

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 2
8 Monday, 29 May 2017
9 (The hearing starts in open session at 9.48 a.m.)
10 THE COURT USHER: [9:48:02] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:48:32] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:48:35] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:48:52] Thank you, court officer.
20 Now appearances please in habitual order, starting with Prosecution.
21 MS SAMSON: Good morning, Mr President, your Honours. For the Prosecution today
22 are Ms Dianne Luping, Mr Eric Iverson, Ms Selam Yirgou, Ms Laura Morris and myself,
23 Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:49:12] Thank you, Ms Samson.
25 Defence, please.

1 MR BOURGON: [9:49:16] (Interpretation) Good morning, your Honour.

2 Representing Bosco Ntaganda, who is present with us this morning, Mademoiselle

3 Sandrine De Sena, Christopher Gosnell and myself, Stéphane Bourgon. Thank you,

4 your Honour.

5 PRESIDING JUDGE FREMR: [9:49:31] Thank you, Mr Bourgon.

6 And now Legal Representative of Victims, please.

7 MS PELLET: [9:49:39] (Interpretation) Thank you, your Honour. The former child

8 soldiers are represented by Vony Rambolamanana and by myself, Sarah Pellet, counsel

9 with the Office of Public Counsel for Victims.

10 MR SUPRUN: [9:49:56] (Interpretation) Good morning, your Honour. The victims of

11 the attacks are represented by the OPCV, Anne Grabowski, associate lawyer, and myself,

12 Dmytro Suprun, counsel.

13 PRESIDING JUDGE FREMR: [9:50:05] Thank you, Ms Pellet.

14 Thank you, Mr Suprun.

15 Before we proceed with our schedule there are a few pending matters that I would like to

16 address. First, I recall that partly due to logistical difficulties faced by the Registry in

17 arranging for the required interpretation for the two witnesses initially scheduled to

18 appear, the Defence will be calling Witness D-0210 and D-0172 to testify during the first

19 evidentiary block. I wish to thank the parties for their flexibility in this regard. The

20 Chamber is aware that there are a number of pending issues in relation to the second

21 witness and we shall attempt to resolve them at the earliest opportunity, hopefully before

22 the end of the day today.

23 And now turning to the second evidentiary block, I note that we have received a request

24 from the Defence seeking a modification of the schedule adopted by the Chamber for the

25 testimony of the accused. That is filing number 1915. The hearings, as scheduled in the

1 Chamber's decision with filing number 1914, are currently set for 14 to 16 June and 27
2 June to 21 July.

3 In responding to this request, there are filings number 1921 and 1922, the Prosecution and
4 the Legal Representatives submitted that the Defence request was, in fact, a request for
5 reconsideration of the Chamber's decision on the schedule for the accused's testimony and
6 that the Defence request should be dismissed. Moreover, and should the Chamber
7 decide to schedule more breaks, the Prosecution put forward a further alternative
8 schedule.

9 On 24 May 2017, the Chamber received via email a Defence request for leave to reply and
10 a response opposing this request from the Prosecution.

11 With regard to the schedule for the second block, the Chamber seeks to accommodate, to
12 the extent feasible and appropriate, the conditions favoured by the Defence to present the
13 testimony of the accused. The Chamber, however, notes that due to the various external
14 factors that are mostly outside the Chamber's control, it is not always possible to add
15 sitting days to a planned schedule, especially on a short notice.

16 For the months of June and July 2017, additional court days cannot be facilitated.

17 Concretely, this means that during the second evidentiary block the Chamber can only
18 hear evidence on the dates previously indicated; in other words, there will be no
19 additional days allotted for the presentation of Defence evidence between now and 28
20 August 2017, when the hearings will resume for a third evidentiary block.

21 Notwithstanding this and mindful of the Defence submissions in this regard, the Chamber
22 recalls that, as always, the starting and end time of each session and break can be adapted
23 to provide for additional breaks or extended sitting hours where appropriate. As for any
24 witnesses, this will be assessed and determined on a case-by-case basis.

25 Mindful of the anticipated lengths of the accused's testimony, the Chamber will ensure

1 adequate conditions are provided for the testimony of Mr Ntaganda. In this regard, it
2 recalls that, in principle, he will not be required to testify for more than four hours per
3 day.

4 Turning to the specific submissions before it, the Chamber has taken note of the email
5 exchanges on 24 May 2017, but rather hears oral submissions on this issue during a
6 hearing on procedural issues, which I will discuss next.

7 Turning now to the second part of this same request number 1915, and to avoid the
8 parties having to spend too much time on written submissions, as requested by the
9 Defence, the Chamber is, in principle, agreeable to discuss orally a number of the
10 procedural matters that were raised by the Prosecution in filing number 1924, as well as
11 other issues related to the expected testimony. The Chamber will dedicate part of the
12 hearings this week to address these matters as well as the scheduling issue I just
13 addressed.

14 So, Mr Bourgon, instead of submitting a written response by 31 May, as provided for in
15 the Chamber's decision with filing number 1914, do you think you can respond orally to
16 the request filing number 1924 by the Prosecution last Friday, for example on Wednesday
17 afternoon or Thursday morning?

18 MR BOURGON: [9:56:27] Yes, Mr President, we are in the Chamber's hands.

19 PRESIDING JUDGE FREMR: [9:56:32] Appreciated.

20 Prosecution, do you have any comment on that?

21 MS SAMSON: [9:56:37] No, Mr President, we are available.

22 PRESIDING JUDGE FREMR: [9:56:39] Very well. Thank you.

23 We will come back to this issue before the end of Witness D-0210's testimony and we will
24 see for what day we schedule these submissions, but please - and we reiterate on that - be
25 ready to discuss these procedural matters orally.

1 Then before we can proceed with the start of the Defence case, I hereby wish to inform the
2 parties and participants that the Chamber rejects the Defence request seeking leave to file
3 a motion of no case to answer which it had requested in filing number 1879. A written
4 decision containing the reasons will follow in due course.

5 And before we approach to the opening statements of -- presented by Defence, we also
6 have been informed that the OTP would like to briefly address the issue of disclosures.

7 Ms Samson, you have the floor.

8 MS SAMSON: [9:57:47] Yes, thank you, Mr President. The Prosecution will be brief
9 this morning. Just a few minutes on the issue of Defence disclosure.

10 Over the last few days, the Prosecution, as well as the Chamber and participants, have
11 received additional, we say, important disclosure in relation to the two witnesses who
12 were scheduled -- who are scheduled to testify this week, and although we note that there
13 may be some difficulties that the Defence is facing, the Prosecution requests that the
14 Chamber enforce its earlier decisions on Defence disclosure.

15 In relation, for example, to Witness D-0172, who will testify perhaps later this week, it was
16 not until Friday, 26 May that the Defence disclosed the witness's full name and full name
17 of the witness's father, whom the Defence had acknowledged was a -- was material for
18 disclosure, as well as an electoral card of the witness. And this is information that the
19 Defence has had in its possession since 15 May. And the -- in fact, the Prosecution had
20 made a specific request to get the witness's full name, and on 17 May, two days after it
21 received the information, the Defence submitted a response to the Prosecution via the
22 Chamber indicating it did not have the requested information related to the witness's full
23 name.

24 So we are not suggesting that the Defence was deliberately withholding the information,
25 but it did have it, and it was not for an additional 11 days that we got the information.

1 And what the Prosecution wishes to stress today is that we cannot investigate or prepare
2 properly if we get the disclosure of the witness's name - which, incidentally, is different in
3 part to the name that we received earlier - until we get that information.

4 So we're working very hard to be able to prepare for the witness coming later this week,
5 but I cannot stress enough that if we don't have the biographical information, and
6 importantly a witness's full and accurate name, it makes it extremely difficult for us to
7 prepare in accordance with schedules that the Chamber has set out and in relation to the
8 difficulties of scheduling different days or requesting adjournments.

9 Secondly, in relation to the witness who will testify today, it wasn't until the evening of
10 Thursday, 25 May that the Defence disclosed this witness's electoral card and a signed
11 statement. And while we certainly appreciate receipt of any additional information that
12 we can get in relation to anticipated testimony, I note that on 8 May, in response to the
13 Prosecution's request for additional information, the Defence responded that the
14 summary that it had provided was sufficient, in its view, in relation to the facts upon
15 which this witness will testify, whereas the statement which at least had begun to be
16 compiled on 12 April, almost a month earlier, contained a lot of the additional detail that
17 we say is critical for us to be able to prepare, in particular in relation to the accused's role
18 in this witness's testimony.

19 And so I point out these two examples because they are the ones that are before us this
20 week, and disclosure just several days before these witnesses come of names or critical
21 details is, in our view, too late, and we would request that the Chamber issue an order
22 reminding the Defence of their obligations.

23 If I could make one very brief additional submission in private session, I would ask to be
24 able to do so.

25 PRESIDING JUDGE FREMR: [10:02:10] All right.

1 Court officer, let's move into private session.

2 (Private session at 10.02 a.m.) * Reclassified partially in public

3 THE COURT OFFICER: [10:02:19] We are in private session, Mr President.

4 PRESIDING JUDGE FREMR: [10:02:32] Thank you, court officer.

5 Mrs Samson, please proceed.

6 MS SAMSON: [10:02:36] Thank you, Mr President.

7 The last issue that I wish to address is the issue of interpretation when the Defence team
8 meets with prospective Defence witnesses. We were provided with the Swahili version
9 of the statement as well as the English interpretation, however, it is not indicated on the
10 statement who performed the interpretation and whether that was a qualified
11 interpretation. We've noted some discrepancies between the Swahili version and the
12 English version and it appears that the Defence investigators may have been the
13 interpreters. I'm not certain of that. But the issue that I raise here is that -- is the
14 propriety of having the Defence investigators being the interpreters on such important
15 meetings, in no small part because they're listed as Defence witnesses of fact as well.
16 They're not qualified interpreters and at least one of them (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 not appropriate that the interpretation be done in that manner and that qualified
21 interpretation be provided.

22 Thank you.

23 PRESIDING JUDGE FREMR: [10:04:09] Thank you, Ms Samson. Probably we remain
24 for -- in private session for the response on both issues.

25 So Defence, who would like to respond?

1 MR GOSNELL: [10:04:20] Thank you, very much, Mr President.

2 I can start in private session and then perhaps go back into public session, if I may, and I'll

3 start with the issue of D-0172 and the circumstances of this witness are somewhat

4 unusual. We only obtained the full name of that person and the surname, that I know the

5 Prosecution is concerned about, we only received that name on 15 May of this year and

6 we disclosed that on 26 May of this year.

7 The information was obtained in the field. The information did not get back to The

8 Hague by the time of the email that was sent on 17 May, which did not include all the

9 information that we could have provided, but that's a simple question of the speed of

10 communication within the team and activities that are going on in the field.

11 Now, why is it that this surname only emerged at this point so late in the day? Well, one

12 of the reasons, Mr President, is because the name of the person came up several times in

13 the course of the trial and that name, since we're in private session I can mention, is

14 (Redacted). This name was mentioned by Prosecution witnesses and that was the

15 name that we thought the person was known by, that was the name on the basis of which

16 we have managed to locate the person, and that was the name under which the person

17 was interviewed up until the time that he was met on 15 May 2017. So there's been

18 absolutely no bad faith on the part of the Defence and, I would suggest, nothing short of

19 the greatest effort possible to bring that information forward to the Prosecution once it

20 became available.

21 And of course the other circumstance that is somewhat unusual is that up until late last

22 week we didn't know that this witness was going to be appearing in this evidential block.

23 It didn't appear that analysing all the information and checking whether or not there was

24 a need for correction against our witness list was a matter of top priority at that time.

25 Once we realised this witness was coming and we reviewed the information more

1 carefully, then we realised that we should make that information available. So that's
2 point number one in respect of Witness D-0172.

3 Interpretation: I don't propose to go into all the details of how the interpretation was
4 conducted, but the purpose of preparing a Swahili statement, a statement in the language
5 of the witness, is to ensure that the witness can directly read the words that he or she is
6 signing. And this is something that we complained about during the Prosecution case,
7 that the Prosecution should be providing statements in a language that the witness is able
8 to directly read in order to ensure that that there is a verifiable record of what the witness
9 was reading when the witness signed the statement. That's not the case when you have
10 an oral read back. And the absence of an oral read back reduces considerably the
11 influence of interpretation which the Prosecution is now putting in question, because it is
12 the statement that the witness is signing, it is the statement that the witness can
13 understand, it is the statement that the witness is saying is true, and the witness can
14 understand that statement because they're reading it in their own language.

15 D-0210: Just out of an abundance of caution I think we should stay in private session.
16 We did try to obtain a statement signed from this witness earlier than we managed to
17 receive it, but there were logistical difficulties which prevented that in terms of the
18 availability of the witness. We -- as soon as we had that statement signed we disclosed it
19 to the Prosecution, and there was no obligation to provide that statement anyway,
20 Mr President. That statement did not need to be taken, did not need to be signed, we
21 could have led the witness's testimony without that statement having been produced or
22 disclosed. And in this respect, Mr President, it's important to recall the important
23 differences in disclosure obligations by the Defence and the Prosecution. The
24 Prosecution has an obligation under Rule 77 to disclose any information that is in essence
25 material, the Defence's obligation in Rule 78 is to permit the Prosecutor to inspect

1 information which is intended for use by the Defence as evidence. Unless and until the
2 Defence has decided that information is going to be used as evidence, there is no
3 disclosure obligation. Those are the rules. And that is a rule that we have abided by
4 when we have decided that we are going to adduce or use a document as evidence, it is
5 disclosed, but until then there is no obligation to disclose.

6 So, Mr President, I believe that that covers the points that have been raised by the
7 Prosecution. We don't believe that there has been any disclosure violation whatsoever.
8 In respect of D-0172, matters have been rushed, and that's unfortunate, and we're not
9 delighted about having to put Witness D-0172 on during the first evidential block either.

10 So thank you very much, Mr President.

11 PRESIDING JUDGE FREMR: [10:10:13] Thank you, Mr Gosnell.

12 Ms Samson, please briefly. Are you satisfied with this explanation or not?

13 MS SAMSON: [10:10:20] Well, no, Mr President.

14 And just briefly, the Defence has not addressed the core issue on interpretation as to who
15 is interpreting from the witness's mouth to the lawyers' ears and that, as I understand,
16 was done from Swahili into English because the lawyers don't speak Swahili, and that is a
17 critical component of one of the complaints that we're making today in relation to those
18 interviews.

19 And then in relation to disclosure, we read the Chamber's orders differently. The
20 Chamber had ordered disclosure by 26 April of relevant information upon which the
21 Defence intends to rely, and that was intended for all witnesses irrespective of their date
22 of testimony, and that has not been complied with in these two cases. It's the first two
23 witnesses who have come, and the reason why the Prosecution sought to raise it now is
24 that we do not wish that this continues for each and every Defence witness to come.
25 And secondly, the Chamber issued very specific instruction on the level of detail that the

1 summaries, should the Defence choose to disclose summaries rather than statements,
2 should contain, and the directions and orders of the Chamber are to provide more level of
3 detail than the Defence's initial summaries provided. If I recall correctly, I don't have the
4 exact language with me, but the Chamber ordered that the key specific facts upon which
5 the witness is to testify be disclosed. And the Prosecution made very detailed specific
6 additional requests for supplementary information as to what exactly Witness D-10 was
7 about to testify on in relation to his attempt to be enlisted and Mr Ntaganda's role in that
8 particular event. And the answer that we obtained was that no further information is
9 necessary because their general list of topics is enough. And we disagree with that.
10 What we found is that on 25 May we did get some supplementary information which we
11 say was incumbent upon the Defence to have provided earlier, by 26 April. And the
12 additional information is not only appreciated by the Prosecution but it's a requirement as
13 set by the Chamber that the Defence disclose sufficient detail of the facts upon which a
14 witness is going to testify.
15 So we do say there's been a disclosure violation, we don't suggest that it is deliberate, but
16 we do wish that the Chamber and we seek the Chamber to issue an order or a further
17 reminder of its previous decisions on the scope of Defence disclosure and the timing.
18 Thank you.

19 PRESIDING JUDGE FREMR: [10:13:24] Thank you, Ms Samson.

20 I think it's -- I don't need any further discussion on that.

21 Now let's move into open session.

22 (Open session at 10.13 a.m.)

23 THE COURT OFFICER: [10:13:37] We are back in open session, Mr President.

24 PRESIDING JUDGE FREMR: [10:13:48] Thank you, court officer.

25 I will briefly address both issues.

1 As concerns disclosures, I would like to highlight that the conditions under this
2 evidentiary block is conducted are really very specific. We had, because of circumstances
3 you are well aware of, had to change our schedule several times, even very short time
4 before the beginning of this block, so, and I think we are all in agreement on that it was
5 not deliberate -- not intentional violation of disclosure, if any, which to me is the most
6 important point. Otherwise, yeah, I can confirm that the Chamber encourage Defence
7 and it, in fact it concerns in fact the third evidentiary block to strictly, strictly respect all
8 rules set up by the Chamber, including deadlines. So I believe that there will be no
9 excuse which now can be used because of the specific circumstances concerning the first
10 block.

11 As concerns the translation, on the one hand, yeah, we can appreciate that the witness is
12 testifying in Swahili and his testimony is written down in Swahili and then translated into
13 English. At the same time, yeah, the translation, we all know that is an issue that could
14 hypothetically influence the content or the original testimony a lot, so it's necessary that
15 person conducting such a translation should be not only qualified, but also neutral with
16 no suspicion that such a person could be biased.

17 So for the next cases, please, Defence, have it in mind.

18 Now, if there is nothing further.

19 Mr Gosnell.

20 MR GOSNELL: [10:16:10] Just one follow up, Mr President, and I thank you for that
21 guidance. And may I just say that on the Defence side we would be delighted that the
22 Registry commits to provide us with interpreters as required. We have made those
23 requests, they have been very forthcoming and very helpful, but interpreters are not
24 always available for the missions. And that's one of the resource constraints that causes
25 us difficulty in this respect.

1 But having said that, we would welcome having the services of a Registry interpreter at
2 each and every interview with each and every one of our potential witnesses.

3 Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [10:16:52] All right. Noted.

5 And now I recall that the Defence had requested permissions to supplement its opening
6 statements.

7 Mr Bourgon, anything else?

8 MR BOURGON: [10:17:04] Yes, Mr President.

9 PRESIDING JUDGE FREMR: [10:17:04] Please.

10 MR BOURGON: [10:17:06] I would like to briefly address the Chamber in respect of
11 two issues, the first one being the Defence Witness 0172. The Chamber indicated this
12 morning that it was grateful for the Defence being able to put this witness on this week.
13 Mr President, I don't want to ruin the day, but it is not yet confirmed whether D-0172 will
14 be able to testify. Our intent is to have him testify on Friday, but this does require some
15 logistical matters to be resolved. Amongst these matters, Mr President, is the Defence
16 requires to conduct a further interview with the witness. That's number one.
17 Number two, the Prosecution has requested to meet with the witness and the witness has
18 accepted to meet with the Prosecution, and this also has to take place in the presence of a
19 Defence representative, whereas we have no representative at this time in the field and,
20 therefore, this will have to be conducted via video link. So there are some logistical
21 difficulties.

22 Then of course there are the requests that we filed last night to ensure that no time would
23 be wasted. And our intent was to ensure that we were following the Chamber's guidance
24 and pushing the issue as much as we can to ensure that this witness could testify.

25 All this to say, Mr President, that there is -- we will know for sure tomorrow whether the

1 Defence will be able to have Witness D-0172 testify on Friday. We hope so and will do
2 everything to make that happen, but it is yet unconfirmed.

3 Second issue I would like to address, Mr President, unless you have any questions on this
4 specific matter.

5 PRESIDING JUDGE FREMR: [10:18:59] Yes, I have just one: Do you have any idea
6 what time you think you could be sure whether this witness will or will not come. You
7 say you are not sure, even not until tomorrow, so.

8 MR BOURGON: [10:19:11] Well, Mr President, I think that by tomorrow both
9 interviews have to -- must have taken place, that is the Defence interview as well as a
10 meeting with the Prosecution, so both have -- if both interviews can take place tomorrow,
11 then we can confirm at the latest by end of business tomorrow, Tuesday, 30 May.

12 PRESIDING JUDGE FREMR: [10:19:33] Very well. Please proceed.

13 MR BOURGON: [10:19:36] The second issue, Mr President, deals with the -- it's an issue
14 dealing with the Prosecution's request submitted on Friday regarding the use of
15 non-privileged conversations of Mr Ntaganda during his testimony.

16 Prosecution has requested the use of 162 conversations and Prosecution has until
17 Wednesday, 31 May to supplement its submissions. And of course we have been invited
18 by the Chamber to respond by 6 June.

19 Of course we will -- it is not a surprise to the Chamber, Mr President, we will be opposing
20 this request, but it would be premature to say anything in this regard until we get the final
21 Prosecution's submissions. But there is one issue that needs to be put on the record at
22 this time, and I did inform my colleague from the Prosecution of this, and this is
23 a -- problems related to the reliability of the material the Prosecution seeks permission to
24 use, reliability mainly because of the transcripts and summaries which have been
25 prepared. In this regard, I wish to put on the record that we do have some significant

1 interpretation/translation difficulties, mainly with regards to material using the Kihema
2 language and Kilendu language. The Prosecution appears to have resources in these two
3 languages available to it. The Registry does not. The Counsel Service Support Section
4 does not. We have conducted in the past eight days about four different tests with
5 candidates that we thought could help us by correspondence in translating some of this
6 material. All four failed the test and simply are not up to the task. So I just want to put
7 on the record at this time all -- without prejudice to any of the arguments that we will
8 submit on 6 June -- that translation and interpretation affects and impacts the reliability of
9 the material that the Prosecution seeks to use.

10 Thank you, Mr President.

11 PRESIDING JUDGE FREMR: [10:22:13] Thank you, Mr Bourgon. Well noted.

12 Ms Samson, do you want to comment it?

13 MS SAMSON: [10:22:19] Not really, Mr President. Thank you.

14 We can respond at the appropriate time.

15 PRESIDING JUDGE FREMR: [10:22:22] Exactly.

16 All right. So now, I recall that the Defence had requested permissions to supplement its
17 opening statements at the start of the presentation of its evidence, which the Chamber
18 granted in our decision on further matters related to the presentation of evidence by the
19 Defence. I therefore now will give the floor to the Defence for its further opening
20 statement. This, as we decided, should last approximately one hour. Anyway, we
21 would like if this statement could be completed before the end of this session. And we
22 are ready to extend this session extraordinarily, so at the latest we will have to finish
23 quarter to 12.

24 So at the moment you have one hour five minutes to complete it, Mr Bourgon.

25 MR BOURGON: [10:23:25] Thank you, Mr President.

1 Mr President, I will now begin on the presentation of the supplementary address or
2 supplementary opening statement and introduce the case for the Defence as of today.

3 Mr President, at this point in time I had the intention to use a slide which depicted --

4 THE COURT OFFICER: [10:24:05] I'm very sorry to interrupt, the PowerPoint
5 presentation will be displayed on the evidence 2 channel.

6 MR BOURGON: [10:24:13] Thank you. Thank you.

7 As I was saying, Mr President, following this slide, which you see on your screen, I
8 intended to add a slide saying, "Well, actually, it's the case for The Terminator", and to put
9 a slide with Arnold Schwarzenegger in his costume as The Terminator. Because let's face
10 it, this is what we face in this trial; a man who has an awful reputation and a man who has
11 to make up for this reputation. But this is why we are having this trial. Of course this is
12 not Hollywood and this trial must not be turned into trying to establish the reputation of
13 one man but, rather, in terms of establishing whether the crimes as charged have been
14 committed.

15 Why do we need to have a supplementary opening statement at this time?

16 Well, first because of the time elapse. We did the first opening statement in September
17 of 2015, that's almost two years ago. We need to recall some of the issues addressed on
18 that occasion. I note, in particular, Mr President, that when I address in a very short time
19 during initial opening statement what the case for the Defence was, we maintain every
20 word that was mentioned on that occasion.

21 But at this point in time it is necessary, in our view, to highlight the Prosecution's
22 incomplete and selective approach during the presentation of its case because this will
23 impact on what the Defence will present during the case for the Defence. And, of course,
24 we want to refresh or to recall and provide the Chamber with a road map into the case for
25 the Defence so that you will be able to follow as witnesses appear before you and provide

1 the evidence.

2 I have said previously, Mr President, that we are having some difficulties in the sense of
3 getting the witnesses ready to come and testify, the witnesses you -- the Chamber has
4 obtained already our list. There are many witnesses. But due to logistical constraints
5 and time considerations, it is unlikely that we will be able to call these witnesses theme by
6 theme, this is why it is important for the Chamber to know at this point in time where we
7 are going with the case for the Defence.

8 So these are the issues I will briefly address today; Prosecution's case, the defects in
9 Prosecution's case, what can be expected from the Defence case, and a couple of issues
10 related to the assessment of evidence and the Prosecution's Article 70 investigation. And
11 I will end by a few fair trial issues.

12 I will not come back on the quack quack theory that I used back in September 2015,
13 although it was very popular and I've been asked to repeat the quack quack theory of the
14 duck. I am not going to do so and I will not come back on the theory of the old lady and
15 the young lady. We believe, Mr President, that the Trial Chamber is well aware of the
16 fundamentally opposing theories in this case.

17 But let's take a look at the Prosecution's case in what has been adduced so far because, as
18 I've mentioned previously, this will impact on what the Defence will present.

19 The Prosecution would like you to see this case through a very narrow lens, as the one
20 depicted on this slide. They would like the Chamber to look through this narrow lens
21 and to assess the evidence.

22 Well, our understanding, Mr President, is different from what the Prosecution would like
23 you to believe. First we need to examine and understand the Prosecution's case. And
24 we need to understand that at the end of the day the Prosecution's case is based on two
25 attacks, or attacks involving some combat, what they refer to as the "first attack" and what

1 they refer to as the "second attack".

2 In both cases there is a very definite time scope and there is a very definite geographical
3 scope. That's the gist of the Prosecution's case. And this we ask the Chamber to bear in
4 mind and to follow carefully as we present the evidence for the Defence.

5 The temporal scope of these attacks, unlike what it is for the other crimes, when I talk
6 about other crimes, of course, I look at the crimes charged for -- in relation to what the
7 Prosecution refers to as "child soldiers", and also the recruitment, enlistment and use of
8 child soldiers, as well as sexual violence related crimes. For these crimes, they go from
9 6 August until 31 December. But there's a difference between the two and we say that it
10 is important for the Prosecution to bear this in mind.

11 Let's take a look, Mr President, quickly, as to the Prosecution's case defects. What is
12 missing, in our view, in the Prosecution's case?

13 Well, you see five topics on this slide which I will address one by one and see what the
14 Defence will do to overcome these defects in the Prosecution's case so far, how the
15 Defence intends to deal with these issues. And this will assist the Trial Chamber, in our
16 submission, to understand better the evidence.

17 First issue is the failure to adduce evidence, placing the events of 2002-2003 in the proper
18 context.

19 Mr President, the Prosecution is presenting a very streamlined case. For them, there is
20 one bad rebel group called UPC/FPLC who have -- which has committed crimes, and
21 there is one man responsible for it all and his name is Bosco Ntaganda.

22 Well, the situation is much more complex than what the Prosecution would like you to
23 believe.

24 We haven't heard much, Mr President, in terms of the roots of the 1999 and 2001 ethnic
25 violence which itself led to an armed conflict in 2002-2003. Admittedly, Mr President,

1 witness after witness have come and have been asked questions about the conflict, but
2 what is the link between the ethnic violence and who is responsible for the ethnic violence
3 in 1999 to 2001 which led to the situation we are dealing with in this case?
4 We did hear some evidence regarding the role of Uganda, Rwanda and the DRC central
5 government, but the Prosecution has not made this a highlight of its case. Why?
6 Because when you look at the role played and when you look at the geo-political situation
7 in Ituri and in the Democratic Republic of Congo, then you see the evidence from a
8 completely different perspective.
9 What about the UPC? We believe, Mr President, that the Prosecution, other than
10 submitting some documents to the Bar table, has led very little evidence concerning the
11 UPC, its ideology, as well as the FPLC.
12 How will the Defence react? Well, the Defence will react by submitting evidence,
13 evidence that we say should have been part of the Prosecution's case. They have the
14 burden of proof, but now we feel that we have an obligation to address these issues, the
15 ideology of the UPC, what was the UPC. To our recollection, Mr President, one witness
16 actually addressed the inner workings of the UPC, UPC/RP, and that was Witness P-0005,
17 who at the end of the day turned out to be almost a Defence witness.
18 We haven't heard any much information about the ideology, why was this UPC created in
19 the first place and why and how the Forces Patriotiques pour la Libération du Congo was
20 created. These are issues that will allow the Chamber to look at the evidence from a
21 different perspective.
22 Moving on, Mr President, to the second issue dealing with expert evidence. Expert
23 evidence, we all know, is meant to assist the trier of fact in areas which are less known or
24 unknown or unfamiliar to the Judges. One area in this case that we have not heard from
25 the Prosecution is military expert evidence. It is essential, in our view, Mr President, that

1 the Chamber understands how an armed force or armed group or any armed movement
2 of this type, how it works, how it is organised and how it is supposed to function.

3 Now, in this regard, we will call an expert witness, a military expert witness, and the
4 military expert witness, Mr President, will show you what a western army would be like.
5 He will show you what a rebel group not following the law would be like and he will
6 compare the two and tell you where, in his expert assessment, the UPC falls in this
7 equation. And this will allow you to understand to what extent responsibility can be
8 incurred by Mr Ntaganda, based on this military knowledge.

9 Communications, Mr President, is another issue that we have heard very little upon.

10 We've heard and have admitted it in evidence some audio recordings or tactical
11 intercepts. We still don't know where these intercepts come from. And we have no
12 information on the record allowing the Chamber to know what is the normal distance that
13 you can speak to another person using a Motorola radio. What evidence do we have
14 concerning the use or the possibility for a person to speak to another person via Motorola
15 or Motorola base, as was used in the trial? We don't have this.

16 We will fill the void, Mr President, and we will explain to the Chamber, by expert
17 evidence, what is the normal distance that you can speak on a Motorola, what is the
18 maximum distance by which two people can speak using a Motorola base, how are the
19 technical specs, specifications, applicable to the use of the phonic. All this, Mr President,
20 you don't have today, yet Prosecution would like you to assess the evidence without this
21 knowledge. We will do our best to introduce it.

22 We have heard and we have admitted in this case evidence coming from exhumations. I
23 put that under expert evidence. And we have also seen some satellite imagery evidence.
24 Other than the fact that no conclusions, in our submission, can be drawn from this
25 material, they will become very important when the time comes for the Chamber to draw

1 inferences based on the evidence. If we look at just the situation in Kobu, Bambu and
2 Lipri, and we look at the related exhumations that were conducted there and the results
3 thereof, this -- these results simply don't match what the Prosecution's case is about the
4 events that would have taken place in the second attack.

5 More importantly, the issue of propaganda clearly, from the evidence that we have heard,
6 simply does not match the exhumation evidence and/or the satellite pictures that we have
7 seen.

8 Mr President, one of the issues that I had a lot of problems with is the paucity of visual
9 aids used by the Prosecution. We put this in a motion close to the end of the
10 Prosecution's case and we said that the Prosecution had failed to provide the minimum
11 information required to the Chamber to understand where these events took place, how
12 does it look like, what is the conditions, what are the road conditions. I use the word
13 "road". I should not even use the word "road". I should use the word -- what were the
14 conditions of the path that were leading from Bunia to Mongbwalu, from Mabanga to
15 Mongbwalu, from Bunia to Mongbwalu going by Nyangarai? Have we seen any roads?
16 Has anybody provided any evidence to your Honours regarding the conditions, how
17 difficult it was or not to get to these places?

18 Photographs. Prosecution has had access to the same area that we have been
19 investigating, but for one difference: We've been investigating for, at best, one year; they
20 have been investigating for 10 years, at least. No photographs. Or photographs of dead
21 bodies and exhumations, yes, but photographs of features, photographs of roads,
22 photographs of buildings, photographs of Mr Lubanga's house, photographs of Mandro
23 training camp, not much, if any.

24 Organisational charts. These can assist your Honours in understanding the construction
25 of the army. And they are important. The Defence will fill the void by putting in

1 evidence organisational charts. Organisational charts, I mentioned that in
2 September 2015, they are just loved by the military. But they are helpful in knowing the
3 lines of command, or I say lines of command and control, or lines of staff relationships
4 and the size of the units and how they were organised.

5 The Prosecution has put a lot of documents through the Bar table motions under the
6 submission that those documents would show that it was a structured army. But we will
7 do our best to highlight to what extent the FPLC, or Forces Patriotiques pour la Libération
8 du Congo, was in fact organised.

9 The logbook, Mr President, it is in evidence. I've said that in 2015 and I say again: You
10 can expect to see more of the logbook during the Defence case. But this time we will look
11 at specific entries to corroborate witness evidence, and that will be a significant part of our
12 case.

13 The reliance on what I call non-reliable evidence. Mr President, there's a lot of people
14 present in the DRC, a lot of NGOs and a lot of MONUC entities. They are all trying to do
15 good work and they are, in fact, doing good work to try and put the Democratic Republic
16 of Congo back on its feet. But they've been there for 20 years, or almost 20 years, and
17 while doing their work they have gathered a lot of information based on rumours and
18 based mostly on the people they met.

19 We say, Mr President, that this evidence is not reliable, and yet the Prosecution has been
20 attempting to build its case on such information. There's a difference why we have a
21 trial, because a trial is based on evidence. If we are going to simply take what was
22 gathered by NGOs in the field without any respect for due process and to put that in a
23 judgment, then we are wasting our time, respectfully submitted, Mr President.

24 The cultural differences. Prosecution had initially indicated that it would call a witness
25 who would speak about, at least, some of the customs in Africa. This did not materialise.

1 But it is a significant aspect of this case. The Democratic Republic of Congo is not The
2 Hague, it is not Canada, and it is not any of the countries in Europe. The way people live
3 there, it's not that it's bad, it's not that it's better, it's simply different. And the way the
4 citizens of the DRC live is significant in assessing the evidence, and we have heard very
5 little in this. And now we are basically -- not forced, but we are in a position where we
6 have to fill that void because it does make a difference in the way that you will see the
7 Prosecution's case.

8 Now let's move on to the Defence case. So I've said many times, there are two theories in
9 this case. Well, that's the case for the Defence. What the Prosecution wants you to see
10 through that narrow lens is not what happened. Take a look at this slide. It says
11 everything. If you look at the total picture, you see that the person handling the knife is
12 actually the person whom you thought was the aggressor. That's what's important in
13 this case and that's what the Defence will present during the case for the Defence.
14 Those are the issues I will address regarding the evidence that can be expected from
15 the Defence.

16 I will address each one of those in turn and I will begin, of course, by Bosco Ntaganda
17 himself; the role, the involvement and/or knowledge of Bosco Ntaganda in relation to the
18 events of 2002-2003.

19 The Prosecution has sought to portray Mr Ntaganda as an arrogant man, as a brutal man,
20 as a vicious man. This is often the caricature of military leaders painted by the enemy.

21 But, Mr President, you will have the opportunity yourselves to observe Mr Ntaganda
22 himself. There's no doubt in my mind Mr Ntaganda is a very charismatic man, but the
23 Chamber will be surprised what kind of charismatic man he is. He's a confident man,
24 yes. He is a man who went under hunger strike for specific reasons, and you will hear
25 about that, but he's a man who's respectful and humble enough to face justice after

1 surrendering voluntarily in March of 2013, he will now face this Chamber and undergo
2 public cross-examination, and most of his testimony will take place in public session.
3 You will see for yourselves who is Bosco Ntaganda.
4 When we look at Bosco Ntaganda, the major difference between the Prosecution and the
5 Defence is what can be attributed to Bosco Ntaganda. Mr Ntaganda was first and
6 foremost a soldier. He ended up in Bunia, you will know why he ended up in Bunia, and
7 when he ended up in Bunia he became a member and was promoted as the chef
8 d'état-major adjoint opération et organisation. Mr Ntaganda is not a political man.
9 Mr Ntaganda is not motivated by ethnic values, but Mr Ntaganda is a professional soldier
10 who was trained, who trained others and did his utmost to ensure that all of those under
11 his command, or even when they were not under his command, but part of the Forces
12 Patriotiques pour la Libération du Congo, he took the necessary measures, he took the
13 measures to ensure that the FPLC ideology, what the Prosecution has failed to present to
14 your Honours, would be implemented and would be respected.
15 I will address a little later, of course, we anticipate that the Prosecution will try to attack
16 the character of Mr Ntaganda. And I'll say a few words later about that, but this will
17 certainly be a major part of our case, which is who is Mr Ntaganda, what he did and why
18 he did so.
19 The other issue we will address is the UPC, I should have put on this slide UPC/RP,
20 because it is very important, and the FPLC, how they were created, why they were
21 created, how they were organised, and their activities. More importantly, the measures
22 taken to ensure implementation and respect of their respective ideology.
23 And here, Mr President, I weigh my words in terms of respective ideology. What you
24 will hear from the Defence during the presentation of its case, you will hear that there is
25 something called UPC/RP ideology, that's one thing. There is FPLC ideology, that's a

1 second thing. And there is Bosco Ntaganda's own ideology. The three are very similar,
2 but they are distinct. And the relationship between the three will be addressed during
3 the presentation of the case for the Defence.
4 You will hear in the case for the Defence the fact that there were on two occasions what
5 Mr Ntaganda I believe will refer to as a target or execution squad, that's when it became
6 so important to send a message to the troops that if you commit a crime the consequences
7 can be the firing squad. It happened on two occasions, it was organised, it was approved
8 and it was meant to achieve a specific purpose. You will hear about those two events.
9 Whether or not Mr Ntaganda was involved in any of them. You will hear from
10 Mr Ntaganda that when one day he was informed about his -- certain members of his
11 group having looted, that he burned the goods and that he whipped those people in
12 public to punish them. You will hear about all the peoples who were put in detention by
13 Mr Ntaganda to achieve the purpose of fulfilling the ideology of the group.
14 Mr President, the conduct of armed military operations by all armed groups present in
15 Ituri is another major aspect which is missing from the Prosecution's case. They did on a
16 few occasions refer to other attacks, but they did not present any evidence regarding all
17 attacks.
18 I will address this in two sections: First section is the so-called contextual attacks, so once
19 again these would be the attacks where the FPLC would be the attacking force, and
20 according to the Prosecution this allows -- should allow the Chamber to conclude that
21 there was a widespread and systematic attack against the civilian population. Well, the
22 evidence we will put forward during the Defence case will show completely otherwise;
23 the measures taken, the operations conducted, why they were conducted, how they were
24 conducted. We'll show, your Honours, Mr President, we submit, that there was no
25 widespread and systematic attacks against the civilian population.

1 Now, I note in this regard and talking about widespread and systematic attack goes way
2 beyond armed or military attacks, but even if you consider the totality of the evidence, we
3 will present evidence that will convince you otherwise.

4 The second component of all attacks is, of course, the attacks committed by other groups.
5 And we haven't heard much about that. Nothing to do with tu quoque argument, it's not
6 because they did it the UPC could do it. Unrelated, Mr President. What is the matter is
7 that there were continuous attacks against the civilian population and that what the
8 UPC/RP and the Forces Patriotiques pour la Libération du Congo were attempting to do is
9 to protect the civilian population. And that's the evidence that we will submit.

10 Let me use one example, Mr President. There is Mongbwalu. Mongbwalu, your Honours
11 will recall, has to do with the so-called first attack, but there was another Mongbwalu
12 operation in June of 2003. We haven't heard much about that operation. Who led this
13 operation? Bosco Ntaganda himself. But it's part of the temporal scope, but it's not
14 addressed in the evidence. Why? Because this attack was conducted the proper way, or
15 they can't show that it was not, but the evidence related to Mongbwalu three, as we call it,
16 is indeed significant and this is what we will show during the case for the Defence.

17 What can the Chamber expect in terms of recruitment policies and practices of the UPC
18 and FPLC? Of course we can't ignore this issue, and it is an important issue.

19 Your Honours will hear from Mr Ntaganda about his knowledge of young people or
20 kadogos in the fighting. You will hear, Mr President, about the difficulty of assessing age
21 during this time period. You will hear about the practices that were in place up until the
22 time that the Rome Statute came into force. Of course, we will highlight and do our best
23 to highlight through the evidence that will be adduced to explain to your Honours that
24 the age limit of 15 was something that was completely unknown at the time. The entry
25 into force of the Rome Statute in 2002 marks the official line or entry into force of the 15

1 years old standard. That standard was not applied by the NGOs, it was not applied by
2 the UPC, it was unknown. And we will explain the impact of the fact that this line was
3 not known. Witnesses for the Prosecution came here and say, "Ah, under 15, higher 15."
4 This issue of 15 years old was not an issue. The issue was children and the UPC had
5 clear-cut policies and did not have a policy of recruiting young people and we will have
6 evidence that will show this.

7 You will hear the degree to which the process of demobilisation encourage false or
8 artificial claims about age that were naively accepted by NGOs whose funding depended,
9 after all, on their own assessment of age. You will hear about young people who were
10 rejected from training because they were perceived as too young. And you will hear
11 from Mr Ntaganda himself how he perceived the situation. You will not hear him -- or
12 Mr Ntaganda deny the possibility that there may have been relatively isolated occasions
13 when individuals under 15 managed to join the UPC, but you will hear him say that every
14 effort was made to ensure that anyone who was too young was not allowed into the
15 FPLC.

16 The charges of enlistment, conscription and use of child soldier has a lot to do with intent.
17 And if we look at the evidence we've seen so far, we haven't seen -- or it is our respectful
18 submission that not one child soldier has managed to testify in this case. So where is the
19 evidence? We have seen video recordings. We haven't seen anyone drawing
20 specifically the attention of the Chamber as to where these so-called child soldiers were.
21 You'll see more videos from us. And again, when you see all of these videos taken in a
22 variety of situation, then you say: Well, where were these child soldiers that the
23 Prosecution is talking about?

24 Mr President, one very important issue is the testimony of witnesses possessing personal
25 knowledge of the acts and conduct of Bosco Ntaganda and other key players. And this

1 will be a major issue. Why? Because the Prosecution has called to testify persons
2 identified as insiders. What is an insider? Of course, *stricto sensu*, an insider is
3 someone who was a member of FPLC. That makes a person an insider. But when it
4 comes to evidence, Mr President, an insider is someone who must be in a position to
5 know the evidence he will provide to the Chamber.

6 If you compare -- and I will simply refer for the moment to a few of the Prosecution
7 witnesses, P-963, P-017, P-907, when you look at these witnesses, just to name a few, and
8 the role and what was their involvement in the operation, then you have to ask yourself:
9 What should these people know about high-level decisions being made, much higher than
10 their pay grade, if I can use this term, but yet they seem to know everything?

11 Well, the witnesses we will call, we certainly intend to have witnesses who will come to
12 provide you evidence because they are supposed to have this evidence. When an escort
13 of Bosco Ntaganda will come to testify, he was there, he worked with Mr Ntaganda, he
14 accompanied Mr Ntaganda, he will be in a position to tell you because he knows.

15 But even an escort will not be able to tell you about high-level decisions. We ask the Trial
16 Chamber to pay very close attention to what information should be in the possession of a
17 witness depending on the role he had in the organisation. An escort will not be able to
18 say about a decision to attack or not. But a member of the *état-major général* will
19 certainly be able to tell you maybe about the decision-making process but will not be able
20 to tell you about what was going on amongst Bosco Ntaganda's escorts. This standard
21 that we will try to abide by must also be applied to the evidence you've heard from the
22 Prosecution, and that is very important.

23 A few issues, Mr President, that we believe will require special attention and vigilance
24 from the Chamber at this point in time, those are the issues on this slide that I wish to
25 address very briefly, beginning with the direct evidence versus finding by inference.

1 And there is very little direct evidence, in our respectful submission, which has been led
2 by the Prosecution. And the Chamber will have to adjudicate this case based on
3 inferences, but inferences of course must be the only possible conclusion or logical
4 conclusion based on all the circumstances. And that will be very important because
5 when we look at what is -- what evidence is reliable and what evidence is not reliable.
6 Plausible evidence and the source of witness evidence.

7 Mr President, the time is a crucial factor in this regard. Few dates have been put forward
8 by the Prosecution, Prosecution witnesses, and it is likely that the situation will repeat
9 itself with Defence witnesses. It is very difficult for a witness to recall more than 15 years
10 after the fact exactly what day or what date something happened. However, what is
11 plausible is, we submit, the governing -- or should be the governing issue. What does it
12 mean when evidence is plausible? It means that a witness account can be explained, can
13 be accepted as being possible based on the totality of the evidence. And the source of the
14 evidence says it all. And the source has to do with a real insider or whether an insider
15 has the possibility to know the evidence he is putting forward.

16 Modes of individual criminal responsibility. We did this in September, so I'm not -- don't
17 want to spend too much time, but the fact remains that the Prosecution has put forward a
18 case in which many different modes of responsibility are alleged based on the same facts
19 without explaining the specific or the differences.

20 In this case, Mr President, we submit that when your Honours will consider the evidence
21 that we will lead during the Defence case, two specific issues require special attention:
22 Knowledge and the importance of mens rea. Hindsight, Mr President, can be a deceptive
23 lens through which to assess the knowledge of an accused. Complexity and confusion
24 can be underestimated, and foresight and control exaggerated.

25 The Prosecution would have you believe that Mr Ntaganda foresaw the crimes which

1 your Honours have heard evidence during the Prosecution's case. And accordingly,
2 they've shown you a very streamlined case, a streamlined version of events, with a view
3 to proving that to have been the case.
4 We will show in the Defence case a much wider picture of the complexity of the evidence,
5 especially in the context of horrifying and widespread attacks against Hema and the fog of
6 war. This war was not fought by units on an open battlefield in neatly formed units, but
7 it's rather a war of insurgency and counter-insurgency, with many fighters on both sides
8 and many wearing civilian clothing. These are but some of the complexities that of
9 course the Prosecution has sought to downplay, and your Honours will hear from the
10 Defence and from Mr Ntaganda himself how complex the situation really was.
11 Audiovisual exhibits. Prosecution has adduced in evidence various audiovisual exhibits,
12 but very small portions thereof. The Defence will also use audiovisual exhibits, and we
13 ask the Chamber to pay attention to the contents of these audiovisual exhibits because
14 they were filmed, they were made at a time when no one even expected that there will be
15 a trial about the events in Ituri, and they are highly relevant in this case.
16 And we will also use video evidence, and this video evidence that we will put
17 forward -- for example, of activities involving the UPC/RP and Thomas Lubanga,
18 speaking out, whether to the population, whether to the media, or whether to the troops
19 and spreading the same message, the same ideology and the same intent and objectives of
20 the UPC RP -- and that, Mr President, we will say should be of importance to you in
21 assessing the evidence.
22 Character evidence. I said earlier on, the Prosecution will undoubtedly attempt to
23 portray Mr Ntaganda in a negative light. Mr Ntaganda, after the events of 2003, was a
24 member of other armed groups. But you will also hear from him his story as to what
25 groups he belonged to and his activities and whether his ideology wavered at any time

1 while being a member of these groups.

2 You will hear, Mr President, about an odd relationship between Joseph Kabila, son, and
3 Mr Ntaganda, when Mr Ntaganda was promoted general in the FARDC and when
4 Mr Kabila, who had requested the arrest and transfer of Mr Ntaganda to The Hague, was
5 also saying, "Well, no, he's more important to peace here than in The Hague", and it is
6 only when Mr Ntaganda decided to leave the FARDC that Mr Kabila decided to let him
7 go.

8 You will hear about these events in a general manner, but all of this, Mr President, have to
9 do, of course, with the character of Mr Ntaganda, but what we say is the more the
10 Prosecution will go into this area, the more it shows how thin their case is for 2000
11 and 2003.

12 Which brings me to the Article 70 investigation. It's been with us since the beginning of
13 this case. The day I arrived here, I had a nice request to impose restrictions on
14 Mr Ntaganda on my desk, and we've been living with this issue ever since, but we haven't
15 seen any Article 70 case yet. Maybe it's coming, but the fact that the Prosecution, we
16 respectfully submit, Mr President, has been using -- has been using this Article 70 ghost
17 and these allegations in order to shed a negative light on Mr Ntaganda. And we ask you,
18 Mr President, not to be disturbed by this evidence.

19 This case is not about whether Mr Ntaganda disobeyed applicable regulations while in
20 detention. You know very well, Mr President, the Chamber is aware that Mr Ntaganda
21 spoke to some people on the phone and that he was not supposed to use his telephone to
22 speak to some of these people. The Chamber is aware of that. But this case is not about
23 whether he disobeyed these rules; this case is about the charges confirmed in the updated
24 Document Containing the Charges.

25 The Prosecution seeks to tarnish Mr Ntaganda by mining the 4,500 telephone calls since

1 his arrival at the ICC detention unit, in which of course he spoke to friends and former
2 colleagues about how events had unfolded more than ten years before. And of course
3 the Prosecution would like -- and we hope that the Chamber will stop the Prosecution
4 from doing so, but they want to select the most tarnishing of these 4,500 conversations in
5 which perhaps Mr Ntaganda does not use words in exactly the right way.

6 But we say again, Mr President, the Prosecution's enthusiasm and its insistence on
7 inviting the Trial Chamber down this rabbit hole reflects the weakness of the evidence it
8 has presented in this case.

9 All this to say, Mr President, I'm approaching one hour, I think I'm at 59 minutes. The
10 Chamber is well aware of the two fundamentally opposing theories. The complexities of
11 the circumstances ruling at the time will be the focus of the Defence case. Unfortunately,
12 we need to supplement the case record, and we will, but in this regard, Mr President,
13 already I invite the Trial Chamber to be vigilant because we anticipate that once we've
14 finished the presentation of the case for the Defence, the Prosecution will ask to file some
15 rebuttal evidence, because there's a lot of empty areas that we will fill. And we hope that
16 the Chamber will realise that these issues should have been part of its case, that there is no
17 surprise in the Defence case and that it should not be able to try and repair its case once
18 the presentation of the case for the Defence is over.

19 I conclude, Mr President, by saying that -- addressing a few fair trial issues: Insufficient
20 time and facilities to prepare. We know we have --that whatever we say, we have very
21 little credibility. We do our best to try and explain, but it's been like this since the
22 beginning. We dare to say that it could have been different, but it is a major issue. But
23 at this case, Mr President, we are asked to present a Defence case, and yet there are still
24 some pending jurisdictional issues. I don't think that I ever -- I have ever seen this before,
25 although I stand to be corrected.

1 We have filed a motion, a request for a stay of proceedings, with prejudice that the
2 Prosecutor -- which was denied. We would like to appeal this decision before the
3 Appeals Chamber, yet we don't know whether we will be able to appeal this, and yet we
4 have to start the case for the Defence.

5 And lastly, the Chamber issued a ruling this morning denying our request to submit a no
6 case to answer motion. Again, I stand to be corrected, but this is nowhere to be seen that
7 without having the possibility to make submissions, we are being denied the possibility to
8 shorten the case significantly by submitting arguments that some charges should not be
9 proceeded upon.

10 But it goes beyond, Mr President, the fact of shortening the case. It goes to the point that
11 because we have to answer all charges, we have to submit evidence on all charges, and
12 this might very well have an impact on the assessment of the evidence of the -- as a whole.

13 And we believe, Mr President, that this is very unfortunate. Personally, I see the face of
14 international criminal justice changing in this case. I agree that there's a need to address
15 the face of international criminal justice and the length of trials, but to do it in this way,
16 Mr President, I don't think we should be able -- we should have to put on a Defence case
17 before resolving these issues. And I refer back to the issue of the conversations where we
18 were never -- we were not given -- not never, sorry, we were not given the sufficient time
19 to assess all of these conversations which now the Prosecution selectively would like to
20 use to cross-examine Mr Ntaganda.

21 Of course, I understand that these issues can be put forward in our appeal on the merits at
22 the end of this case regardless of the result, and they will, and they will, but we really
23 hope, Mr President, that when you listen and hear the evidence from the case for the
24 Defence that you will put your mind to assessing the evidence and being vigilant in the
25 manner in which this evidence is to be assessed.

1 This concludes, Mr President, the presentation of our supplementary opening statement.
2 Mr Ntaganda will testify now, it is now confirmed, on 14 June. We will address these
3 issues when the Chamber is ready to hear us.
4 And all in all, Mr President, I would like to submit that beyond individual aspects of this
5 case, it is our submission that the Defence evidence will show at the end of the day that
6 not only Mr Ntaganda is not guilty for the crimes as charged, Mr Ntaganda actually
7 contributed to minimising the number of victims in Ituri. That's what we intend to show
8 during the case for the Defence. Respectfully submitted, thank you, Mr President.

9 PRESIDING JUDGE FREMR: [11:25:52] Thank you, Mr Bourgon.

10 So now we will break. We will resume at 12 o'clock. And in order to return back to our
11 original schedule, the second session will last only 75 minutes. So it will last from 12 till
12 quarter past one.

13 Now we break.

14 THE COURT USHER: [11:26:20] All rise.

15 (Recess taken at 11.26 a.m.)

16 (Upon resuming in open session at 12.02 p.m.)

17 THE COURT USHER: [12:02:34] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [12:03:26] Good afternoon, everybody. Are there any
20 changes in the composition of the teams? Prosecution?

21 MR IVERSON: [12:03:34] No, Mr President, there are no changes for the Prosecution.

22 PRESIDING JUDGE FREMR: [12:03:38] But at least I see one change in the composition
23 of the Defence team.

24 MR GOSNELL: [12:03:44] Yes, Mr President, now present for the Defence assisting me
25 is Erik Cookson-Montin and David Wagen-Magnon. Thank you, Mr President.

1 PRESIDING JUDGE FREMR: [12:03:57] Thank you. And before we start with the
2 testimony, please disconnect the line because then we decide about some issues that
3 concern the witness, so I will first start with some procedural issues and not have our
4 witness hearing us.
5 I just approved just to delete the voice, and otherwise we will keep the connection in order
6 to -- not to lose it.
7 If the witness is present in the -- in this -- then it's fine. So it was my error. Please keep
8 it as it is. Sorry, it's fine.
9 So those procedural issues are following ones:
10 The Chamber was notified via email on Friday, 26 May of a VWU report recommending a
11 number of protective measures for Witness D-0210. In the absence of a related request
12 from the calling party, and having regard to its obligations under Article 68(1) of the
13 Statute, the Chamber has not found it necessary to put in place said measures. For
14 further instances, the Chamber invites the VWU to consult with the Defence where
15 appropriate, including with a view to allowing the calling party to amend any previous or
16 submit further requests for protective measures.
17 Also before we start with the witness testimony, the Chamber will render an oral decision
18 on a Prosecution request for lifting of a redaction applied to a document recently
19 disclosed by the Defence.
20 By way of a filing provided by the Prosecution via email last Friday, which was notified
21 this morning as filing number 1926, the Chamber has been seized of a request seeking the
22 lifting of a standard category B redaction applied to the names of Witness D-0210's
23 parents. Also via email on Friday, the Defence provided its response opposing this
24 request, which was formally notified this morning as filing number 1927.
25 The Chamber notes that the information sought to be obtained is only part of the witness's

1 biographic; information as reproduced on his electoral card. Having considered that the
2 witness's date of birth is not an issue which will require a factual determination in the
3 present case, the Chamber finds that the information covered by the redaction does not
4 appear prima facie relevant to a known issue in the case.

5 Following the approach it adopted in previous relevant decisions, such as decision
6 number 1241, and pursuant to the redaction protocol adopted in this case, that is Annex A
7 to decision number 411, the Chamber decides that the contested redaction is appropriately
8 covered by the standard category B justification and therefore rejects the request.

9 Should it become apparent on the basis of the testimony that the witness's parents are
10 relevant to a live issue in the case, the Prosecution may raise the matter again and the
11 Chamber will decide whether or not the redaction is to be retained.

12 This concludes the Chamber's oral ruling on this issue.

13 And I have another point to make. On 28 May 2017, the Defence filed a request for
14 testimony via video link and for protective measures for Witness D-0172. This is filing
15 number 1928, confidential.

16 The Defence submits that further to the Chamber's guidance, it seeks to secure the
17 testimony of Witness D-0172 during the first evidentiary block as an alternative to the two
18 witnesses who could not be called due to the logistical difficulties faced by the Registry.

19 Noting that the witness who was added to this block only last week is unable to obtain all
20 the documentation necessary in order to be able to travel to give testimony in person, the
21 Defence requests that his testimony be heard via video link.

22 The Chamber notes that the Prosecution has indicated via email, sent on 26 May 2017, that
23 given that the reason for proceeding by way of video link is linked to the last minute
24 addition of D-0172 and in view of the anticipated nature of his testimony, it does not
25 oppose the request for the witness to testify via video link.

1 As previously held, the Chamber has broad discretion to permit evidence to be given viva
2 voce by means of video link, provided, inter alia, that such measures are not prejudicial to
3 or inconsistent with the rights of the accused.

4 The Chamber further recalls that it does not consider the use of video link for testimony to
5 require exceptional justification and that it, in deciding on any request therefor, may
6 consider a variety of factors, including a witness's personal circumstances or logistical
7 difficulties in arranging a witness's travel to the seat of the Court.

8 In the present circumstances, noting, inter alia, that recent addition of Witness D-0172 to
9 the list of witnesses to testify during the first evidentiary block, as well as his expected
10 testimony, the Chamber considers it appropriate to hear Witness D-0172 by way of video
11 link.

12 In order to take a timely decision on the requested protective measures, notwithstanding
13 the Defence submissions this morning on scheduling issues in relation to this witness, the
14 Chamber orders that any responses are to be filed by 12 o'clock tomorrow -- sorry,
15 12 o'clock tomorrow, 30 May 2017.

16 The Chamber further directs the VWU to submit its security assessment for this witness as
17 soon as practicable.

18 This concludes the Chamber's ruling on this issue.

19 And now nothing prevents us to bring the witness into the courtroom in the field.

20 Sorry, Mr Gosnell.

21 MR GOSNELL: [12:12:18] Mr President, may we move briefly into private session
22 before the witness is brought in?

23 PRESIDING JUDGE FREMR: [12:12:23] For sure.

24 Court officer, let's move into private session now.

25 (Private session at 12.12 p.m.) * Reclassified partially in public

1 THE COURT OFFICER: [12:12:33] We are in private session, Mr President.

2 PRESIDING JUDGE FREMR: [12:12:39] Thank you, court officer.

3 Mr Gosnell, please.

4 MR GOSNELL: [12:12:42] Mr President, I refer to your reference just now to a VWU
5 report indicating that the VWU has concerns about the need for protective measures.

6 We're not in receipt of that report. I'm not sure whether we're supposed to be in receipt
7 of that report, but it does cause me some concern that there may be reasons that have been
8 now raised and the Defence has not been informed and the Defence therefore has not
9 made any request to your Honours.

10 And this is the beginning of the Defence case, our first witness, it's possible that
11 something has not happened the way that it should, or perhaps we're not supposed to
12 receive this report, I'm not sure, but could I request, your Honours, further information
13 from your Honour about the report?

14 PRESIDING JUDGE FREMR: [12:13:33] Yes, we are in private session so there's no
15 problem to provide you with the report we obtained.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 Do you want to add anything, mister -- because, frankly, saying, yes, we also considered it
2 thoroughly, but if you -- especially the topic of the expected -- expected testimony, which
3 is in effect very narrow, or should be very narrow, and in my view doesn't have at least
4 any apparent impact on the whole, you know, whole issue. So it's not even clear whether
5 for -- I think, especially for inhabitants of the area where Mr Witness lives, what effect it
6 will have to the Prosecution. So I don't believe, and the Chamber doesn't believe, that it
7 would clearly provoke some retaliation. That was why we decided not to grant any
8 protective measures.

9 MR GOSNELL: [12:15:46] Mr President, I can say that I'm taken by surprise by the
10 information. That was not a concern that was raised during the inquiries about this
11 particular issue, about the need for protective measures with the witness.
12 However, one point of caution that I would like to raise is that it is certainly common
13 amongst many Defence witnesses that they have raised concerns about precisely the issue
14 that is expressed in the report that your Honour has now received from the VWU. That
15 is not a specific -- there is not a specific source of concern or a specific relationship
16 between the content of the testimony and a specific threat, but more the notion that if a
17 person is known to be testifying for Mr Ntaganda, that that may give rise to negative
18 repercussions.

19 So I do raise that issue, Mr President, so that you're aware of it, and I believe that it's
20 incumbent upon me to ask your Honours to grant protective measures to the witness,
21 even if there is no specific relationship between the testimony and the threat. And I do
22 make that application now, requesting voice and facial distortion, the application of a
23 pseudonym and, as necessary, private session. Thank you, Mr President.

24 PRESIDING JUDGE FREMR: [12:17:12] Thank you, Mr Gosnell.

25 Prosecution, your position?

1 MR IVERSON: [12:17:19] Well, I'm a bit caught off guard by this, Mr President, but our
2 position is that this doesn't change the calculation. He should not testify under in-court
3 protective measures.

4 PRESIDING JUDGE FREMR: [12:17:32] Give me a second, I will consult with my
5 colleagues.

6 (Trial Chamber confers)

7 PRESIDING JUDGE FREMR: [12:20:07] So after silent deliberation in the courtroom,
8 our decision is that we don't grant those protective measures. We, as you may see, we
9 discussed it thoroughly before and we discussed it again. And in our view the fact itself
10 that somebody's testifying for Defence shouldn't be a reason for granting such protective
11 measures without any concrete threat, only concrete example of risk of retaliation, which
12 we haven't found in this concrete case; that was why we stick on our -- and we maintain
13 our previous decision.

14 Now we can invite the witness into the room in the field.

15 And in the meantime, I was reminded that we are still in private session, so in the
16 meantime we can move into open session.

17 (Open session at 12.21 p.m.)

18 THE COURT OFFICER: [12:21:42] We're in open session, Mr President.

19 PRESIDING JUDGE FREMR: [12:21:44] Thank you, court officer.

20 (The witness enters the video-link room)

21 PRESIDING JUDGE FREMR: [12:22:07] Good afternoon, Mr Witness. Can you see and
22 hear me?

23 WITNESS: DRC-D-0210

24 (The witness gives evidence via video link)

25 (The witness speaks Swahili)

Trial Hearing
WITNESS: DRC-D-0210

(Open Session)

ICC-01/04-02/06

1 THE WITNESS: [12:22:26] (Interpretation) Yes.

2 PRESIDING JUDGE FREMR: [12:22:26] Good. Mr Witness, you are call to testify in
3 the case against Mr Bosco Ntaganda to assist our Chamber in its search for the truth. You
4 will be soon asked questions both by the Judges and lawyers here in the courtroom.
5 In addition to the Judges in the courtroom, there are the lawyers for the Prosecution, there
6 is Mr Ntaganda and his lawyers, and there are Legal Representatives of Victims.
7 Although you are testifying by way of video link, your testimony is treated in exactly the
8 same way as if you were in the courtroom, so I would like to provide you with some
9 guidance for answering the questions.

10 Mr Witness, please listen carefully to the questions that you will be asked. If you do not
11 understand, feel free to ask for the question to be repeated. We want you to tell the truth
12 and tell us what you saw, heard or sensed yourself. If you didn't see or hear it yourself
13 but you found out some other way, then you should explain how. You may not
14 remember all details and it does not matter, please testify just on that which you
15 remember. Don't guess, don't make things up. There is nothing wrong in saying "I
16 don't know" or "I don't remember." Have you understood all that, Mr Witness?

17 THE WITNESS: [12:24:26] (Interpretation) Yes.

18 PRESIDING JUDGE FREMR: [12:24:29] Very well, Mr Witness. Mr Witness, now you
19 will be provided with the text of the solemn undertaking. Do you have this text in front
20 of you?

21 THE WITNESS: [12:24:45] (Interpretation) Yes.

22 PRESIDING JUDGE FREMR: [12:24:47] So please now make your solemn undertaking
23 to tell the truth by reading out the declaration you have in front of you.

24 THE WITNESS: [12:25:06] (Interpretation) I declare solemnly that I shall tell the truth,
25 the whole truth and nothing but the truth.

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1 PRESIDING JUDGE FREMR: [12:25:18] Thank you, Mr Witness. It means you are now
2 under oath. And you need to be aware that it is an offence within the jurisdiction of this
3 Court to give false testimony. Do you understand that?

4 THE WITNESS: [12:25:41] (Interpretation) I do.

5 PRESIDING JUDGE FREMR: [12:25:44] All right. And finally, a few practical matters
6 you should have in mind when giving your testimony.

7 It's important to speak into the microphone, to stay in view of the camera, to speak clearly
8 and to speak at a slow pace to allow the interpreters to translate everything. You should
9 only start speaking when the person asking you the question has finished. When a
10 question is asked, please count in your head to three, and only then give your answer.

11 This pause of three seconds is essential for us to properly hear, translate and record what
12 you are saying. Have you understood all that, Mr Witness?

13 THE WITNESS: [12:26:43] (Interpretation) Yes.

14 PRESIDING JUDGE FREMR: [12:26:49] Very good. So now we can start your
15 testimony.

16 Defence, you have the floor. And allow me usual reminder, you have been allotted two
17 hours for direct examination of this witness.

18 Mr Gosnell, you have the floor.

19 MR GOSNELL: [12:27:06] Thank you very much, Mr President.

20 QUESTIONED BY MR GOSNELL:

21 Q. [12:27:10] Good afternoon, sir. Could you kindly tell us your name?

22 A. [12:27:21] Good morning. My name is Maki Olivier Dhekana.

23 Q. [12:27:33] And what is your date of birth?

24 A. [12:27:42] I was born on 25 November 1987.

25 Q. [12:27:52] And what is your ethnicity?

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WITNESS: DRC-D-0210

(Open Session)

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1 A. [12:28:03] I'm a member of the Gegere ethnic group.

2 Q. [12:28:12] Do you possess an electoral card reflecting this information?

3 A. [12:28:36] I was living at a place other than where I reside, so I didn't have an
4 opportunity to take my card with me.

5 Q. [12:28:48] Yes, sir, I don't ask you whether you have it on you right now. I'm
6 asking you whether you have a card somewhere that reflects this information.

7 A. [12:29:11] I do.

8 MR GOSNELL: [12:29:12] May we have, please, DRC-D18-0001-5298, it's tab 1.

9 If that perhaps could be blown up a little more.

10 Q. [12:29:53] Sir, do you see the document on the screen in front of you?

11 Sir, do you see a document on the screen in front of you?

12 A. [12:30:31] Yes.

13 Q. [12:30:36] And do you recognise that to be a document that you're familiar with?

14 A. [12:30:46] Yes.

15 Q. [12:30:48] And what is it?

16 A. [12:31:00] It's my voter registration card.

17 Q. [12:31:04] And is the information on that card correct?

18 A. [12:31:18] Yes, the information is correct.

19 MR GOSNELL: [12:31:23] Mr President, I tender this document.

20 PRESIDING JUDGE FREMR: [12:31:26] Prosecution, any objection?

21 MR IVERSON: [12:31:30] No objection, your Honour.

22 PRESIDING JUDGE FREMR: [12:31:32] So this document specified by Mr Gosnell is
23 admitted into evidence as a further Defence -- as a first or further Defence exhibit.

24 MR GOSNELL: [12:31:47] Thank you. The document can be removed from the screen.

25 Q. [12:31:55] Sir, have you ever been to Mandro?

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WITNESS: DRC-D-0210

(Open Session)

ICC-01/04-02/06

- 1 A. [12:32:07] Yes.
- 2 Q. [12:32:09] And when did you first go there to Mandro?
- 3 A. [12:32:28] We went there when soldiers were being trained there.
- 4 Q. [12:32:40] Where were you living at the time?
- 5 A. [12:32:51] At that time I was living with my family in town.
- 6 Q. [12:32:58] In which town?
- 7 A. [12:33:06] In the town of Bunia.
- 8 Q. [12:33:10] And what political authority was in control of Bunia at that time that you
- 9 were living in Bunia and when you first went to Mandro?
- 10 A. [12:33:38] It was Lompondo's group.
- 11 Q. [12:33:43] Do you remember what year that was?
- 12 A. [12:33:58] I don't recall the year well, but if I remember correctly, it would have
- 13 been in the year 2000 or 2001.
- 14 Q. [12:34:14] Do you remember what time of year you made this trip to Mandro?
- 15 A. [12:34:36] When I went to Mandro it was when we stopped our schooling, so I
- 16 think it was in July. It was at the beginning of the school holidays, I think.
- 17 Q. [12:35:01] And why did you go to Mandro?
- 18 A. [12:35:16] Well, as we had been told that soldiers were being trained there, we
- 19 wanted to go there too, to be trained as well.
- 20 Q. [12:35:29] What caused you to want to be trained as well?
- 21 A. [12:35:48] Because there was war at the time and the Gegere were the ones under
- 22 threat.
- 23 Q. [12:36:03] When you say, "the Gegere were the ones under threat", what do you
- 24 mean, under threat from whom?
- 25 A. [12:36:23] It was Lompondo's group that was a threat to them.

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1 Q. [12:36:35] Had there been any attacks by Lompondo's group on Gegere prior to you
2 going to Mandro?

3 A. [12:36:55] Yes. They attacked the residence where Thomas was residing.

4 Q. [12:37:11] What happened during this attack on the residence of Thomas?

5 A. [12:37:32] They came and they wanted to disarm the soldiers who were there, and
6 then return. Often when they came to attack, it was the Ugandans who came to put an
7 end to their attack.

8 Q. [12:37:52] And what was the name, the last name of the person named Thomas
9 whose residence was attacked?

10 A. [12:38:14] His name was Thomas Lubanga Dyilo.

11 Q. [12:38:25] Did you tell anyone that you were going to Mandro to be trained?

12 A. [12:38:40] Nobody.

13 Q. [12:38:45] And before you left Bunia, did you hear anything about the ages of
14 people being trained in Mandro?

15 A. [12:39:05] No.

16 Q. [12:39:13] What time of day did you leave to go to Mandro?

17 A. [12:39:30] We left in the morning, at 8 o'clock.

18 Q. [12:39:39] And when did you arrive there?

19 A. [12:39:49] We arrived there at about 1300 hours or just thereafter.

20 Q. [12:40:00] And how did you go there?

21 A. [12:40:11] We walked. We went by foot.

22 Q. [12:40:22] And what happened when you arrived in Mandro?

23 A. [12:40:36] When we arrived in Mandro, we found a roadblock there and we were
24 asked to stop at that point.

25 Q. [12:40:51] Did anyone say anything to you?

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WITNESS: DRC-D-0210

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1 A. [12:41:05] There were people standing guard at that roadblock and they asked us to
2 stop there, and the commanders came and met us there.

3 Q. [12:41:19] When you say "commanders", to whom are you referring?

4 A. [12:41:33] There was Commander Mugisa and Commander Didier.

5 Q. [12:41:44] Did you know their names at the time that you saw them?

6 A. [12:41:55] Yes.

7 Q. [12:41:56] How did you know their names at that time?

8 A. [12:42:09] Because they're people who were our neighbours.

9 Q. [12:42:19] When you say they were your neighbours, do you mean they were your
10 neighbours in Bunia?

11 A. [12:42:32] They were our neighbours in Bunia. We lived beside the residence and
12 those people lived there too, and we knew them.

13 Q. [12:42:51] And how old were they at the time that you arrived there that day and
14 saw them in Mandro? Mugisa and Didier, how old were they, as best you know?

15 A. [12:43:13] I really have no indication as regards their age.

16 Q. [12:43:20] Were they older, the same age, or younger than you?

17 A. [12:43:40] I haven't understood your question correctly. You're talking about the
18 commanders or are you talking about other people?

19 Q. [12:43:48] In my question I am referring specifically to Mugisa and Didier. Were
20 they older, the same age or younger than you?

21 A. [12:44:06] They were older than me.

22 Q. [12:44:12] And what did they say to you when you saw them there on this occasion
23 when you arrived in Mandro?

24 A. [12:44:27] They came to the spot where we were and they asked us, "What have you
25 come to do here?" We told them that we had come to undergo training. And they said

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1 to us, "We're not training little children like you here, you have to go home."

2 Q. [12:45:03] Did you see any other commander in the area at the time that they told
3 you this?

4 A. [12:45:22] Well, Commanders Didier and Mugisa were there, and I also saw
5 Bosco Ntaganda.

6 Q. [12:45:32] And where was he relative to Didier and Mugisa when they spoke to you
7 in this way?

8 A. [12:45:52] They were at -- or, on the veranda of the house.

9 Q. [12:45:59] Which house?

10 A. [12:46:10] It was Chief Kahwa's house.

11 Q. [12:46:19] Where were Mugisa and Didier before they came and spoke with you?

12 Did you see where they had been before they came and spoke with you?

13 A. [12:46:40] All of them were on the veranda of that house. They were talking a little
14 bit to Bosco, and then they came to us.

15 Q. [12:46:55] Were you able to see whether Bosco saw you?

16 A. [12:47:15] Yes, because we were 15 to 20 metres from where he was.

17 Q. [12:47:30] Did you know him, or did he know you prior to this moment in time?

18 A. [12:47:48] Yes, we knew each other.

19 Q. [12:47:57] How did you know each other?

20 A. [12:48:12] Are you asking me how we got to know each other? I have not quite
21 understood your question.

22 Q. [12:48:22] Let me try to clarify. At this moment in time when you were there in
23 Mandro, you say that you were familiar with Bosco, and I would like to know how you
24 were familiar with him. How did you know him?

25 A. [12:49:02] From time to time he used to come to our house since we were

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1 neighbours and would greet us.

2 Q. [12:49:19] You've told us that Didier and Mugisa told you that "You have to go
3 home", that "We're not training little children like you here". Did he say that only to you,
4 or did he say that to other people?

5 A. [12:49:53] When we arrived there, we were younger than the others, and there were
6 still others who were younger than us.

7 Q. [12:50:05] Yes. Mr Witness, now I'm just trying to clarify your use of the term "us"
8 and "we". Was there someone else with you when you were told this by Didier and
9 Mugisa?

10 A. [12:50:28] Yes, because we were three of us in number.

11 THE INTERPRETER: In the previous answer the witness said, "There were none others
12 younger than them and we were the ones who went there."

13 MR GOSNELL: [12:50:49]

14 Q. [12:50:49] And what were the ages of the two others who were there with you at
15 this point in time relative to yourself? Were they older, younger, or the same age?

16 A. [12:51:11] We were all of about the same age.

17 Q. [12:51:19] And just to clarify, was it Mugisa or was it Didier who actually spoke
18 these words to you?

19 A. [12:51:42] No, it was Mugisa who told us, but Didier was also there with him.

20 Q. [12:51:54] Now, you've told us you arrived there at around 1 p.m. in the afternoon.
21 Did you stay there in response to Mugisa's instructions, or did you leave?

22 A. [12:52:26] We remained there because it was already late, and we decided to leave
23 the next day, in the morning.

24 Q. [12:52:37] And what did you see going on in Mandro for the remainder of the day
25 that you remained there?

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1 A. [12:52:55] We saw that some people had already been trained among those who
2 were at that location.

3 Q. [12:53:16] Did you see any activities ongoing in Mandro that day?

4 A. [12:53:35] There were no other activities outside training being offered to some
5 people.

6 Q. [12:53:46] You say that training was being offered to some people. What kind of
7 training did you see?

8 A. [12:54:05] They had sticks in their hands, they were marching.

9 Q. [12:54:19] Did you see them with any weapons, or did they only have sticks?

10 A. [12:54:32] They had sticks in their hands.

11 Q. [12:54:39] And how many of them were there being trained, approximately, if you
12 recall?

13 A. [12:54:59] I will say that about two to 300 people that I saw, about two to 300
14 people.

15 Q. [12:55:17] Did you see anyone there who appeared to you to be younger than you?

16 A. [12:55:37] No, no, they were older.

17 Q. [12:55:47] And what were they wearing?

18 A. [12:56:02] They were wearing civilian attires.

19 Q. [12:56:09] And were these people being trained by someone and, if so, whom?

20 A. [12:56:34] I do not know the name of the commander who provided the -- or, the
21 commanders who provided the training so I cannot give you an answer to that question.

22 Q. [12:56:46] Well, leaving aside whether they were commanders or not, can you
23 remember the names of any trainers, any of the people doing the training?

24 A. [12:57:16] I remember one name, De Gaulle.

25 Q. [12:57:26] Was he the only trainer, or were there other trainers there as well?

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1 A. [12:57:45] There were other trainers, but I don't remember their names.

2 Q. [12:57:52] And what were the trainers wearing?

3 A. [12:58:07] Some of them were wearing military uniforms.

4 Q. [12:58:19] Now, you've said that you spent the day there. Did you sleep
5 somewhere that night in Mandro and, if so, where did you sleep?

6 A. [12:58:46] We spent the night there at a commander's house. I have forgotten the
7 name of that commander.

8 Q. [12:59:09] And what did you do the next morning when you woke up?

9 A. [12:59:24] We did not do anything. We stayed there waiting for permission to
10 return to our homes.

11 Q. [12:59:37] Were you able to return to your homes by the same route that you had
12 come to Mandro?

13 A. [12:59:55] No.

14 MR GOSNELL: [13:00:02] Mr President, could I just inquire when we're breaking for
15 lunch? I've lost track of the schedule.

16 PRESIDING JUDGE FREMR: [13:00:08] Quarter past 1 was our plan.

17 MR GOSNELL: [13:00:11] Thank you, Mr President, that's fine.

18 Q. [13:00:18] And, sir, why could you not return to Bunia by the same route that you
19 had come to Mandro?

20 A. [13:00:42] Information was given to the effect that Lompondo was going to attack
21 Mandro.

22 Q. [13:00:56] And where did that information come from, if you recall?

23 A. [13:01:16] While we were seated at that location, we were brought together and
24 informed that an attack was going to be launched. But I don't know the source of that
25 information.

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1 Q. [13:01:50] When you say "we were seated at that location", can you tell us where
2 you were at that moment in time?

3 A. [13:02:21] It was in the courtyard, near the place where the training was taking
4 place.

5 Q. [13:02:28] Well, when you say the "courtyard", are you referring to a courtyard of a
6 building, or is it an open space, between buildings? Can you describe that a little more
7 for us, please?

8 A. [13:02:56] The courtyard was in front of the chief's office.

9 Q. [13:03:04] What was the name of the chief to whom you're referring to, to whom
10 you're referring here? Which chief?

11 A. [13:03:20] Chief Kahwa Pango Mandro.

12 Q. [13:03:29] Relative to the location of his house, can you describe for us where the
13 training that you saw was ongoing? Where was that training taking place in Mandro, if
14 you can describe it?

15 A. [13:04:00] I -- I cannot be more specific, but I can confirm that it was opposite his
16 office.

17 Q. [13:04:16] Can you remember any other buildings of note that existed in Mandro
18 when you went there that day? Did anyone point out any other buildings?

19 A. [13:04:48] Yes, there was a school and a church.

20 Q. [13:05:05] After you received this news about an attack by Lompondo and his
21 forces, what did you do?

22 A. [13:05:36] After we received that information, a group was asked to travel through
23 Katoto, and we followed that group.

24 Q. [13:05:50] Who was in this group?

25 A. [13:06:10] I have not quite understood your question. Are you talking about the

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1 group of soldiers who were being trained, or which group are you talking about?

2 Q. [13:06:22] Yes, that's my question, whether or not the group with which you went
3 were indeed soldiers who were being trained or were they someone else?

4 A. [13:06:49] Yes, indeed, it was a group of people who had been receiving training.

5 Q. [13:07:08] And you say you were "asked to travel through Katoto and we followed
6 that group." Did you go all the way in to Katoto?

7 A. [13:07:38] No. Someone was designated to lead us, to escort us, or to show us the
8 road.

9 Q. [13:07:52] And what was the name of the person who was guiding you?

10 A. [13:08:09] His name is Lonjiringa.

11 Q. [13:08:14] Can you spell that please?

12 A. [13:08:26] L-O-N-J-I-N-G-A.

13 Q. [13:08:49] And I come back to a question that I don't believe you answered, which
14 was, did you go all the way in to Katoto itself? Did you go do the centre of Katoto?

15 A. [13:09:13] No.

16 Q. [13:09:16] Where did you go?

17 A. [13:09:34] We scattered around Katoto centre without getting into the city -- into the
18 centre of Katoto.

19 Q. [13:09:46] Did Lonjiringa stay with you as you were skirting around Katoto?

20 A. [13:10:05] Yes, he's the one who was our guide. He showed us the way, the road
21 which we were supposed to use.

22 Q. [13:10:19] And from Katoto, where did you go after you had skirted around
23 Katoto?

24 A. [13:10:51] We went by Katoto where we saw a mama, a lady, and we asked her for
25 food. She gave us some food, and then we continued on.

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1 Q. [13:11:07] Continued on to where?

2 A. [13:11:25] From Katoto we went to our homes in Bunia.

3 Q. [13:11:33] Was Lonjiringa still with you when you got back to Bunia?

4 A. [13:11:48] No. When we got to Katoto he remained at Katoto centre, and then each
5 person was on their way to their home.

6 Q. [13:12:13] Now, the translation we just received is that he remained at Katoto
7 centre, whereas you just told us before that you skirted around Katoto. Can you explain
8 that difference? Did you see him go into the centre, whereas you went in a different
9 direction?

10 A. [13:12:52] He was the guide, and we went around Katoto centre, all the way to
11 Bunia.

12 Q. [13:13:05] All right. At what point did he split up from you, if you can remember
13 that?

14 A. [13:13:32] It was in the evening.

15 Q. [13:13:37] Geographically speaking, where did he split up with you?

16 A. [13:14:04] I cannot give you a specific answer with a specific house or bearing in
17 mind. It happened in the evening and I couldn't see the houses clearly, but it was near
18 the centre, near the centre.

19 Q. [13:14:30] And in which direction did the recruits go? Did they go with him, did
20 they go with you, did they go somewhere else?

21 A. [13:15:02] We went our different ways in the bush. We went along our own road,
22 and they took another road, but I don't know in which direction they went.

23 Q. [13:15:28] Do you know why, or was anything said during either the meeting in
24 front of Chef Kahwa's house or when you were going to Katoto with Lonjiringa and the
25 other recruits, was anything said as to why the recruits would flee or would leave Mandro

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1 when there was news of this attack by Lompondo?

2 A. [13:16:14] Are you asking me why we were not given that information at the place
3 where I spent the night? Can you be more specific, please, in your question.

4 PRESIDING JUDGE FREMR: [13:16:28] Mr Gosnell, I thought that you had asked me
5 about the timing in order to be timely.

6 MR GOSNELL: Yes, Mr President, I -- that was my intention 15 minutes ago.

7 PRESIDING JUDGE FREMR: [13:16:40] So if you don't mind, if it is not a crucial issue,
8 which I guess it's not, we can break now.

9 MR GOSNELL: [13:16:47] Now is a perfectly suitable time, Mr President. Thank you.

10 PRESIDING JUDGE FREMR: [13:16:50] All right. So we break now. We will
11 continue quarter to three. And allow me to inform you the idea, because our schedule is
12 not tight, the idea of the Chamber is just to complete today direct examination and to
13 proceed with cross tomorrow if there are no some strict objections from the parties. It's
14 fine with the parties? All right.

15 So now we break and we will -- we will reconvene at quarter to three.

16 THE COURT USHER: All rise.

17 (Recess taken at 1.17 p.m.)

18 (Upon resuming in open session at 2.45 p.m.)

19 THE COURT USHER: [14:45:58] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [14:46:30] Good afternoon, everybody.

22 This afternoon the Defence will continue and hopefully complete its direct examination of
23 our witness.

24 And for your information, Mr Gosnell, you still have at your disposal one hour 11
25 minutes.

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1 MR GOSNELL: [14:46:52] Mr President, I can already indicate I should be finished in 10
2 to 15 minutes.

3 PRESIDING JUDGE FREMR: [14:46:57] All right then.

4 MR GOSNELL: [14:46:59] Thank you.

5 Q. [14:47:02] Good afternoon, sir. Can you hear me?

6 A. [14:47:13] Good afternoon. I can hear you.

7 Q. [14:47:21] When we left off I was asking you why it was that the recruits left

8 Mandro when they received this information about the impending attack by Lompondo?

9 Did anyone say why they had to leave in the face of this information?

10 A. [14:48:38] The -- called them to parade and, at that point, they told them to follow
11 them and to leave the place.

12 Q. [14:48:55] You said earlier that you went all the way to Bunia, about what time did
13 you arrive back in Bunia?

14 A. [14:49:16] We arrived into Bunia at around 9 p.m.

15 Q. [14:49:24] Did there come a time after these events that you've described today
16 when you left Bunia?

17 A. [14:49:51] No.

18 Q. [14:49:53] Was there a time when your family left Bunia and moved somewhere
19 else?

20 A. [14:50:07] Yes.

21 Q. [14:50:08] And how long after this trip of yours to Mandro did that happen that
22 your family left Bunia and went somewhere else?

23 A. [14:50:32] It was about one month later. Certainly no longer than three months
24 later.

25 Q. [14:50:42] And did you go along with your family when they moved out of Bunia?

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1 A. [14:51:00] Yes, we all left together.

2 Q. [14:51:03] Where did you go?

3 A. [14:51:11] We went to Goma.

4 Q. [14:51:18] While in Goma did you hear anything about power in Bunia changing
5 hands and someone taking power from Lompondo, did you hear about that while you
6 were living in Goma?

7 A. [14:51:56] Yes, we followed that news over the airways.

8 Q. [14:52:01] And what was the news that you heard over the air waves?

9 A. [14:52:20] It was information to the effect that that group, or that party, those armed
10 groups had taken power in Bunia.

11 Q. [14:52:36] Which armed groups?

12 A. [14:52:49] It was the armed group that had been formed in Mandro, trained in
13 Mandro.

14 Q. [14:53:00] And this news that you heard over the air waves, approximately how
15 long after your trip to Mandro did you hear this news, if you have a recollection of that,
16 just approximately, there's no need to be exact, but if you can give us a general idea that
17 would be helpful?

18 A. [14:53:40] That might have been about seven months later. I -- I can't be specific,
19 however.

20 Q. [14:53:53] You described earlier that at the time you went to Mandro it was at the
21 time of the summer holidays after school had ended. Do you remember having said that
22 earlier today?

23 A. [14:54:14] Yes.

24 Q. [14:54:16] What school were you attending at that time?

25 A. [14:54:33] I was in junior high school.

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1 Q. [14:54:41] In what -- what year had you just completed prior to the moment that
2 you went to Mandro?

3 A. [14:55:01] I was in my second year of secondary studies.

4 Q. [14:55:07] And what was the name of the school?

5 A. [14:55:19] The school was called college.

6 Q. [14:55:27] Did it have any other name?

7 A. [14:55:37] No. The school was called Grand College, and the other name was Ujio
8 Wa Heri.

9 Q. [14:56:03] Did you continue your schooling while you were living in Goma?

10 A. [14:56:17] Yes.

11 Q. [14:56:21] How many years of schooling did you do in Goma?

12 A. [14:56:41] I went to school there until the fifth year.

13 Q. [14:56:48] Did you also do your fourth year then in Goma?

14 A. [14:57:06] Yes; I did the third, the fourth and fifth years of secondary in Goma.

15 Q. [14:57:16] Do I correctly understand that you completed your fifth year of école
16 secondaire in Goma?

17 A. [14:57:34] Yes.

18 Q. [14:57:36] And can you recall the name of the school or schools that you attended
19 while completing the third, fourth and fifth years of secondaire in Goma?

20 A. [14:58:07] I did my third year in Mikenno (phon), and my fourth in the Islamic
21 school, and I also did the sixth -- sorry, the fifth year there too.

22 Q. [14:58:30] Did the Islamic school have any other name or was it just known as the
23 Islamic school?

24 A. [14:58:48] We simply called it the Islamic school.

25 Q. [14:58:55] Did you successfully pass each of those three years, or did you fail any of

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1 these three years that you completed in Goma?

2 A. [14:59:13] No, no, I -- I passed each of those years.

3 Q. [14:59:26] When did you, if ever, go back to Bunia?

4 A. [14:59:48] We returned to Bunia in 2006.

5 Q. [14:59:54] Have you ever been to high school in Mahagi or secondary school in
6 Mahagi?

7 A. [15:00:12] No, never.

8 Q. [15:00:15] When you went back to Bunia itself, did you complete or continue your
9 studies in Bunia?

10 A. [15:00:33] I did. I continued and I did my sixth year in Bunia, thereby completing
11 my studies.

12 Q. [15:00:43] And what was the name of the school where you attended for your sixth
13 year of secondary studies?

14 A. [15:01:09] When I arrived back, I went to the Adventist school, then after three
15 months I left that school and I went to IDAP and that's where I completed my schooling.

16 Q. [15:01:36] And what year did you complete your schooling?

17 A. [15:01:51] I finished my studies in the year 2006, 2007.

18 Q. [15:02:02] Did you succeed in your final examinations and graduate?

19 A. [15:02:14] Yes.

20 Q. [15:02:21] Did you at any time ever join the FPLC or any armed group associated
21 with the UPC?

22 A. [15:02:42] No.

23 Q. [15:02:43] Thank you very much, Mr Witness.

24 MR GOSNELL: [15:02:45] Mr President, that concludes my examination.

25 PRESIDING JUDGE FREMR: [15:02:49] Thank you, Mr Gosnell.

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1 Before we adjourn, I will have a few clarifying or additional questions to Mr Witness at
2 this moment.

3 Mr Witness, what is your body height, I mean, how tall are you?

4 THE WITNESS: [15:03:27] (Interpretation) I've never measured myself. It could be a
5 metre 20, a metre 40, something like that.

6 PRESIDING JUDGE FREMR: [15:03:38] So something between a metre 20, a metre 40;
7 am I right? Or at least not more than one metre 40, not more than one metre 40; am I
8 right?

9 THE WITNESS: [15:03:56] (Interpretation) Yes.

10 PRESIDING JUDGE FREMR: [15:03:59] And Mr Witness, it's your height, body height
11 today. And at the time of your visit to camp -- training camp Mandro you were of the
12 same height or you were smaller than today?

13 THE WITNESS: [15:04:25] (Interpretation) I was smaller. I haven't grown a lot.

14 PRESIDING JUDGE FREMR: [15:04:31] Thank you.

15 Then another question: If I understood well, you said that when you ask being recruited
16 they told you that don't want to recruit little children, did they ask you about your precise
17 age?

18 THE WITNESS: [15:05:00] (Interpretation) Yes.

19 PRESIDING JUDGE FREMR: [15:05:05] All right. And my last issue: You also
20 described part of the training during the day because you spent there time from 1 o'clock
21 in the afternoon till the next morning. Have you observed what the recruits did in the
22 evening?

23 THE WITNESS: [15:05:39] (Interpretation) In the evening they didn't have any
24 particular or special activities, rather the activities were during the day and the evening
25 was for relaxation.

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1 PRESIDING JUDGE FREMR: [15:05:55] So may I take it that you did not observe, for
2 example, that they would sing some songs?

3 THE WITNESS: [15:06:15] (Interpretation) They sang songs, but I don't know the
4 words to those songs.

5 PRESIDING JUDGE FREMR: [15:06:26] And who would sing those songs?

6 THE WITNESS: [15:06:37] (Interpretation) Those who were already trained.

7 PRESIDING JUDGE FREMR: [15:06:46] Thank you very much, Mr Witness.

8 We will now break your testimony, we will continue tomorrow by cross-examination
9 conducted by the Prosecution. So I thank you very much for your testimony you made
10 today, you perfectly followed my guidance. And I have to inform you that in the
11 meantime, till tomorrow, you must not discuss your testimony with anybody else; do you
12 understand that?

13 THE WITNESS: [15:07:26] (Interpretation) Yes.

14 PRESIDING JUDGE FREMR: [15:07:27] So thank you very much and we will see you
15 tomorrow, tomorrow morning.

16 Now we can disconnect the line.

17 (The witness stands down)

18 PRESIDING JUDGE FREMR: [15:07:44] If there are no further requests for the floor, we
19 will adjourn and continue tomorrow 9.45.

20 THE COURT USHER: [15:07:55] All rise.

21 (The hearing ends in open session at 3.07 p.m.)

22 RECLASSIFICATION REPORT

23 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
24 the public reclassified and redacted version of this transcript is filed in the case.