

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and Judge

4 Christine Van den Wyngaert

5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/07

6 In the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

7 Trial Hearing

8 Tuesday, 24 November 2009

9 (The hearing starts at 9.32 a.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International Criminal Court is now in
12 session.

13 PRESIDING JUDGE COTTE: (Interpretation) The Court is now in session.
14 Please be seated.

15 Photographer, if you would like to take some photographs of the participants
16 at this hearing, you have a minute in which to do so.

17 (Pause in proceedings)

18 So the taking of these photographs does contribute to the publicity that
19 there is in the public nature of this hearing. Thank you for that, particularly
20 for the discretion with which you have carried out this taking of photographs.

21 So the Court notes that the two accused, Germain Katanga and Mathieu Ngudjolo
22 Chui, are in attendance. Madam Court Officer, you can therefore call the case
23 which is the subject of our hearing today.

24 THE COURT OFFICER: Thank you, President. The situation in the Democratic
25 Republic of the Congo, case of the Prosecutor versus Germain Katanga and Mathieu

1 Ngudjolo Chui, ICC-01/04-01/07.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The Court thanks you.
3 Before starting our hearing, we have to make sure that there is a good
4 understanding of the languages which are made available to the accused, namely,
5 French, English, but also Lingala, at the request of Mr. Katanga in accordance with
6 the decision issued by this Chamber after an expert report; namely, on the 15
7 September 2009. It is obvious that if they so wish, Mr Ngudjolo can also make use
8 of this translation into Lingala. The Court has indicated to him - or did so over
9 a year ago - and reminds him of that today.

10 Mr. Katanga, Mr Ngudjolo, you have leave to address the Court now.
11 Mr Germain Katanga firstly, could you indicate to us if you are able to use the
12 interpretation, as I said, at the moment in a language which you have understood?

13 MR KATANGA: (Interpretation) Yes, your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Katanga.

15 Mr Mathieu Ngudjolo, where it concerns yourself, have you also understood
16 well and have you understood what I've said?

17 MR NGUDJOLO CHUI: (Interpretation) Perfectly.

18 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you.
19 As we are now speaking about the language issue, the Court would like to remind all
20 those who will speak before our court in the hearing, whether it's today or if it's
21 over the coming days, that it's important to speak slowly, to not interrupt one
22 another and to wait for at least five seconds before replying to the person who has
23 just finished a sentence.

24 The task of the interpreters and the court reporters will, therefore, be much
25 more simple, and, more importantly, our proceedings will be more clear and better

1 understood by all those who follow them, whether that be here or whether that be
2 outside this courtroom. Madam Court Officer has the task of reminding us of this
3 whenever that is necessary. Nobody -- everybody will listen to you if you ask us
4 to so do.

5 Now, still within the same idea, the Court would like to thank the
6 interpreters, the court reporters, the information and other technicians, all those
7 who contribute to the smooth running of our hearing. We perhaps -- we won't be
8 able to thank you at every hearing, but we would like to take this opportunity to
9 do so; and we'd like to stop at the moment, because without you we would not be
10 able to sit in a useful and efficient way.

11 To the two accused, Mr. Katanga and Mr Ngudjolo, to the victims who from afar
12 are going to be following our hearing and to the persons who here or elsewhere are
13 present at this public hearing, I would like now to remind everyone of the
14 composition of the Chamber and to present this Chamber, Trial Chamber II, which has
15 this case entrusted to it.

16 This Chamber which I have the honour of presiding over is composed of, on my
17 right, Judge Fatoumata Diarra. Fatoumata Dembele Diarra, and on my left,
18 Madam Christine Van den Wyngaert, on my left, and myself, Bruno Cotte.

19 By way of information for the Court and for the accused, but also for mutual
20 exchange of information between participants, and furthermore for the information
21 of all those who are taking part in this hearing or who are from afar following its
22 progress, I would like each of the participants to introduce themselves.

23 So, Mr Prosecutor, could you please introduce the members of your team and
24 all of those who are helping you today?

25 MR MORENO-OCAMPO: Mr President, your Honours, the Prosecutor's office is

1 represented by Deputy Prosecutor Fatou Bensouda; senior trial attorney Eric
2 Macdonald; trial lawyers Florence Darques Lane, Gilles Dutertre, Dianne Luping,
3 Lucio Garcia; and case manager Sandra Schoeters; and myself, the Prosecutor.
4 Merci.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. The legal
6 representative of victims, can you now introduce yourselves and also introduce your
7 colleagues?

8 MR FIDEL: (Interpretation) Thank you, your Honour, for giving us this
9 opportunity to address the Court. The legal representative of the common group of
10 victims is composed as follows: On my left we have Counsel Flora Mbuyu, who is the
11 legal assistant based in the Democratic Republic of Congo and who is working
12 closely with the victims in Ituri. There is also Counsel Catherine Denis who is
13 helping us with the matter here in The Hague in the courtroom. And then we have
14 Ms Estelle Jeanmart, who is our case manager. Thank you.

15 MR GILISSEN: (Interpretation) Thank you, your Honour. I am Counsel
16 Jean-Louis Gilissen. I am the legal representative of child soldiers. I am aided
17 by Counsel Julie Goffin, who is my case manager, who is one of the three young
18 people situated behind us. And who is also part of this team, we also have Joseph
19 Keta who, for personal reasons, an emergency, unfortunately was not able to appear
20 and participate in this hearing today.

21 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
22 Counsel Luvengika and Counsel Gilissen.

23 The counsel of Mr. Katanga and Mr. Ngudjolo, can they also introduce
24 themselves and their teams? Counsel David Hooper.

25 MR HOOPER: Yes. My name's David Hooper. I'm of the Bar of England and

1 Wales, as is Andreas O'Shea. And we wear our full court dress today out of respect
2 for the Court on this auspicious day. I'm assisted by Caroline Buisman and
3 Nathalie Wagner, both legal assistants; Ms Menegon, Sophie Menegon, who is our case
4 manager. And we're also assisted by two interns who have proved themselves very
5 extremely helpful and useful over of the very busy months. I name them both:
6 Hedelene Monteiro, who is sitting behind me, and Aurelie Stoflique, who is in the
7 gallery.

8 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
9 Counsel Hooper. It is very sensitive to the dress that you have decided to wear
10 today.

11 Counsel Kilenda.

12 MR KILENDA: (Interpretation) Thank you, your Honour. I have the real
13 pleasure of introducing Ms Andrea Valdivia, who is Canadian, and she is a lawyer at
14 the Quebec Bar and she has been in The Hague since last Sunday. She is part of our
15 team as a legal assistant. She is a legal assistant. And then we have Caroline
16 Martin, who is our legal assistant on a pro bono basis. And on my left we also
17 have H       Gorkiewiez, who is our case manager, and on my right we have
18 Jean-Pierre Fof  , who is also our co-counsel. And myself, Jean-Pierre Kilenda, who
19 is a lawyer in the Brussels Bar and principal counsel of Mathieu Ngudjolo. Thank
20 you.

21 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
22 Counsel Kilenda, and it is very pleased to note that your team is starting to be
23 built up again after the real difficulties that you have had over this previous
24 time.

25 Now, in this courtroom, court officer, are there other representatives of the

1 Registry other than yourself?

2 THE COURT OFFICER: (Interpretation) No, your Honour.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You are, therefore, a
4 central person, a central figure, in this case.

5 The Chamber would now like to make certain observations of a general nature
6 at the start of this hearing. When the trial begins in the case concerning Mr
7 Katanga and Mr Ngudjolo, I would just like to remind everyone that this case is the
8 second which, since the creation of the International Criminal Court, has come to
9 the trial phase. It is, therefore, a very important date for this Court and beyond
10 that for international criminal justice.

11 Now, I also think it is useful to recall that Mr Katanga and Mr Ngudjolo were
12 transferred to The Hague in October 2007 and in February 2008 respectively. And I
13 also have to state that under the proceedings conducted by the Pre-Trial Chamber I,
14 a confirmation hearing took place in September -- or June and July, rather, 2008.
15 And that the decision confirming the charges was issued on 26 September 2008. And
16 that this Chamber was established, and then seized of this case at the end of
17 October 2008.

18 Since the end of October 2008, there has been a pre-trial phase with a view
19 to preparing the trial which is commencing today. This pre-trial phase has been
20 conducted at a steady pace. In doing so, the Court has complied with the
21 provisions of Article 64(2) of its Statute; according to which, and here I shall
22 read it, "The Trial Chamber shall ensure that a trial is fair and expeditious and
23 is conducted with full respect for the rights of the accused and with due regard
24 for the protection of victims and witnesses."

25 So with regards to fairness throughout this long pre-trial phase, the Court

1 has endeavoured to respect this balance which must exist between, on the one hand,
2 the rights of the Defence and, on the other, the necessary protection of victims
3 and witnesses who find themselves in a region marked by significant instability and
4 also with expeditiousness with the agreement of all the participants; that is to
5 say, with your agreement, Prosecutor, counsels, with all your colleagues, with your
6 agreement, counsel. That is the Defence counsel and the legal representatives of
7 victims.

8 We have together followed this objective of expeditiousness because the Court
9 is persuaded, and we were all conscious of the fact that both accused who were
10 detained on a provisional basis, and who are presumed innocent, were supposed to
11 appear before their judges in a reasonable time frame, because we are all aware
12 that the victims authorised to participate in the trial were also entitled to the
13 right to obtain as quickly as possible a response to their call for justice.

14 Furthermore, the Court is also aware, as indeed are you all participating in
15 this hearing, and being active participants here, the Court is also aware that
16 beyond the persons who are present here today in the public gallery, many other
17 people with the aid of audio/visual equipment are also able to take part from afar
18 in this hearing.

19 This is particularly the case in the Democratic Republic of Congo and notably
20 in Ituri. A few moments ago we reminded all that this is a public hearing and,
21 just as today we have all the various participants here in the room facing us to
22 follow the trial, similarly, the Court wishes to acknowledge from The Hague all
23 those who have gathered, particularly those in the Ituri district, and who will
24 continue to gather together to view the trial.

25 Having made these few preliminary remarks, I would now like to speak to the

1 agenda of the hearing. We will be following the provisions of Article 64(8) of the
2 Statute and ask the accused whether they plead guilty or not guilty. Then we will
3 be hearing the opening remarks of the Prosecutor, as well as those of Mr Luvengika
4 and Mr Gilissen, the legal representatives of the victims. This afternoon,
5 gentlemen, ladies and gentlemen, we will be hearing your opening remarks.

6 We will now proceed with the entering of a plea. I was saying that we must
7 comply with the provisions of Article 64(8) of the Statute, and I will read out the
8 provisions in question.

9 At the commencement of the trial, the Trial Chamber shall have read to the
10 accused the charges previously confirmed by the Pre-Trial Chamber. The Trial
11 Chamber shall satisfy itself that the accused understands the nature of the
12 charges. It shall afford him or her the opportunity to make an admission of guilt
13 in accordance with Article 65, or to plead not guilty.

14 At this particular moment I think we should review the procedural background
15 of the case. The Court would remind all that we have previously taken note of the
16 fact that Mr Katanga and Mr Ngudjolo said that they intended to plead not guilty
17 during the first status conference which was held in this room on 27 November 2008.
18 However, at that time the Court clearly indicated to both accused and to their
19 counsel that the charges would be read another time, a second time, once the trial
20 began and that the opportunity to plead guilty or not guilty would be given to them
21 again, and that is the case today.

22 During that hearing held on 27 November 2008, and I'm sure that everyone
23 remembers what a solemn occasion that was, the Court took particular pains to
24 ensure that the counsel of both accused had made it quite clear to their clients
25 just how important it would be to enter a plea, the total importance and the scope

1 of such a plea, generally speaking, and within the framework of this trial. Thus
2 we asked you, Mr Hooper, Mr Kilenda, if your clients were fully aware that pleading
3 guilty would mean they would lose the right to be tried, to be presumed innocent
4 until their guilt is established, to look at the merits of the Prosecution's case
5 by examining Prosecution witnesses; in other words, the right to defend, the right
6 to conduct their defence.

7 We asked you whether your clients received a copy of the decision confirming
8 charges in a language that they understand, and whether they had read it, whether
9 they had discussed the content of that document with you and their rights. We
10 asked you if they had received from you a complete explanation of the nature of the
11 charges that were confirmed, whether you explained the elements of crimes, and
12 finally, we asked you whether Mr Katanga and Mr Ngudjolo had, in your opinion,
13 understood the nature of the charges confirmed by the Pre-Trial Chamber.

14 Finally, at that point we asked you whether your clients, given that this is
15 not an obligation, whether they intended to enter a plea. At the end of that
16 hearing, on 22 November 2008, you both answered "yes." You answered "yes" to all
17 these questions and by doing so that began the process for the entering of an
18 initial plea.

19 Before proceeding any further on 27 November 2008 the Court thought it would
20 make remarks directly to each one of the accused. We asked them the same questions
21 as we asked you, to make quite sure that they had clearly understood and that they
22 were clearly informed of the charges against them and that they fully understood
23 the consequences of entering a plea. The Court made sure that they understood the
24 distinction between a crime against humanity and a war crime.

25 Finally, the Court reminded them that entering a plea was a possibility and

1 was not a requirement. That question was asked directly of you, Mr Katanga, and of
2 you, Mr Ngudjolo, and the Court received clear, specific replies, and thus today we
3 need not reformulate all those questions because these replies are just as valid
4 today as they were then.

5 We would like to take a few moments to review the process, the procedural
6 history, and I think this will allow us to move, directly move to the entering of
7 the plea. Madam Courtroom Officer, could you read out all the charges, without
8 interruption, as found in the decision upholding the charges. Not necessarily all
9 but the -- not all the report or the decision, rather, but the various counts.
10 After reading those counts without interruption, the Court shall ask the two
11 counsel, Mr David Hooper and Mr Jean-Pierre Kilenda, whether their respective
12 clients are intending to enter at this moment a plea of guilty or non-guilty and
13 once again we remind the accused that this is not mandatory.

14 If Mr Katanga and Mr Ngudjolo, through their counsel, answer and say that
15 they are ready to enter a plea of guilty or not guilty, the courtroom officer will
16 take up the reading of the counts again but will read them out individually, and
17 after each one has been read, the Court, speaking through me, will ask two
18 questions: First of all, have you understood this charge? And the accused will
19 answer "yes" or "no." Secondly, I will ask: Do you plead guilty or not guilty?
20 And the accused will answer "yes" or "no." So that particular phase in the hearing
21 may be somewhat long but it is important, and it is a very solemn moment and, of
22 course, there are consequences for the two accused. It is their trial. They are
23 full-fledged participants in this phase of the proceedings.

24 Madam Courtroom Officer, please go ahead with the reading out of the counts,
25 without interruption. We are all listening.

1 THE COURT OFFICER: (Interpretation) War crimes. August 2002, Mr Katanga and
 2 Mr Ngudjolo jointly establishing the existence of an armed conflict. August 2002
 3 to May 2003, Germain Katanga and Mathieu Ngudjolo knew the existence of a link,
 4 namely, the intent to wipe out the village of Bogoro.

5 First charge: On or about 24 February 2003 Germain Katanga and Mathieu
 6 Ngudjolo jointly committed through other persons crimes against humanity, namely,
 7 the killing of at least -- and this is under 8(2)(a) of the Statute.

8 Count 2: 24 February 2003 Germain Katanga and Mathieu Ngudjolo jointly
 9 committed under Article 8(2)(a)(i) the crime of using children under the age of 15
 10 in active battle, and this is found in 8(b)(xxvi) of the Statute.

11 Third charge: On or about 24 February 2003 Germain Katanga and Mathieu
 12 Ngudjolo jointly committed through other persons, and this is under Article
 13 8(2)(b)(i) of the Statute the intentional -- a war crime intentional directing of
 14 an attack against the civilian population of Bogoro village in the Bahema Sud
 15 *collectivité*.

16 Fourth charge: On or about 24 February 2003 Germain Katanga and Mathieu
 17 Ngudjolo jointly committed through other persons a war crime, namely, the
 18 pillaging, and this is within the meaning of Article 8(2)(b)(xvi) and Article
 19 25(3)(a) of the Statute.

20 Fifth count: On or about 24 February 2003 Germain Katanga and Mathieu
 21 Ngudjolo jointly committed through other persons a war crime, namely, the
 22 destruction of goods or items. This is within the meaning of Article 8(2)(b)(xiii)
 23 and Article 25(3)(a).

24 Sixth charge: On or about 24 February 2003 Germain Katanga and Mathieu
 25 Ngudjolo jointly committed through other persons war crimes, within the meaning of

Article 8(2)(b) and Article 25(3)(a), namely, the sexual enslavement of civilian female residents or civilian women.

Count 7: On or about 24 February 2003 Germain Katanga and Mathieu Ngudjolo jointly committed through other persons within the meaning of the Statute war crimes, namely, rape, 8(2)(b), rape of civilian female residents.

Crimes against humanity: Germain Katanga, and the two knew that the crimes against -- knew that the crimes committed during and after the attack of 24 February 2003 against the village of Bogoro had been done within the framework of a systematic and generalised attack against the civilian population, attacks on various villages inhabited primarily by Hema.

Eighth charge: On 24 February 2003 Germain Katanga and Mathieu Ngudjolo Chui jointly committed through other people, under the meaning of Article 25(3)(a) of the Statute the murder, a crime against humanity under Article 7(1)(a) of the Statute with wilful intent.

Ninth charge: On 24 February 2003 Germain Katanga and Mathieu Ngudjolo Chui committed jointly through other persons, under the meaning of Article 25(3)(a) of the Statute, the crime of sexual enslavement, a crime against humanity under the meaning of Article 7(1)(g) of the Statute knowing that this crime would occur in the normal course of events.

Tenth charge: 24 February 2003 Germain Katanga and Mathieu Ngudjolo Chui committed jointly through other persons, within the meaning of Article 25(3)(a) of the Statute, the crime of rape, a crime against humanity, as provided for in Article 7(1)(g) of the Statute knowing that the crime would occur in the normal course of events.

PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Courtroom Officer.

1 We have now read the charges without interruption and these charges were taken from
2 the decision confirming charges.

3 Mr Hooper, does Mr Katanga intend to enter a plea of guilt or innocence?

4 MR HOOPER: Now, his plea from the outset has been a plea of not guilty.
5 That's been his position from the time of his arrival here two years ago. It was
6 his position at the confirmation hearing and it's his position today. His plea to
7 each of these counts, if requested, will be one of not guilty.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Even though
9 you have indicated that Mr Katanga intends to uphold his decision to continue with
10 that plea, the Court will continue to comply with the Statute and continue with the
11 reading of the charges.

12 MR KILENDA: (Interpretation) Ever since he was arrested and arrived in The
13 Hague, Mr Ngudjolo has always proclaimed his innocence. He has asked me to tell
14 the Bench that he still intends to plead not guilty.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda.

16 Madam Courtroom Officer, we would now like to ask you to read the charges one
17 at a time and the two categories, namely, war crimes and crimes against humanity,
18 will only be read once.

19 THE COURT OFFICER: (Interpretation) War crimes: From August 2002 to
20 May 2003 Mr Katanga and Mr Ngudjolo, knowing the circumstances, the establishment
21 of an armed conflict of an international character; from August 2002 to May 2003,
22 Germain Katanga and Matheiu Ndudjolo, knowing the existence of a link between the
23 common plan to wipe out the village of Bogoro and the armed conflict. First
24 charge, 24 February 2003 Germain Katanga and Mathieu Ngudjolo committed jointly,
25 through other persons, under Article 25(3)(a) of the Statute the crime -- the war

1 crime of willful homicide provided for in Article 82(a)(i) of the Statute.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Katanga, you have heard this
3 first charge. The Court wishes to know whether you have understood charge number
4 one, which was confirmed by the Pre-Trial Chamber.

5 MR KATANGA: (Interpretation) I think that I already have said, ever since I
6 arrived here I have pleaded non-guilty, and I continue to plead non -- not guilty.

7 PRESIDING JUDGE COTTE: (Interpretation) We have heard you, sir, but in
8 order to comply with the provisions of the Statute, the law that regulates this
9 Court, we must ask you, once again, charge by charge.

10 Mr Ngudjolo, have you understood the first charge that has just been read out
11 and do you intend to plead guilty or not guilty?

12 MR NGUDJOLO CHUI: (Interpretation) I plead non-guilty.

13 PRESIDING JUDGE COTTE: (Interpretation) And you have understood this first
14 charge?

15 MR NGUDJOLO CHUI: (Interpretation) Yes, I have understood it.

16 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom Officer, could you
17 please read out the second charge?

18 THE COURT OFFICER: (Interpretation) Count 2: On 24 February 2003 Germain
19 Katanga and Mathieu Ngudjolo Chui jointly committed within the meaning of Article
20 25(3) of the Statute the crime of using children of less than 15 years for -- and
21 having them participate in hostilities, constituting a crime of war under Article
22 8(b)(26) of the Statute.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer.

24 Mr Katanga, have you understood that second count and do you plead guilty or
25 not guilty.

1 MR KATANGA: (Interpretation) Can you kindly repeat?

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Katanga, did you understand the
3 second count and do you plead guilty or not guilty?

4 MR KATANGA: (Interpretation) I plead not guilty.

5 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you.

6 Mr Mathieu Ngudjolo, did you understand that second count and do you plead
7 guilty or not guilty?

8 MR NGUDJOLO CHUI: (Interpretation) I plead not guilty.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer,
10 please read the third count.

11 THE COURT OFFICER: (Interpretation) Count 3: On 24 February 2003 Germain
12 Katanga and Mathieu Ngudjolo Chui jointly committed and through other people within
13 the meaning of Article 25(3) of the Statute the war crime consisting of directing
14 an attack against a civilian population and against civilians that were not
15 participating directly in hostilities under Article 8(2)(b)(i) of the Statute with
16 the intention of committing the crime.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Katanga, for this
18 third count, did you understand and do you plead guilty or not guilty?

19 MR KATANGA: (Interpretation) I plead not guilty.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Mathieu Ngudjolo?

21 MR NGUDJOLO CHUI: (Interpretation) I plead not guilty.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer,
23 please read Count 4.

24 THE COURTROOM OFFICER: (Interpretation) Count 4: On 24 February 2003
25 Germain Katanga and Mathieu Ngudjolo Chui jointly committed through other people

1 within the meaning of Article 25(3) of the Statute the war crime of pillaging under
2 Article 8(2)(b)(xvi) of the Statute while knowing that this crime was within the
3 normal course of events.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Katanga, with regard
5 to Count 4, what do you plead?

6 MR KATANGA: (Interpretation) I plead not guilty.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Mathieu Ngudjolo?

8 MR NGUDJOLO CHUI: (Interpretation) I have understood and I plead not
9 guilty.

10 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you.

11 Madam Court Officer, could you read Count 5?

12 THE COURT OFFICER: (Interpretation) Count 5: On 24 February 2003 Germain
13 Katanga and Mathieu Ngudjolo Chui jointly committed through other people within the
14 meaning of Article 25(3)(a) of the Statute the war crime of destruction of property
15 under Article 8(2)(b)(xiii) of the Statute with the intention of committing the
16 crime.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer.

18 Mr Germain Katanga.

19 MR KATANGA: (Interpretation) On this Count 5, I plead not guilty.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Katanga.

21 Mr. Ngudjolo.

22 MR NGUDJOLO CHUI: (Interpretation) I plead not guilty.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer,
24 can you read the next count?

25 THE COURT OFFICER: (Interpretation) Count 6: On 24 February 2003 Germain

1 Katanga and Mathieu Ngudjolo Chui jointly committed through other people within the
 2 meaning of 25(3)(a) of the Statute the war crime of reduction to sexual enslavement
 3 under Article 8(2)(b)(xxii) of the Statute while knowing that this was happening
 4 within the normal course of events.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Katanga?

6 MR. KATANGA: I plead not guilty.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Now, Mr Ngudjolo?

8 MR NGUDJOLO CHUI: (Interpretation) Your Honour, I plead not guilty.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer.

10 THE COURT OFFICER: (Interpretation) Count 7: On 24 February 2003 Germain
 11 Katanga and Mathieu Ngudjolo Chui jointly committed through other persons within
 12 the meaning of Article 25(3)(a) of the Statute the war crime of rape under Article
 13 8(2)(b)(xxii) of the Statute while knowing that this was within the normal course
 14 of events.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Germain Katanga?

16 MR KATANGA: (Interpretation) I plead not guilty.

17 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you. Mr Mathieu
 18 Ngudjolo?

19 MR NGUDJOLO CHUI: (Interpretation) Your Honour, I plead not guilty.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer.

21 THE COURTROOM OFFICER: (Interpretation) Crimes against humanity:
 22 Germain Katanga and Mathieu Ngudjolo Chui knew that the crimes committed during and
 23 after the attack of 24 February 2003 against Bogoro village was within the
 24 framework of a systematic and widespread attack against a civilian population
 25 targeting the villages in the region of Ituri; including Bunia, Nyankunde, Mandro,

1 Kilo, Drodro and others mainly inhabited by the Hema.

2 Count 8: On 24 February 2003 Germain Katanga and Mathieu Ngudjolo Chui
3 jointly committed through other people within the meaning of Article 25(3)(a) of
4 the Statute murder as a crime against humanity under Article 7(1) of the Statute
5 with intention to commit a crime.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer. Mr
7 Germain Katanga?

8 MR KATANGA: (Interpretation) Your Honour, I plead not guilty.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr. Mathieu Ngudjolo?

10 MR NGUDJOLO CHUI: (Interpretation) Your Honour, I plead not guilty.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer?

12 THE COURTROOM OFFICER: (Interpretation) Count 9: On 24 February 2003
13 Germain Katanga and Mathieu Ngudjolo Chui jointly committed through other people
14 within the meaning of Article 25(3)(a) of the Statute the crime of reduction to
15 enslavement as a crime against humanity under Article 7(1)(g) of the Statute, while
16 knowing that this crime would be committed within the normal course of events.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer. Mr
18 Germain Katanga?

19 MR KATANGA: (Interpretation) I plead not guilty.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Mathieu Ngudjolo?

21 MR NGUDJOLO CHUI: (Interpretation) Your Honour, I plead not guilty.

22 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you. Madam Court
23 Officer.

24 THE COURT OFFICER: (Interpretation) Count 10. On 24 February 2003
25 Germain Katanga and Mathieu Ngudjolo Chui jointly committed through other persons

1 within the meaning of Article 25(3)(a) of the Statute the crime of rape as a crime
2 against humanity under Article 7(1)(g) of the Statute while knowing that this crime
3 would be perpetrated within the normal course of events.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer. Mr
5 Katanga?

6 MR KATANGA: (Interpretation) I plead not guilty.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Ngudjolo?

8 MR NGUDJOLO CHUI: (Interpretation) Your Honour, I plead not guilty.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And at this point, the
10 Court notes that at this stage of the proceedings Mr Germain Katanga and Mr Mathieu
11 Ngudjolo plead not guilty.

12 The wording of these charges and the answers that the two accused were called
13 upon to give on each count might have seemed like a fastidious exercise; but it
14 was, however, important and indispensable for the Court to know the position of the
15 accused at this stage of the proceedings. As I have said a short while ago, we
16 only complied with the provisions of Article 64(8).

17 And before I give the floor to the Prosecutor for his opening statement, the
18 Court will also comply with the provisions of Rule 94(2) of the Rules of Procedure
19 and Evidence on the procedure to be followed in the event of an application for
20 reparation by the victims. And I will read out Rule 94(2), and I quote: "At
21 commencement of the trial and subject to any protective measures, the Court shall
22 ask the Registrar to provide notification of the request to the person or persons
23 named in the request or identified in the charges, and, to the extent possible, to
24 any interested persons or any interested States. Those notified shall file with
25 the Registry any representation made under Article 75, paragraph 3."

1 Madam Court Officer, the Court has been seized of a certain number of
2 applications for reparation, and it will be appropriate in consultation with the
3 specialised services of your Registry to proceed with the notification to the two
4 accused and their counsel. It was important to comply with the provisions of this
5 rule, which compels us to make this notification at the end -- at the commencement
6 of trial.

7 Mr Prosecutor, before the break which was scheduled at 11:00 a.m., we have
8 about 35 minutes, approximately. Would you like to start with your statement -
9 because you are going to begin, and maybe other members of your team will take the
10 floor - or do you prefer that we break for about half an hour? And at the
11 resumption of the hearings at 11:00 a.m., you will have one hour as planned for
12 your opening statement; followed by about 40 minutes of opening statements from the
13 legal representatives?

14 And if the interpreters agree, given that now it is 10.25, we will resume at
15 10 minutes to 11:00, and in that case we will have one hour for the Prosecutor and
16 40 minutes allocated for the legal representatives of the victims. I believe this
17 is a good approach. Do you agree?

18 MR MORENO-OCAMPO: Yes, perfectly.

19 PRESIDING JUDGE COTTE: (Interpretation) And you also the legal
20 representatives of the victims? Yes.

21 Is there any objection from the Defence that we proceed in this way?
22 Mr Kilenda, Mr Hooper?

23 Madam Court Officer, maybe you have an objection?

24 So we will resume at 10.55. We will break for half-an-hour and we should all
25 be present in this courtroom precisely at 10.55 to listen to the opening statement

1 of the Prosecutor.

2 Court is adjourned.

3 (Recess taken at 10.24 a.m.)

4 (Upon resuming at 11.08 a.m.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE COTTE: (Interpretation) The Court is now in session.

7 Please be seated.

8 The Court firstly would like to express it's regret for this delay. We asked
9 you to be present at 10.55 precisely. You were at 10.55 precisely and we were
10 present at 10.55 precisely, but unfortunately, a glass that was spilled over on an
11 electric -- an information technology circuit meant it wasn't possible to come into
12 the courtroom as quickly as we would have wished. That gives you the explanation
13 of a totally involuntary delay. So now we can take up our work again. We are
14 therefore going to listen to the opening statements of the Office of the Prosecutor
15 expressed at the start of this phase of the trial by the Prosecutor himself. These
16 opening statements do come within the framework of Regulation 54 of the regulations
17 of this Court.

18 Prosecutor, I give you leave to address the Court.

19 MR MORENO-OCAMPO: Mr President, your Honours. The Office of the Prosecutor
20 of the International Criminal Court, representing 110 State Parties to the Rome
21 Statute and committed citizens from all over the world, allege that Germain Katanga
22 and Mathieu Ngudjolo Chui are responsible for some of the most serious crimes of
23 concern to the international community as a whole. The Prosecution submits that
24 they are criminally responsible for crimes against humanity and war crimes
25 committed in Bogoro, in the Democratic Republic of Congo, on 24 February 2003.

1 They used children as soldiers. They killed more than 200 civilians in a few
2 hours. They raped women, girls and elderly. They loot the entire village and they
3 transform women into sexual slaves. Mr Katanga and Mr Ngudjolo were the leaders of
4 militias composed of members of the Lendu and Ngiti communities. They were
5 involved in an armed conflict with the UPC, a militia predominantly composed of
6 members of the Hema community and led by Thomas Lubanga.

7 The Bogoro attack was not an isolated event. It was part of a widespread and
8 systemic attack against the civilian population of Ituri. The Bogoro attack took
9 place at the end of the two Congo wars. This neglected conflict, the Congo wars,
10 involved more than nine African countries for more than four years of fighting. As
11 a consequence of these wars, almost four million people died, making the Congo wars
12 the gravest conflict since World War II. At the root of the Congo wars is the
13 genocide in Rwanda.

14 In April 1994 the international community failed to act when the genocide
15 started in Rwanda. One million fifty thousand people were exterminated within
16 three months. Some of the *génocidaires* were allowed to escape to neighbouring
17 Congo. There they regrouped and became a crucial factor in triggering the two
18 Congo wars. The Bogoro attack is the consequence of the national and international
19 failures to prevent and control such massive crimes.

20 The Rome Statute was adopted in 1998 to end the impunity for such crimes,
21 crimes that we have thought over and over will never happen again, only to see them
22 occur again and again before our eyes. This International Criminal Court has not
23 jurisdiction over most of the crimes committed during the Congo wars, but this
24 office is determined to do justice for the Bogoro victims and to contribute to
25 stopping the cycles of violence in Ituri and in the Great Lakes region, a region

1 still unstable.

2 It is time to apply the Rome Statute to prevent genocide, to prevent another
3 Congo war, to make the premise of "never again" real. No more will the victims of
4 massive crimes be ignored. The people from such places as Bogoro, Bunia, Aveba and
5 Zombe must know that they are not alone, that they do not need to resort to
6 violence again. The Hema, the Ngiti, the Lendu, the people from Ituri, have to
7 feel that they are part of a global community, that we are their brothers and
8 sisters. The Rome Statute is building one global community to protect the right of
9 victims all over the world.

10 Mr President, I will use a slide to explain where is Bogoro and why did
11 Katanga and Ngudjolo decide to target Bogoro.

12 I will use this map and then this will tell the picture to show the
13 situation. You will see that Bogoro is at the crossroad on the way to Bunia.
14 Mr Katanga and Mr Ngudjolo planned to attack Bogoro so as to open the Bunia-Kasenyi
15 route and at the same time prevent UPC attacks on neighbouring Lendu and Ngiti
16 villages.

17 The UPC had a military camp in the centre of Bogoro. It was located at the
18 Bogoro institute. You can see in the picture its position and you can see in the
19 picture highlighted the trench that surrounded the Bogoro Institute. This is the
20 situation. You are sitting in the crossroad, UPC there. But Mr Ngudjolo and
21 Mr Katanga's plan was more than just disabling the UPC. The plan was to wipe out
22 Bogoro, destroying not only the UPC camp but the whole civilian village. This is
23 the plan and this is the position of the Prosecutor's office.

24 The attack on Bogoro was carried out in successive waves of violence. At
25 around 5.30 in the morning hundreds of women, men and children, under the command

1 of Mr Katanga and Mr Ngudjolo, armed with automatic weapons, machetes and spears,
2 descended on the village centre. Mr Katanga and Mr Ngudjolo forces did not
3 distinguish between military and non-military targets. When questioned about the
4 number of civilian deaths, Mr Ngudjolo responded, and I quote, "There are not any
5 civilians amongst the Hemas. They are all soldiers." Therefore, civilians and UPC
6 soldiers were killed without distinction. Some were shot in their sleep, some cut
7 up with machetes to preserve bullets. Others were burnt alive after their house
8 were set on fire by the attackers.

9 Awakened by gunfire and the screams of their neighbours, some civilians
10 attempted to flee but found the escape routes blocked. Most were shot in flight.
11 Many sought refuge in the Bogoro Institute, in the centre of town. They were easy
12 prey. As you will hear, the bodies of dead civilians filled the rooms of the
13 Bogoro Institute.

14 Victims will come here and will tell this Court of the brutal killings. Some
15 were forced to watch the mother of their own family members, "The combatant," I
16 quote, "The combatants ordered me to leave the house with my children and they
17 surrounded us. I took my children by the hand but the combatants held them, and
18 while this combatant fired on my two daughters on the spot. He only shot twice
19 from his gun."

20 Some reached the bush and hid while others were captured, but the slaughter
21 and devastation were not over. As a victim will describe, and I quote again, "From
22 where we were, we could see that each time the attackers came across someone, they
23 will kill him and cut him up in pieces. They kill everyone. They did not make any
24 distinction between men, women, children and the elderly."

25 The troops of the accused first raped and then killed women. Two child

1 soldiers found a 50-year old woman, sick and exhausted, in a house outside the
2 village. One of the child soldiers described the scene. "The *maman*, the mother,
3 told us that we were like her children and she started crying. Then we left. We
4 did not -- we did not have the courage to kill her." That's what he'll say.
5 That's the instruction.

6 But other members of Mr Katanga and Mr Ngudjolo forces followed the order to
7 kill. This woman was found and the child soldiers explained, "We found her
8 undressed and naked, like an animal. She had been strangled and her tongue was
9 outside. Her legs were open. One of her legs was tied with ropes to the pillar in
10 the middle of the house and the other leg to the door. She was dead."

11 By the end of the afternoon the screams had faded. Dead bodies surrounded
12 the commanders. Homes that were burned continued amid the rubble. Commanders were
13 congratulated by their troops for a job well done. One witness will say, and I
14 quote, "The officers were set up there in the middle of the town. They had put
15 some chairs. They were drinking beer and they got drunk. And they were even
16 congratulating the commander who had led the operation."

17 The next day captured civilians were forced at gunpoint to lure out other
18 community members who were hiding in the bush. When they appeared, these survivors
19 were brutally executed. The joint attack achieved its goal, but horror was not
20 over yet for the women of Bogoro. Once captured, some women hid their Hema
21 identity to save their lives. Those later revealed as Hema were killed. The
22 others were raped and forced into marriage as combatant wife, or detained to serve
23 as sexual slaves by Mr Katanga or Mr Ngudjolo's soldiers. All these women were
24 victimised on the basis of their gender. They were attacked in particular because
25 they were women.

1 Mr President, your Honours. The Prosecution will show that Germain Katanga
2 and Mathieu Ngudjolo planned the attack. They were the top commanders of the
3 forces which killed, raped and loot the civilians, and that both intended and were
4 satisfied by the success of their criminal operation. Mr Katanga boasted that he
5 had ordered and planned the attack and bluntly described its aims, openly
6 documenting the atrocities that were committed. He said, I quote, "About Bogoro,
7 which is a village predominantly Hema, the attack was carried out to take revenge
8 on massacres perpetrated by the Hemas in another village." And laughing, he added
9 that, "Nothing was spared, absolutely nothing: Chickens, goats, everything.
10 Anywhere there was nothing left. There were nothing left. Everything was wiped
11 out."

12 Mr President, your Honours, Deputy Prosecutor Fatou Bensouda will now present
13 with more detail the context in which the crimes were committed.

14 MS BENSOU DA: Mr President, your Honours. The Prosecution's evidence will
15 demonstrate that when the attack on Bogoro occurred, an ongoing armed conflict
16 existed in the territory of Ituri involving several organised armed groups,
17 including Lubanga's UPC, the FNI, the FRPI as well as the Ugandan army. Early in
18 his recitation, the Prosecutor referred to the 1994 genocide in neighbouring
19 Rwanda, following which *génocidaires* fled that country and regrouped in the DRC,
20 the Democratic Republic of Congo. The Rwanda genocide is the root of the two Congo
21 wars.

22 In 1996 a first conflict broke out in Congo, then known as Zaire. It was
23 triggered by the presence of the Rwandan *génocidaires* in the Eastern Province of
24 the Democratic Republic of Congo. These *génocidaires* began to launch attacks on
25 Rwanda from their position in the Kivus.

1 Uganda and Rwanda provided support to a rebel group led by Laurent Désiré
2 Kabila against the men and the then leader of Zaire, Mobutu Sese Seko, and they
3 were instrumental in ousting Mobutu in 1997. In 1998, a second larger conflict
4 broke out in the Congo after relations deteriorated between Kabila, the father, and
5 the new President of the Congo and his former allies.

6 Under international pressure, Rwanda and Uganda retreated from a large part
7 of the Congo, but remained in the Eastern Democratic Republic of Congo. Uganda
8 consolidated its presence in a large part of the Province of Oriental, which
9 included Ituri, and Rwanda consolidated its presence in the Kivus.

10 At least nine countries and many local militias were involved in these wars,
11 and it is estimated that between 1998 and 2003 close to 4 million people died in
12 relation to these events. They died largely from disease and starvation as the
13 population was displaced and fled the combat zones.

14 At the beginning of this second conflict, armed groups depicting themselves
15 as *Groupes Politico-Militaire* took control of Ituri with the support of Uganda and
16 Rwanda. These governments each supported at different times Ituri-based militias
17 by supplying them with weapons, ammunition, military training and expertise,
18 uniforms and financial support.

19 The Eastern Democratic Republic of Congo, including Ituri, is a rich and
20 fertile area. The armed conflict out of which the attack on Bogoro arose started
21 in mid-1999 with a series of land disputes and violent confrontations between the
22 Hema and the Lendu groups. And by the end of 2001, the violence escalated to an
23 intensive attack launched by either group on villages.

24 In April of 2002, the states involved in the Congo conflicts, as well as the
25 main Congolese groups, began peace negotiations in Sun City in South Africa. In

1 April of 2002, after being excluded from the Sun City negotiations, Thomas Lubanga
2 publicly announced his own *mouvement politico-militaire*, the Hema dominated UPC.
3 At first, the UPC was supported by the Ugandan army, but later changed alliances
4 and Rwanda became its source of support.

5 In August of 2002, the UPC took over the town of Bunia. Non-Hema residents
6 were displaced and they fled south, mostly to Beni area in Kivu North. Mathieu
7 Ngudjolo, a Lendu, fled Bunia and went to his village of Zumbe in the Djugu
8 territory.

9 From August 2002 onwards, the UPC and Ngiti, their armed groups were engaged
10 in this armed conflict. By the fall of 2002, the Ngiti and some Lendu had joined
11 forces under the umbrella of the FRPI. At the same time, a number of other Lendu
12 had formed the FNI. Once in Zumbe, Matheiu Ndudjolo became the leader of the Lendu
13 combatants based in that area. During the fall of 2002, from his base village of
14 Aveba, Germain Katanga, Ngiti emerged as the leader of the FRPI.

15 On 6 March 2003, the Ugandan army, with the support of the FNI and the FRPI
16 forces, attacked the UPC in Bunia and occupied parts of the city. And on 6 May
17 2003, under pressure from the international community, the UPDF began their pullout
18 from Ituri and left Bunia. About a week later, the UPC re-took Bunia. The UPDF
19 completed their withdrawal from the DRC on 2 June 2003, following the Luanda
20 agreement. The UPDF's departure - excuse me - marked the end of the second Congo
21 war.

22 Mr President, your Honours, let me now address you on the widespread and
23 systematic attack on civilians. The Prosecution will show that the Bogoro attack
24 was part of a series of attacks perpetrated by various armed groups throughout the
25 district of Ituri from August 2002 to July 2003. Most attacks did not discriminate

1 between military or civilian targets. They were directed at both. And as a result
2 of these attacks, approximately 8,000 civilians were killed and more than 600,000
3 were forced to flee their homes. Mr President, your Honours, as you can see on the
4 slide which depicts that the attacks on these -- on these villages were
5 indiscriminate.

6 The February 2003 attack on Bogoro was part of a pattern of widespread and
7 systematic attacks perpetrated by the Lendu and the Ngiti militias against the
8 civilian population of mostly Hema origin. Between August 2002 and July 2003, the
9 Lendu and Ngiti forces were responsible for many attacks. Let me describe some of
10 these attacks.

11 On 5 September 2002, Ngiti militia along with other forces attacked the
12 UPC-controlled town of Nyankunde. The attack lasted only a few hours, and it ended
13 with the destruction of the UPC camp. In the following 10 days, the attackers
14 hunted out and killed an estimated 1,200 Hema and Bira civilians.

15 On 4 March 2003, the allied forces of Katanga and Ngudjolo attacked UPC
16 military positions located in Mandro. An estimated 168 civilians were deliberately
17 killed during this short attack. Again, Mr President, on 6 March 2003, FNI and
18 FRPI forces supported the Ugandan army in attacking the UPC in Bunia. This
19 resulted in the willful killing of many civilians.

20 On 3 April 2003, FNI militias attacked at least 11 Drodro area villages where
21 UPC combatants were located; and at a minimum, 400 civilians were deliberately
22 killed during these attacks. From 6 to 16 May 2003, after the withdrawal of UPDF
23 from Bunia, fighting erupted between the UPC and the FNI/FRPI for the control of
24 the city. During this fighting, there were instances of ethnically-targeted
25 killings. There were also instances of pillaging and destruction of property.

1 More than 500 cases of deliberate killings were reported, and approximately 200,000
2 civilians fled Bunia and its surrounding areas.

3 On 31 May 2003, the FNI attacked the village of Tchomia. More than 250
4 civilians were deliberately murdered, including 30 patients that were still,
5 unfortunately, on their hospital beds.

6 On 11 June 2003, FNI and FRPI forces attacked the village of Kasenyi. More
7 than 80 civilians were deliberately killed, while at least 30 civilians were
8 abducted. During the Ituri conflict, Lendu and Ngiti militias abducted and raped
9 women from all tribes, including their own women, women they considered to be *butin*
10 *de guerre*. In fact, during the earlier attacks on Bogoro in 2001 and 2002, young
11 girls were abducted and forced to become wives of combatants. During the Nyankunde
12 attack, many young girls, Mr President, were raped, and either killed or taken to
13 Ngiti camps or Lendu camps to become sexual slaves.

14 During later attacks, women were often used to carry looted goods to the
15 camps, and they remained captive. They were raped and deprived of their identity
16 and of their liberty. Their existence, Mr President, was reduced to being the
17 forced wives or sexual slaves of soldiers.

18 Mr President, your Honours, at this moment, with your kind permission, I
19 would like to call on senior trial lawyer Mr Eric Macdonald to present the
20 remaining opening remarks of the Prosecution.

21 MR MACDONALD: (Interpretation) Your Honour, allow me to speak to the
22 individual criminal responsibility of the accused Germain Katanga and Mathieu
23 Ngudjolo.

24 The Prosecution will demonstrate that the accused are criminally responsible
25 as the main perpetrators under the Rome Statute of the crimes committed in Bogoro.

1 All the crimes in question were the result of a common plan that was drawn up by
2 the accused and other commanders, and the ultimate objective of this plan was to
3 wipe Bogoro off the map.

4 The Prosecution shall demonstrate that Germain Katanga and Mathieu Ngudjolo
5 both developed the plan to attack Bogoro, and their respective militia were
6 entrusted with the task of carrying out this plan. The accused coordinated their
7 efforts and played an essential role in carrying out the plan.

8 With regard to the crime of having children under 15 years of age
9 participating actively in hostilities, the Prosecution shall demonstrate that both
10 accused used children and had them become soldiers, have them taking part directly
11 in the attack on the village of Bogoro.

12 As for all the other crimes, the Prosecution will demonstrate that the
13 criminal responsibility of Germain Katanga and Mathieu Ngudjolo is based on the
14 direct line authority that they enjoyed. They were the leaders of the groups that
15 came under their control during the attack on Bogoro, and they used these groups to
16 conduct the attack.

17 The Lendu and Ngiti militia who committed the crimes in question did so on
18 the orders of the accused. Thus, the crimes committed by each militia can be
19 attributed to their respective leaders. Furthermore, following the principle of
20 mutual attribution of crimes amongst co-perpetrators, it is of little importance
21 determining which militia committed which crime, because their actions can be
22 attributed to both accused, insofar as both these crimes were committed as part of
23 a common plan.

24 The Prosecution shall demonstrate that between the end of 2002 and the joint
25 attack led by the FNI and the FRPI against Bogoro, Mathieu Ngudjolo was the leader

1 of the FNI for all the Lendu combatants in the military camps in the Zumbe region.
2 The Prosecution shall also demonstrate that in the fall of 2002 Germain Katanga
3 became the supreme commander of all the FRPI forces. Mr. Katanga and Mr Ngudjolo
4 were the supreme commanders of their respective forces during the planning of the
5 attack and the execution thereof.

6 Finally, the evidence shall make it very clear that the accused had the
7 criminal intent that is required with regard to the charges that they are facing.
8 The Prosecution shall prove that the accused had the intent of committing the
9 following crimes by way of their common plan.

10 First of all, the fact that they led an attack against a civilian population.
11 Secondly, willful killings. Third, the destruction of property. Four, the fact
12 that they had children under 15 years of age taking an active role in hostilities.
13 Furthermore, the evidence will show that the two accused were well aware that the
14 crimes of looting, sexual enslavement and rape would occur in the normal course of
15 events.

16 Let me now describe the structure of the FNI and FRPI camps. Germain Katanga
17 was the de jure supreme commander of the FRPI and exercised de facto control over
18 the commanders of the group. During the same period Mathieu Ngudjolo exercised
19 similar control over the FNI and its commanders based in the Zumbe region.

20 The FRPI was created in late 2002 during meetings organised at Beni. The
21 purpose of those meetings was to join forces and organise Lendu and Ngiti
22 resistance against the UPC, which was attacking the various communities in Ituri,
23 in order to exploit the natural resources of the region.

24 The FRPI was the first noteworthy attempt to bring under the same command the
25 various Ngiti and Lendu forces. During the same period, the Lendu community

1 created a similar opposition movement to the UPC, known as the FNI. The FNI was
2 created in December 2002 during discussions carried out initially at Kpandroma in
3 the DRC and subsequently in Arua, Uganda. On the map that you can see on your
4 screen, you can see the map, or rather, the town of Beni in the south and in the
5 north, Kpandroma in Ituri, DRC and then Arua in Uganda.

6 Up to the time of the official creation of those two movements in late 2002,
7 the Lendu combatants were under the authority of local leaders who organised
8 attacks against, or rather, who organised the defence against the attacks carried
9 out by the UPC and during that period Ngudjolo consolidated his power and his
10 authority over the Lendu fighters in the Zombe region.

11 In the autumn of 2002 Germain Katanga became the leader of the Ngiti fighters
12 of Walendu Bindi. At least eight military camps in that collectivité took part in
13 the execution of the attack in Bogoro. Germain Katanga commanded the Aveba camp,
14 which was also known as the *Bureau de Command Combattant Aveba*, that is BCA. He
15 resided in this camp which became his headquarters.

16 The other commanders from other regions came and reported to him. Germain
17 Katanga actually owned a radio set that he used to communicate with the other FRPI
18 camps. Weapons and ammunition were delivered by air to Aveba. They were stored in
19 the BCA before being distributed to the other camps of the FRPI and the FNI in
20 anticipation of attacks, such as that in Bogoro.

21 The Prosecution will also show that during the same period the Lendu fighters
22 in the Zombe region had been split up similarly in a series of military camps, each
23 camp with its own commander. Those camps were all located about ten kilometres
24 away from each other. Mathieu Ngudjolo lived in Kambutso but he was the commander
25 of a camp located in Zombe village. Mathieu Ngudjolo exercised his authority over

1 the other camp commanders. He issued orders which were implemented by his
2 subordinates.

3 He, himself, was empowered to judge and punish and, in fact, he did not
4 refrain from punishing his subordinates, including the execution of certain
5 soldiers. With your leave, I will describe briefly the map that is on the screen.
6 You can see the FRPI camps, Medhu, Golgota, Kagaba, Landrietsi (phon), Aveba,
7 Bukiringi and Bavi, Olongba, and in the red triangle you can see Zumbe, Kambutso,
8 Ezekere and the Beni camp.

9 Mr President, your Honours, at the same time as the creation of this network
10 of camps in the end of 2002 some Ngitis and Lendus decided to join forces in the
11 face of the aggression of the UPC. That is how come the FRPI and the FNI planned
12 the attack at Bogoro and executed it. Let me now describe to you the joint
13 enterprise to attack Bogoro.

14 The Prosecution will show that the attack against Bogoro was planned by the
15 FNI and FRPI commanders at the home of Katanga in Aveba at the end of 2002, early
16 2003. Between autumn 2002 and the time at which the attack against Bogoro was
17 carried out, Germain Katanga went to Beni and returned with weapons, ammunition and
18 other materials, particularly mobile radio sets, and you can see Aveba on the map
19 and the route to Beni.

20 Late 2002, early 2003, there was a delegation of FNI soldiers which left
21 Ladile in the Zumbe region and met up -- and went to the Germain Katanga residence
22 in Aveba. You can see that on the slide.

23 Ngudjolo had appointed Commander Boba Boba to head this delegation and
24 represent him during that meeting with Katanga and other FRPI commanders. On that
25 occasion, a plan was drawn up by Katanga and the other FNI and FRPI commanders to

1 wipe out Bogoro village and take over control of the road leading to Bunia.

2 Let me quote the words of a former FRPI member. "The objective was to join
3 forces to attack Bogoro. Our intention was to wipe out Bogoro." During these
4 negotiations Commander Boba Boba was in contact, in radio contact with his
5 commander, Mathieu Ngudjolo. The members of the FNI delegation returned in
6 successive waves to the Zombe region, carrying along with them the ammunition that
7 Katanga had given them. The FRPI commanders, who had taken part in the Aveba
8 meeting, also returned to their respective camps.

9 A few days before the attack, Commander Bahati of the FRPI went to Zombe camp
10 where Ngudjolo was to be found and reported the details of the attack to Ngudjolo.
11 A few days prior to the attack against Bogoro, the FRPI commanders convened a
12 meeting in the Katanga residence to prepare the attack. Katanga disclosed to them
13 the details of the attack and handed over to them the necessary ammunition.

14 I will now describe the movements of the FRPI forces during the days
15 preceding the attack. On the eve of the attack, the FRPI fighters met at two
16 gathering points, Medhu to the west of Bogoro and Kagaba to the south. You can see
17 this on the map in orange. You can see Kagaba, Medhu and Bogoro at the centre.
18 Katanga led his fighters to the Kagaba camp. Other commanders of the FRPI,
19 including Cobra Matata took their troops to Medhu in accordance with the plan.

20 In Kagaba Katanga watched a march passed and then ordered Commanders Yuda and
21 Dark to take the floor before the soldiers of the FRPI. Commander Yuda dwelled on
22 the sufferings inflicted by the UPC against the Ngiti. If the FRPI were victorious
23 they would exterminate the UPC, pillage their property, burn down their houses and
24 settle in Bogoro. In a nutshell, the FRPI soldiers had carte blanche to raze down
25 Bogoro.

1 Later on that evening Katanga and his soldiers of the FRPI left Kagaba and
2 took up positions in Bogoro, so you can look at that distance that they covered.
3 They skirted the Lapka camp or village. At that time in Medhu, Commander Matata
4 told his troops that it was necessary to wipe out Bogoro. He reminded the soldiers
5 that Ngiti had already tried twice to take Bogoro and that it was going to have to
6 be third time lucky.

7 The troops left Medhu and split into two groups to arrive on the two
8 different sides of Bogoro. The troops of Commander Matata marched southwards
9 towards Mount Waka and they went towards Bogoro from Aveba/Bunia. Commander Oudo
10 Mbafele left from Medhu and travelled north, skirting Mount Waka, and penetrated
11 Bogoro from the road to Bunia. You can see on that map the route that they
12 followed.

13 Let me now describe the movements of the FNI forces prior to the attack. At
14 the same time, this was about two days before the attack, Ngudjolo announced to his
15 troops stationed in Zumbe camp that the attack against Bogoro was imminent. Still
16 in Zumbe camp, on the eve of the attack, Mathieu Ngudjolo handed over the attack
17 plan to Commander Boba Boba, who in turn gave it over to the fighters. Now, once
18 again, we can see on the map in yellow the Zumbe and Ladile camps.

19 On the eve of the attack Ngudjolo and Commander Nyunye went to Ladile camp.
20 During a parade in that camp commander Boba Boba announced that the attack against
21 Bogoro would take place the following day. This announcement was made in the
22 presence of Mathieu Ngudjolo himself and other FNI commanders. At Ladile, Ngudjolo
23 and the other FNI commanders agreed that Bahati would lead the operations.
24 Subsequently, Mathieu Ngudjolo went away with the other commanders to Lagura camp.

25 JUDGE DIARRA: (Interpretation) Mr Prosecutor, you are going a bit fast.

1 MR MACDONALD: (Interpretation) I apologise. Despite the fact that I gave the
2 text to our interpreters.

3 JUDGE DIARRA: (Interpretation) I'm sorry, but I had to do that.

4 MR MACDONALD: (Interpretation) And so Mathieu Ngudjolo, together with other
5 commanders, went with the soldiers to Lagura camp, which is situated on a *colline*
6 in Bogoro, and they met up with the other soldiers who were stationed there. You
7 can see that on the map.

8 As described earlier, Commander Bahati, who was the commander of operations,
9 communicated the details of the attack to the soldiers in the presence of other
10 fighters. He pointed out the various points through which the groups would
11 penetrate Bogoro. Commander Bahati instructed his fighters to meet up in the
12 centre of Bogoro at the end of the attack. The group led by Bahati used the road
13 linking Bogoro to Bunia. Another FNI group positioned itself on the road next to
14 the road linking Bogoro to Kasenyi. As you can see on the slide from Lagura, these
15 groups travelled towards Bogoro.

16 Before the attack, the FNI combatants were chanting the following words: The
17 Hema must be killed pitilessly while the Ngiti and the Bira should be spared.
18 Similar chanting was done by the FRPI soldiers on the eve of the attack. On the
19 road leading from Aveba to Kagaba, they were singing "If we capture a Hema, we will
20 slit his throat and then we will kill him."

21 Mr President, your Honours. The implementation of this attack on its own
22 reflects the existence of a common plan. The weapons and ammunition that were
23 distributed before were used, and the movements of the fighters were coordinated.
24 The village was surrounded. There was perfect synchronisation as you can see on
25 the screen. In yellow, you have the FNI troops, and in orange, to the south, you

1 have the FRPI troops.

2 Once the objective of wiping out Bogoro was successful, Ngudjolo and Katanga
3 met up with other commanders of the FNI and the FRPI at the village centre. It was
4 possible to see dead bodies of civilians. The commanders and fighters of the FNI
5 and FRPI celebrated victory in the shadows -- in the shade of the mango trees while
6 the massacres and pillaging continued. This attack wiped out Bogoro from the map.

7 The Prosecution evidence shows that no less than 200 civilians were killed.
8 The survivors, who were too traumatised to return home, fled to neighbouring
9 villages. Prior to the attack, Bogoro was home to about 6,000 inhabitants. Today,
10 despite the return of certain families, the population of Bogoro has been reduced
11 by more than half.

12 To conclude, Mr President, your Honours, the Prosecution will prove beyond
13 all reasonable doubt that Germain Katanga and Mathieu Ngudjolo jointly planned and
14 executed the attack against Bogoro and must be declared guilty of the crimes
15 charged against them.

16 Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor. And we
18 would also like to thank you for scrupulously respecting the time allocated to you.

19 I would like to call on the court officer to enter into the record the
20 electronic documents that were presented.

21 THE COURT OFFICER: The documents will be registered under
22 ICC-01/04-01/07-HNE-17 and the Registry would want its copies to be transmitted to
23 them.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court Officer. It
25 is your turn, the legal representatives of the victims. You have 40 minutes. How

1 will you allocate that time between yourselves and who is going to begin? It will
2 be Mr Jean-Louis Gilissen.

3 MR GILISSEN: (Interpretation) Thank, Mr President. Mr President, your
4 Honours, ladies and gentlemen of the Court, my learned colleagues of the Office of
5 the Prosecutor, my learned colleagues of the Defence, ladies and gentlemen, members
6 of the Registry:

7 As you mentioned, your Honour, this is really a high point in the story of
8 this Court and the history of the world. This is an important point that must be
9 properly marked, this second trial before the International Criminal Court. The
10 second series of proceedings - to put it in a more technical way - has just begun
11 this morning.

12 Your Honour -- your Honours, believe me, this is a great moment, a great
13 moment of hope for the victims who, for more than six years, have been waiting,
14 waiting for justice to be served. They have waited for more than six years so that
15 this Chamber can ensure that international justice will finally allow them to
16 understand.

17 I represent children who are now young adults, young women. I could speak of
18 young men, young women. Alas, these children are condemned to remain children as
19 long as a process such as this one for which you are responsible does not break the
20 infernal circle that their lives have become. They seek to understand, these young
21 people who were children at the time, they try to understand what happened;
22 because, Mr President, your Honours, Mr Prosecutor, my learned friends, even now
23 today these children do not understand what might have happened. Their childhood
24 was brutally interrupted and they found themselves in hell, from one day to the
25 next. As you know, I represent children who were abducted; and even today, they do

1 not understand what happened. How? Why? Why were these things done to them? Why
2 were they forced to do things? How was it all possible?

3 It is important to understand, to understand this complex game, the
4 interaction of actions and responsibilities of all parties, Mr President. Your
5 Honours, they seek recognition, recognition of the terrible extent of the damage,
6 the harm done. They seek recognition of the victims and what happened to them, the
7 specific details, the experience they endured.

8 You have done an excellent job of stressing these points in your ruling when
9 you created two separate groups of victims; thus, avoiding any confusion and any
10 possible conflict of interest. You have these people who lost a spouse, or a
11 family member or a child, people who have lost a limb, two limbs. This is what
12 we're talking about today, your Honour.

13 Just yesterday you said, and I will quote -- you used an expression that was
14 really extremely suitable. You said, "We are not talking about disembodied legal
15 experts." We will not be talking about such things. We are not going to be
16 talking about disembodied victims. So we seek understanding and recognition,
17 understanding and recognition, the suffering, the madness that these victims found
18 themselves plunged into. Physical suffering, of course. Mental suffering, no
19 doubt. Psychological harm, the worst of all, no doubt.

20 I was speaking of the abduction and the imprisonment of these very young men
21 and women who I was able to meet in the field, and I saw to what extent they were
22 harmed, how their suffering continued, their feelings of regret, their remorse,
23 their feelings of guilt. No matter how unfair things may have been, the child
24 soldiers that I represent, your Honours, my learned friends, committed terrible
25 acts. They followed orders, and not orders from just anyone. They are the

1 children who did what they were told to do. It was not good what they were told to
2 do. They think about what they did during the day, and they dream of the events at
3 night. For them, the nightmare is at sleep -- while they sleep, but also when they
4 wake up.

5 Mr President, your Honours, we have to see these people. We call them
6 "victims," which is a bit of a euphemism in some ways. They are victims. That is
7 the terminology of the international legislation. But we must see these men and
8 these women, who are miserable, unable to understand what a normal life is like,
9 tormented by images, images from a province of -- in Ituri, in a remote part of the
10 world, a region marked by suffering and savagery.

11 The region was prosperous. The children were happy. We must acknowledge
12 this. We must reiterate this. The use of child soldiers is not part of the
13 African culture, be it in the Congo, be it in the western -- eastern province in
14 the Ituri district. But no one took responsibility. No one -- the responsibility
15 for abducting children, transforming them into soldiers, enrolling them in armed
16 groups, using them as the vanguard troops for the butchery of Bogoro.

17 You have heard the excellent opening remarks made by the Prosecutor and the
18 members of his team. He spoke of the horror, the horrors that occurred, that were
19 carried out without mercy, without pity. In Bogoro, attacks on unarmed
20 civilians -- pardon me, attacks by armed soldiers on civilians who were running
21 away. They were in flight. They were stopped. They were killed. The women were
22 raped. And what is worse, some were reduced to the state of sexual slaves. And
23 the children, you know what their fate was.

24 And then it is clear that there was a plan to wipe out the village of Bogoro.
25 That was the plan, the plan that was carried out scrupulously by the young people

1 who I represent. And I wish to say that I'm honoured to represent them here at
2 this hearing.

3 Your Honour, ladies and gentlemen, you will hear and you will see during
4 these hearings, and if they hear me the victims will know that -- I must say, they
5 no longer believe. They no longer believe. You are here, and this is the moment
6 when we must all take on our responsibilities. The Prosecution, the Defence, and I
7 pay tribute to their courage, their determination, and the other representatives of
8 the victims.

9 On 24 February 2003 was a dark day in Bogoro. The darkest forces of mankind
10 unleashed violence on the village preparing for the attack. They realised they
11 needed child soldiers, the worst combatants. They are feared by professional
12 soldiers. Adults were needed as well, junior officers, officers, commanders,
13 leaders, people to handle logistics. The preparations were long and detailed.
14 Equipment was gathered up in a very effective way, and someone had to be
15 responsible for all of this. Bogoro became a village of martyrs and will go down
16 in the history of horror of our common world.

17 Today is an important event, and I have no doubt of that. I am quite sure
18 that we will all rise to this occasion and play our respective roles. On behalf of
19 the victims, I wish -- and this was the request of the victims, on behalf of the
20 victims, I would like to thank you for carrying out this important task. I would
21 like to thank the Prosecutor. Thank you.

22 But I cannot neglect, I must say that they still do not understand why only
23 one event has led to charges. I have met with dozens of victims, and many wonder
24 why other events were deemed to be not within the jurisdiction of the Court, for
25 instance. And these other people are -- they are talking about what happened to

1 them. They must make an extremely difficult choice. We realise that these matters
2 are very difficult, complex, and we consider the importance of your office's work.

3 Taking the events that occurred in Bogoro and dealing with them, I think we
4 all understand this difficult choice that must be made. All the children whom I
5 represent still cannot understand why some matters are within the jurisdiction,
6 others outside, because the people responsible for the events who are still out
7 there, the Ugandan authorities are out there. Why are they not appearing today?
8 Why have they not been charged? None of them have been charged in terms of what
9 they did or what they failed to do.

10 This de facto immunity that they enjoy -- and what's worse, that we see. We
11 see people in Uganda who were responsible for actions. And the victims I met, the
12 victims I represent, cannot understand this. We can't understand everything. We
13 can't see everything. And the Defence, of course, will speak of these absences.
14 Let us take up a simple example.

15 For example, bandits, thieves, killers asking for acquittal or the indulgence
16 of Judges. If there is an argument that cannot be used, it is the absence of those
17 who could have been brought before the Court and those who should have been brought
18 before the Court, those who should be facing charges, when we consider the complex
19 situation, the extent of the responsibility of the massacre that occurred in Bogoro
20 as it occurred.

21 Mr President, your Honours, I do not wish to speak for too long. I
22 acknowledge that we lawyers do like to talk. Together, we are working together.
23 And I think we can do this together. We can write a page in an important -- an
24 important story, an important page in history of the history of law, and this will
25 strengthen an international framework of law. We will take part in the building of

1 a true common system of law, common to all humanity, because these -- this
2 Prosecution leads to a principle, an essential principle; namely, the dignity, the
3 dignity that is due to human beings.

4 There you have it. On behalf of my clients, this is what I wanted to say
5 today. I do not doubt for a single moment that together we can work towards this
6 goal and deal with this terrible reality. A trial such as this one, if it
7 succeeds, will no doubt have an effect; will have -- will serve as a form of
8 teaching.

9 The arguments that we will be hearing before this Bench, we will see just how
10 much importance you attach to the quality of the proceedings, the dignity, the
11 calmness of the proceedings. This will help those - the people who are there - who
12 still continue living with the horrors, those who must go on living their lives.

13 No doubt, Mr President, your Honours, this trial will be a great moment of
14 truth, and I do hope will allow us to become aware, in this courtroom or outside
15 it. This trial will allow for a debate, a public debate that is necessary amongst
16 a group of people, within a country that is continuing to rebuild after the cruel
17 wars that were mentioned in the opening remarks by the Prosecutor.

18 Your Honour, I don't want to take any more time than that. I'm reviewing my
19 notes, and perhaps I will say one or two essential things.

20 Your Honours, I think that with the assistance of the parties and the
21 participants, with the contribution, the topnotch contribution of each and every
22 one of us, you will render justice in a fair trial. You will render justice,
23 justice that we see as the very mortar of this building, this group. I speak of
24 humanity, the international community. The international community almost was
25 checked and did not know and did -- was not able to intervene and end the abuses

1 and the violence. The political component of the international community failed.
2 And I no doubt -- and I doubt not that the legal component of the international
3 community will succeed and all of us in this room will make a contribution towards
4 that success.

5 I thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
7 Counsel Gilissen.

8 Counsel Fidel Luvengika, you now have leave to address the Court.

9 MR FIDEL: (Interpretation) Mr President of Trial Chamber II, your Honours,
10 Prosecutor and members of your team, dear learned colleagues of the Defence teams,
11 dear learned colleagues of the common legal representation of victims, ladies and
12 gentlemen, members of the Chamber. It is on behalf of all the people who we
13 represent before this distinguished Court, including children, women and men who
14 have been victims, as stated in the preamble of the Rome Statute, of unimaginable
15 atrocities that deeply shock the conscience of humanity that we allow ourselves to
16 take the floor before you.

17 Presiding Judge, your Honours, this great day has been awaited anxiously by
18 the victims which, since February 2003, who had -- since then had lost all hope and
19 no longer knew which way to turn. However, they have found a glimmer of hope,
20 based on the conclusion of investigations carried out by the Court for three years.
21 The victims know that judicial procedures are often lengthy and that it is only at
22 the end of the proceedings which will take place before you that a verdict will be
23 handed down and that justice will be rendered.

24 Most of the victims would have wished to be present here at the court, to be
25 able to take part in the debate, to be able to express what they have experienced

1 and suffered, because that is of great importance for them. They regret that these
2 proceedings have to be held more than 8,000 kilometres from them and from the site
3 of the crimes of which they have been victims, but they do trust in justice and, in
4 particular, in this justice that your Chamber, Mr President, is called upon to
5 render.

6 This trial which is opening today has great importance to the victims for
7 several reasons. It helps them to carry out their mourning, to know the truth, and
8 to establish the responsibility to finish impunity, and put an end to the cycle of
9 violence, and to obtain reparations.

10 Now, with regards to the mourning. Most of the victims live as internally
11 displaced persons within their own region in the DRC. Some of them, traumatised by
12 the events, have not returned to Bogoro or to the neighbouring areas where they
13 used to live and so, outside what has happened, they do not know how -- what
14 happened to their families. They do not know the way in which they were killed and
15 if they were buried. They have not had any kind of support or guidance to overcome
16 their trauma and to come to terms with the loss of their loved ones. As such, they
17 hope that the proceedings which will take place before this Court will make it
18 possible for them to understand what really happened and to help them with this
19 mourning, to rebuild themselves once again and to have their dignity restored.

20 Truth. For victims, seeking the truth through this trial is essential to
21 come to terms with what happened, but also for reconciliation, make it possible to
22 build a future, a future based on a peaceful co-existence of communities, on bases
23 which guarantee the eradication of cycles of violence which have caused bereavement
24 in the region of Ituri. But what truth are we talking about, that of the
25 manipulation of ethnic communities by warlords for these wars? Or those of the

1 major powers and multi-national companies who, due to their coveting the richness
2 of the region, have managed to create warlords and, through this, they have also
3 become victims?

4 Responsibility. Whatever the facts, they are there. The village of Bogoro
5 and others were razed to the ground. The villagers were killed. Children, women,
6 the elderly, children, were raped, reduced to sexual slavery. Their houses were
7 pillaged, destroyed. Cattle were stolen. Fields were destroyed. There's a long
8 list. The Office of the Prosecutor has shown a demonstration of all the atrocities
9 which these victims have had to undergo.

10 Victims have lost everything. This is not due to a natural disaster but as a
11 result of human actions. The victims are convinced that these are acts committed
12 by the FNI and the FRPI, and perhaps others. They expect the Chamber to establish
13 responsibilities and that those responsible must respond for their acts.

14 Impunity. The victims hope that this Court, through its action, through the
15 justice that it shall render, will help to break the spiral of violence, the
16 mindset of lawlessness and vengeance which has been reigning in Ituri and which are
17 borne of rampant impunity in the region. This impunity often leads to the creation
18 of new warlords, all convinced that war will give them leverage in negotiations for
19 political and other posts. In a context where justice by the state has lost all
20 credibility for lack of jurisdiction, capacity and autonomy, justice will be
21 administered by this Chamber. That is the last resort for the victims, who are
22 determined to see that the crimes do not go unpunished.

23 Reparations. After the establishment of the truth and of responsibilities,
24 the victims expect from this Court that it will assist them to have their dignity
25 restored and that they receive reparations.

1 The common legal representation team of the main group of victims dares to
2 hope that the minimum demands that the trial needs to satisfy to comply with the
3 rights of a fair trial for victims be respected and they should be taken into
4 account for the entire duration of the trial. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you,
6 Counsel Luvengika. It would also like to thank all those who have taken the floor
7 this morning as part of the opening statements.

8 We are now going to suspend our work, as agreed, and we will hear the opening
9 statements of the two Defence teams this afternoon, the Defence team of Germain
10 Katanga first and then the Defence team of Mathieu Ngudjolo.

11 It is now 12.40. Court officer, we should suspend for one hour and
12 30 minutes. That would then take us up to, in theory, 2.10. The work, should it
13 be 2.10 or 2.30 with regards to the constraint of our different colleagues? I
14 think that it would have to be 2.15 or 2.30 to re-start our work.

15 Court officer, who is precise, proposes 2.10. So, we will be back here at
16 2.10 to be certain that we can start our work at 2.15. So the session is now
17 adjourned.

18 (Luncheon recess taken at 12.42 p.m.)

19 (Upon resuming at 2.15 p.m.)

20 THE COURT USHER: All rise.

21 PRESIDING JUDGE COTTE: (Interpretation) Court is in session. Please be
22 seated. Court is in session, as I have said, and we are going to continue with the
23 opening statements. This morning we listened to the opening statements of the OTP
24 and of the two legal representatives of the victims. And this afternoon, it is the
25 turn of the counsel of the two accused to make their opening statements, and it's

1 going to be the Defence team of Mr Germain Katanga which will begin.

2 Mr Hooper, you have the floor.

3 MR HOOPER: Thank you, Mr President. As I indicated a week or two ago, I'm
4 not going to say very much this afternoon; this is not because there's nothing to
5 say, but because this is not the time to say it.

6 This is the opening of a trial, the opening of the Prosecution's case. It's
7 not the opening of the Defence case. And it is not, after all - and we bear this
8 in mind as the underlying theme and principle behind this case - for Mr Katanga to
9 prove his innocence.

10 The Prosecution have brought him here to The Hague from his home in the DRC.
11 He hasn't asked to be brought here. They bring these charges against him, and it's
12 for the Prosecution to prove them and to a high standard to prove, if they can, his
13 guilt beyond a reasonable doubt.

14 Now, all these charges, as we know, concern events on just one day; that day
15 is 24 February 2003. The allegations are that Mr Katanga planned, together with
16 his co-accused Mathieu Ngudjolo, an attack on the village of Bogoro. We are not
17 directly concerned with attacks or other events at other places on other days. The
18 charges we are concerned with are solely concerned with the village of Bogoro and
19 solely concerned with events on 24 February.

20 Undoubtedly, there was an attack on Bogoro that day and excesses were
21 committed, but we say those excesses were not committed by Germain Katanga. The
22 Defence disputes that Germain Katanga bears responsibility for those excesses, or
23 that he planned the attack or that he participated in it. We dispute all the
24 evidence that speaks to the contrary. It remains now for the Prosecution to prove
25 the case that they have chosen, that they have elected to prove.

1 Bogoro, as we heard from Mr Ocampo this morning, is a village in Ituri, a
2 province in the east of Congo, bordering Uganda. You can pass through the village
3 of Bogoro in a couple of minutes. It's a tiny place. I was, therefore, surprised
4 when I first came into this case - and I was in London - and I turned to my Times
5 World Atlas to find Bogoro marked on it.

6 Why was it marked on it, this tiny little place? Well, it's marked on it for
7 a reason: It's geographically highly important. It marks the point where you can
8 pass from East Africa, from Uganda, into the Democratic Republic of the Congo. You
9 cross Lake Albert, one of those series of lakes that runs down the Rift Valley
10 there in Africa. You climb the wall of the Rift Valley, and at the top of the wall
11 through a little gap is Bogoro. That's why it's marked on the Times Atlas. That's
12 its significance, geographically and militarily, because it controls the route
13 between Uganda and Bunia. And Bunia, as we know, is the principal town in this
14 province, a province incidentally the size of England, the size of my country, with
15 basically two roads running through it. That's its significance.

16 It became this town, this poor village of Bogoro, militarily significant
17 during the two Congo wars, which we heard a little this morning, and particularly
18 the second war, the war of 1998 to 2003, a war that claimed probably more than four
19 million lives. Some commentators say five million lives. An incredible number.
20 Wars brought about, in large part, because of the previous President Mobutu's
21 degradation of his country, because of his waste and corruption, though his days
22 are now probably looked back as halcyon and golden days by many in the Congo;
23 because for all his faults, at least they weren't at war and they didn't have the
24 miseries of war inflicted upon them. But his degradation of the state allowed
25 other states, such as Rwanda, such as Uganda, to take advantage of its weaknesses

1 to plunder the Congo. That is the backdrop to this case. And we know that Rwanda
 2 and Uganda, they display their excuses for being in this particular area of the
 3 Congo, and they have done so for ten years, but plunder was the heart of their
 4 reason for being there.

5 Uganda and Rwanda invaded this area, and the area of the Kivus to the south
 6 and elsewhere, and exploited the DRC ruthlessly. Uganda set themselves up in this
 7 very area; they had a base at Bogoro. From there, they attacked the defenceless
 8 people that lived south of Bogoro. These people are mainly Ngiti people, a group
 9 of Lendu, but they speak quite a different language than the Lendu. They are
 10 extremely poor people. They are an agrarian, defenceless community.

11 The Ugandans attacked them with trained and heavily-armed troops, even with
 12 attack helicopters. The local people had spears and bows and arrows. They put up
 13 a brave resistance against these neo-colonisers from Uganda. I have seen in one
 14 report of the many that we have had served on us these words written, and this is
 15 talking about Walendu Bindi in 2001 to 2002:

16 "A local, non-governmental organisation reported a total of 2,860 civilians
 17 killed - " that's the Twin Towers number, approximately, too " - and 77 localities
 18 completely destroyed, together with all social infrastructures resulting in the
 19 displacement of 40,000 civilians. The collectivité of Walendu Bindi located in the
 20 southern part of Ituri had not been involved in the conflict until late 2001." So
 21 it's 2002 into 2003 that these miseries befell this area. And all Ituri, all its
 22 inhabitants became victims. Nobody was left untouched.

23 In this trial, we hear the voices mainly of Hema victims. And I don't
 24 detract from their miseries one iota, but it is, we must remember, a selective
 25 voice. And we will not hear from the mass of Ngiti victims, of which there were a

1 great number.

2 The Ugandans armed, trained and encouraged the UPC group to attack Ngiti.
3 The UPC group had trained soldiers, 20,000 of them. The UPC came to Bogoro and set
4 up camp, too, in Bogoro. They had 200 or maybe 300 trained soldiers there in a
5 defended camp, well-armed, and that was the position when the camp was attacked on
6 24 February 2003. The camp was attacked. The camp was in Bogoro.

7 The UPC fled. Excesses were committed. We heard of a population of 6,000.
8 That's not right. By 23, the eve of the attack on Bogoro, most of the population
9 had left. All the schools had been closed. Families had been moved out. There
10 were, perhaps, a few hundred left.

11 Within the fortnight, the UPC had fled Bunia as well, the main town, and that
12 was the position at least until May 2003. But even then, the UPC were a spent
13 force. Within a few months, the Ugandans - following their undertakings to
14 Kinshasa/Luanda in September 2002 - had finally, begrudgingly left the area. And
15 behind it, of course, all the opportunities for pillage, the gold mines, the
16 diamond mines, the timber that they had resourced actively over many years.

17 And in that way, the ambitions of a rapacious Uganda and a rapacious Rwanda
18 that was already sniffing around the area were thwarted, and bit-by-bit Kinshasa
19 re-asserted its power and its authority over this most easterly and distant and
20 wretched province.

21 Interestingly, Mr President, in the course of the submissions from the
22 Prosecution this morning, I don't think I heard the word "Kinshasa" mentioned.
23 It's a strange omission. Central government was never mentioned in this history,
24 the party with the greatest interest in this whole affair was the central
25 government of President Kabila, in Kinshasa.

1 So, two years ago when I first came here and met Germain Katanga, I was
2 pleasantly surprised to find an affable, intelligent and a pleasant young man; but
3 what most surprised me was his age. He was born in April 1988. That makes him
4 about the same age as my son, so it's quite easy for me to see him as young. And
5 bear in mind, that he spent over five years now in prisons. He has spent two years
6 here and three years in the DRC, much of his adult life. And the three years he
7 spent in the DRC, as you have heard yourself, were on trumped-up charges in
8 relation to a matter which with he has had absolutely no connection.

9 But the point about his age is this: In February 2003 at the time of this
10 Bogoro attack, he was only 24 years old. This makes him the youngest person ever
11 to be charged before an international criminal tribunal or court.

12 Now, of course, youth is no bar to committing crime, it's no bar to a
13 capacity to commit crime, but doesn't it raise a question as to why such an
14 institution as this - albeit taking its first steps, as it is - an institution that
15 is fighting impunity, as we heard from the Prosecution this morning, and we
16 acknowledge and so it should and so it must, against a backdrop, though, here of an
17 international armed conflict that leaves five million dead, with the involvement of
18 many plundering states, that it puts in the dock a man who is only 24 years of age
19 at the time when these allegations are allegedly rooted and whose essential role in
20 time was merely to defend his own people against dreadful excesses.

21 Where are those who inflicted on the poor people of Ituri all this misery?
22 Where are the Ugandans and the Rwandans, the manipulators from Kinshasa that
23 Mr Gilissen touched on this morning? It's an important question.

24 And the other aspect to his age is this: In 2003, at age 24, was Germain
25 Katanga so gifted in the arts of war as to be able to plan a successful attack on

1 an entrenched and trained military position such as existed at Bogoro? Rather
 2 surprising, if that was the case. So who did do the planning? There are stones
 3 here that the Prosecutor - whose duty it is, of course, to search out exculpatory
 4 material, stones that have not been turned.

5 You are going to hear in the course of this trial quite a lot about the
 6 organisation, the FRPI. Who founded the FRPI? How did it develop? And we suggest
 7 that you pay particular attention to that question, because it's our submission
 8 that it was only March 2003 that the FRPI that had existed essentially nominally up
 9 until then began to become organised. That is after the fall of Bunia, after the
 10 Ugandans chased out the UPC. Hardly anyone, we submit, had heard of the FRPI in
 11 February 2004 -- 2003. I'm sorry. Even less so had people heard of the FNI.

12 The FRPI, we submit, did not have the structure that the Prosecution are
 13 laying on it at that time; it came later. Germain Katanga was not President at
 14 that time; that came later. It was not the organisation that planned Bogoro, as is
 15 the heart of the Prosecution case here.

16 Bogoro was attacked, and he is charged with planning it. That is the heart
 17 of the case against him. But who planned the attack? And the answer to that all
 18 important question may be found, perhaps, by asking some other questions, and
 19 doubtless you, the Judges and others in this Court, will be asking these questions
 20 over the course of the next several weeks and months. Who, for example, benefitted
 21 from the attack? Who provided the arms that the Ngiti people were, destitute as
 22 they were, quite incapable of buying? Who provided the military knowledge
 23 necessary to conduct such a relatively sophisticated operation? What was the *le*
 24 *tournant majeur operational d'integration* that arrived in Beni following the Sun
 25 City agreement in late 2002 and what part, if any, did it play? What was the role

1 of the *maison militaire* in Kinshasa and its relationship with its army and agents
2 in the east? As I say, these are questions to ponder perhaps over the next several
3 weeks and months.

4 Earlier on, I may have said Germain Katanga was born in 1988. I meant 1978.
5 Of course, we know his date of birth. And he is in your charge - you, the Judges,
6 nobody else's - and through me he can say he trusts in your judgment to assess this
7 evidence, neutrally and thoughtfully, as we know you would do. Thank you very
8 much.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr David Hooper.

10 The floor is now given to the Defence of Mr Ngudjolo. Is it you, Mr Kilenda?

11 MR KILENDA: (Interpretation) Thank you, Your Honour, Honourable Judges of
12 Trial Chamber II.

13 First of all, the Defence team of Mr Mathieu Ngudjolo would like to carry out
14 one pleasant task, that is, to thank the Chamber for this opportunity to make
15 opening remarks. The Chamber has realised the importance that the drafters of the
16 Statutes attached to this particular step in the proceedings. This opportunity is
17 a fine moment for all those involved to, well, perhaps not set out the thrust of
18 their primary arguments but at least speak to their expectations for this trial
19 that is getting underway. As far as we are concerned, this matter -- and of course
20 I will not touch upon matters that might be more properly reserved to our closing
21 arguments but, in any event, for us this is a matter of showing the people of the
22 Congo and all those on the international scene what our interpretation is, the
23 interpretation of our client regarding the - what the international press has
24 called the tragedy of Ituri and how the investigation by the Prosecutor has been
25 conducted so far.

1 From this particular point of view the Defence team of Mr Ngudjolo was
2 pleased to receive your ruling of 5 November 2009 in which you ordered that the
3 head of investigations from the OTP appear tomorrow, and we certainly do not want
4 to anticipate any of your particular thoughts, but we see in this a concern, a
5 concern that the trial be held in an objective manner so that the truth shall be
6 established, which is the very goal of the Chamber.

7 Mr President, your Honours, Mr Prosecutor, members of the OTP, my learned
8 friends representing the victims, my learned friend Mr Hooper and all the members
9 of your team, indeed something did occur in Bogoro on 24 February 2003. Mathieu
10 Ngudjolo and his Defence have reasonable grounds to believe that. Denying that
11 those events occurred would be an insult to morality, to reason and to decency.

12 According to the allegations from the Prosecution and others who are taking
13 part in this trial, Germain Katanga and Mathieu Ngudjolo entered into a criminal
14 agreement. They allege that this agreement led to the massacre of nearly 200
15 people in the village of Bogoro on 24 February 2003. The Prosecution received the
16 referral of this matter before this Chamber on 26 September 2008 and, following the
17 usual rules of the game, so to speak, the Prosecution will endeavour to convince
18 you beyond all reasonable doubt of the guilt of the accused.

19 As for the accused, they have denied right from the very outset the charges
20 that have been laid. They have proclaimed their innocence in the most forceful of
21 terms. They have never plotted or schemed in any way to wipe the village of Bogoro
22 off the map. Why would they have done such a thing? Was it really in their
23 interest to do so? The attitude displayed by the accused has remained constant.

24 It would appear to us that at this juncture the task of you, the Judges,
25 impartial arbitrators, becomes uplifting, delicate and most difficult. You must

1 come to a decision. You must deal with the various opposing interests and thereby
2 upholding the law, follow the law. This means that you, and as is the case for the
3 Defence, you have not experienced the facts so you must get to the heart of the
4 matter and try to really find out what happened, basing yourselves on the
5 fundamental legal statutes of the International Criminal Court, the rules that
6 allow you to uphold the law in this manner. You will meet the expectations of the
7 international community, which is determined to put an end to impunity and,
8 similarly, you will meet the expectations of our client, who expects justice to be
9 rendered with full respect of the law. This is a very complicated endeavour, and
10 thus a number of imperatives are in order.

11 First of all, the first imperative is to seek out the truth. That is the
12 fundamental aim of any criminal proceedings that seek to both respect the
13 individual rights of people and collective rights, the collective rights of
14 society, deeply concerned by these crimes that have scarred the conscience of
15 humanity.

16 The second imperative is to make sense of what the international community
17 describes as the tragedy of Ituri. Making sense of the events must be based on an
18 objective, comprehensive and impartial description of the realities and the
19 identification of the true causes of the armed clashes that occurred in that part
20 of the DRC over many years.

21 Since that day the indigenous peoples of the Ituri district have had their
22 eyes turned towards The Hague, where members of their communities are being tried.
23 They expect that the cut and thrust of legal arguments will lead to the truth
24 emerging so that justice can be rendered. That is the only way in which the wounds
25 of the past can be healed, by international criminal justice in this post-conflict

1 phase.

2 So there you have it, Mr President, your Honours. That is why the defence
3 team of Mr Ngudjolo is taking this opportunity to draw your attention to the fact
4 that, in our opinion, the tragedy of Ituri must not be reduced or boiled down to
5 only one thing. And this is very often what the Prosecution seems to do. It can't
6 be boiled down to just a conflict between two ethnic groups, between the Hema and
7 Lendu. Such an attitude would hide the multi-dimensional nature of the conflicts.

8 Extraneous considerations were quite predominant. The legal representatives
9 of the victims, in their opening remarks in July 2008, focused so much on the
10 international nature of the conflict that they made a number of very serious
11 indications. Taking in account this reality could have led the Office of the
12 Prosecutor taking a different tack.

13 We must spend some time looking at the complexity of the tragedy that
14 occurred in Ituri. Once we have understood what happened, then we must deal with
15 what the Defence is calling procedural grey areas, and then, finally, we will speak
16 to our clients' expectations.

17 First of all, I would like to spend a few moments speaking about the complex
18 nature of the tragedy. The conflict between the Hema and Lendu originated before
19 colonisation. The colonisation of the Congo by the Belgians then heightened
20 tensions between these two communities. One community was deemed to be superior,
21 racially superior, than the other and then this idea was stressed - as was done in
22 Rwanda between the Tutsi and Hutu - and the Hema were deemed to be superior to the
23 Lendu, and the Lendu owed them allegiance and obedience. Benefitting from this
24 superiority that Belgian colonial powers had granted them, the Hema thought
25 themselves to be superior beings and that they could crush the Lendu and treat them

1 as if they were subhuman. These ideas, obviously, leading only to crime were
2 echoed in one particular piece of research. I am speaking of a PhD thesis written
3 by Mr Lwa-Djugu Djugu, a Hema person, entitled "The Bahema of Upper Zaire, Family
4 Relationships and Policy Within a Traditional Society".

5 This academic thesis received high honours, despite the criminal contentious
6 statements found in this research. This doctoral thesis, which is still
7 controversial within certain circles of the Congo, showed all the contempt that a
8 people can show ostensibly and with impunity towards another with the full
9 knowledge of the state. I think it would be appropriate to draw your attention to
10 the fact that two Congolese members of parliament fought publicly in parliament
11 because of the ideas found in this particular PhD thesis.

12 Furthermore, the Congolese association called Media For Peace organised a
13 round table in Kinshasa from 10 to 11 July 2003, and it was written at that
14 occasion, "This research, taking as its model the history of the Hutu and Tutsi
15 people of Rwanda and Burundi, develops the idea of the superiority of the Hema,"
16 and I am referring to page 287 of the thesis and, furthermore, I make reference to
17 pages 152 and 153 of Jacques Maquet, *Pouvoir et Société en Afrique*, which was
18 published in 1970 by Hachette. In any event, this perpetuates this controversial
19 thesis advanced by old western ethnologists regarding the differences between
20 races.

21 The second Republic of the Congo which was ruled by an iron hand by
22 Maréchal Mobutu, based on this deadly principle of divide and conquer, exploited
23 this conflict between the two peoples. Political, administrative and legal
24 positions were all entrusted to Hema people. Many land conflicts came before the
25 courts, but the Lendu always seemed to lose out and they found themselves stripped

1 of their lands, persecuted everywhere. The only response to these things was the
2 actions, the bloody reprisals by officers who were corrupt, who were manipulated
3 and used as tools of oppression.

4 One example was the massacre of the civil population of Lendu Bindi -- the
5 Lendu Bindi civil population in Walendu Bindi during a commando operation led by a
6 colonel who had been sent there by the Zaire authorities in 1992. Before the
7 superior court of Matete in 2002, when asked to deal with a matter having to do
8 with this thesis, a Congolese judge had to pay the price. Had she not fled the
9 country, she would have paid the ultimate price for having the temerity to
10 prosecute this intellectual in 1999. When the Balkanisation of the country was at
11 its very height, owing to these so-called liberation wars, the conflict was
12 exploited once again, more than before, and took on staggering proportions. The
13 Lendu were systematically massacred by the Hema and the Ugandans. Everything seems
14 to point towards a true desire to commit genocide. Clearly, everything had been
15 planned to ensure out-and-out eradication of the Lendu tribe. Children were
16 recruited, sent off to Uganda for military training and engaged in hostilities to
17 massacre the Lendu.

18 During that time -- during that time, the Congolese government was
19 inexistent, powerless. This huge creature that the citizens had entrusted with
20 their personal sovereignty was no longer anything more than a shadow of itself.
21 The Congolese state was no longer able to ensure the collective security of all.
22 Everything happened as if citizens were still living in some kind of untamed
23 wilderness where only the strong would survive.

24 The Ugandan military forces that occupied the country during that period
25 thought of the Lendus as their worst enemies and massacred them as they wished.

1 Uganda, the occupying power since 1998 was the uncontested and ferocious ally of
2 the *Union des Patriotes Congolais*.

3 Some Prosecution witnesses argue that young Hema youth were recruited by the
4 UPC and sent to Uganda for military training. It is alleged that others were
5 trained in Rwanda and even in the country; namely, in the Rwampara training centre
6 in Bunia. What were the Lendu to do while this happened, stand by and do nothing
7 as they were being killed, exterminated? Allow their tribe and their people to be
8 slaughtered?

9 The instinct of preservation is a natural thing, and so that was the point
10 when seeing the inability of the Congolese government to ensure their collective
11 security, the Lendu began to organise themselves within their families, so as to
12 ward off the repeated and blind attacks using only rudimentary weapons, ward off
13 the attacks of the enemy clearly out of control using powerful military resources,
14 including MIG 20s, helicopters, tanks, heavy artillery, including armoured
15 vehicles.

16 This is called the instinct of preservation, and really is a matter of pure
17 self-defence. They were defending themselves against obvious plans to exterminate
18 the Lendu population. And this organisation that was being done was not by
19 Mr Ngudjolo, who was not the leader of the Lendu, certainly not the most senior
20 commander of the Lendu, as the Prosecutor claims. That is the historical truth of
21 what happened in Ituri. Historians can attest to this.

22 It is unfortunate that the Prosecution still has not dealt with that part of
23 the true situation that the Lendu experienced. They never dealt with that in their
24 various filings. This situation explains why the various self-defence groups came
25 into being. It was only a logical response, faced with the inability of the

1 Congolese state to ensure the safety and well-being of many of its citizens who
2 found themselves subject to arbitrary decisions, crime in many forms, and the
3 abuses and violence of a foreign country, Uganda, which occupied its territory in
4 plain sight and with the full knowledge of the international community, that same
5 international community that is now calling for the ICC Prosecutor to ensure the
6 punishment of Mr Ngudjolo, who had no decision-making power in Ituri.

7 Where it concerns procedural reasons, even if at the start the Defence of
8 Mathieu Ngudjolo fiercely was opposed to the decision of Pre-Trial Chamber I of 11
9 February 2008 to join the instant cases, in the vision of the Prosecutor who
10 considers that the two accused formed a joint criminal enterprise with a view to
11 dislodging the *Union des Patriotes Congolais* from Bogoro, logic would have it that
12 all the alleged protagonists be tried together with a view to saving contradictions
13 in the decisions to be issued.

14 The Prosecutor is prosecuting another Congolese person before this Court for
15 enlisting and conscripting child soldiers. He is accused by the Prosecutor of also
16 having made these child soldiers participate in hostilities. Any sound mind would
17 have to ask itself to the benefit of who and against who these children had to
18 fight?

19 He's also made an accusation of Germain Katanga and Mathieu Ngudjolo
20 particularly of having carried out the enlisting of child soldiers and having put
21 them into hostilities. The Prosecutor would have us believe that two ethnic groups
22 were clashing in Ituri. Faced with such a possibility, it becomes difficult to
23 understand the splitting up of cases which are currently pending before the
24 International Criminal Court in the DRC situation and, more precisely, in Ituri.
25 These cases deserve a joint examination, such as to be able to fully understand the

1 causes and effects in an overall and holistic and attractive manner.

2 Within the vein of these concerns, your Chamber should constantly have in
3 mind with a view to better understanding this tragedy that the cases - which are
4 currently pending before the International Criminal Court in the situation of the
5 Democratic Republic of the Congo where it concerns Ituri - are, in fact, but one.
6 They should have been judged together; they deserve all to be joined together.

7 Who would have had an interest in driving the *Union des Patriotes Congolais*
8 out of Bogoro and why? Did the UPC really have child soldiers within its ranks,
9 and to do what? For a plausible reason, was -- is Uganda not in the box? Well,
10 proprio motu, it assigned itself a fallacious pacification mission in Ituri for the
11 precise motive of protecting the populations who were abandoned and with a view to
12 making secure its fronts.

13 How can you understand certain politicians currently governing the Congolese
14 state whose testimony could have shed light on the religion of your high court, to
15 have played a first-line role, particularly within the structures such as EMOI, the
16 integration operational staff? They have never been heard to this day. Well,
17 their examination would have been able to bring answers to a whole host of
18 questions which surround the Bogoro case.

19 How can you explain that the Prosecutor has not heard, not even as witnesses,
20 the leaders of the APC, the *Armée du Peuple Congolais* of Mbusa Nyamwisi, whose
21 troops were present in Bogoro before arrival of the UPC and the UPDF, Ugandan army.

22 And what is, finally, the prosecutorial policy of the International Criminal
23 Court? The accused, currently in the dock of the International Criminal Court, are
24 they responsible for the Bogoro massacre? Did they really plan it?

25 The responsibilities in this case in Bogoro, are they not to be found in

1 foreign countries - namely, Uganda and the Congolese state - which it would have
 2 had an interest in kicking out the UPC enemy? It would have thwarted their
 3 political and economic ambitions at a given time.

4 These questions should not be dissociated from the examination of the case
 5 that you are judging today and the answers to which make it possible to understand
 6 the political and military situation and the economic situation in Ituri, which has
 7 suffered grave violations of human rights for several years. The answers to these
 8 questions would shed light also on the real reasons for the emergence of
 9 self-defence groups in Ituri.

10 Before going back to this more in-depth in pleadings and submissions, let us
 11 say simply that it is both the absence and the incapacity of the Congolese state at
 12 the time to ensure the collective security of the inhabitants of Ituri, which has
 13 justified the proliferation of self-defence groups as well as the presence of
 14 foreign countries in Ituri, such as Uganda, which has established a veritable
 15 military government, the front-man of which appears in a number of videos produced
 16 by the Prosecutor.

17 Three: The expectations of the Defence of Mathieu Ngudjolo Chui. We --
 18 President, your Honours, we go into this trial after the decision of 26 September
 19 2008 which confirmed ten charges against our client. Everything could then appear
 20 lost for him given that a certain opinion, which is only that he be eliminated from
 21 society. May that not come to pass.

22 Mathieu Ngudjolo and his Defence go into this trial with a clear conscience,
 23 driven by the imperative of searching for the truth. This calm that they have
 24 comes from the decision confirming the charges itself, paragraph 71 of which
 25 recalls that it is for the Trial Chamber that evaluates the evidence on which the

1 confirmation charges were based.

2 This clear conscience results, President and Judges, from the assurance that
3 you have - in accordance with the legal provision - given to the accused from the
4 first status conference of 21 September 2008. Having examined the latter with
5 regard to whether they plead guilty or not guilty, and following their answer of
6 pleading not guilty, you have unequivocally reminded them of their rights, those
7 linked to the presumption of innocence and of criminal legality.

8 On the same occasion, you stressed to the Prosecutor that he always has the
9 burden of proof when it comes to the crimes the accused are accused of. You have
10 even gone further demanding that the Prosecution produce a detailed table which, in
11 a very clear way, sets out the charges against the accused and all the related
12 evidence. Your method of approach is symptomatic of the respect of the presumption
13 of innocence.

14 The requirement of the Prosecutor to produce such a table, in our humble
15 opinion, respectfully reminds the Prosecutor of the evidentiary standards at trial
16 before the International Criminal Court. You should, to convince you of the
17 liability of the accused, prove their guilty beyond reasonable doubt. The rigorous
18 nature of the evidentiary standards at this stage of the proceedings before the ICC
19 reflects a respect of the human person, as this standard highly protects the rights
20 of the accused who should not be exposed to the whims of international criminal
21 justice if his guilt is shown with doubt, with grey areas.

22 Those who tend to would -- prosecution before the high court -- or this would
23 do so, and it's also to convince even the accused of his conviction if a sentence
24 should be handed down that would be an example which would be arbitrary.

25 So, in order to permit -- to make it possible to admit to the Judges and the

1 international community, the Prosecutor has taken testimony of witnesses alleged to
2 have seen a plan to raze Bogoro to the ground and allegedly have the capacity of
3 the highest command of the FNI, Mathieu Ngudjolo.

4 These witnesses are said to have seen and given instructions to other
5 commanders dispatched to the field while drawing up the plan and also during
6 hostilities. All the investigation of the Prosecutor is based on these supposed
7 witnesses. These other commanders who have been used by -- supposedly used by
8 Mathieu Ngudjolo were never heard. This is at least curious.

9 It is also strange to note that while Uganda at this time was the occupying
10 force, having massacred a lot of Congolese during the conflictual period, no
11 military Ugandan officer has been heard with regards to the Bogoro case. The
12 witnesses of the Prosecutor confirm, however, that Uganda made and undid alliances
13 between political military groups put up by itself in Ituri.

14 Uganda manipulated and armed these political and military groups. Uganda
15 trained child soldiers recruited by the UPC. Ugandan soldiers and those of the
16 *Armée du Peuple Congolais of Mbusa Nyamwisi* were present in Ituri in general and,
17 in particular, where it concerns us, in Bogoro during the period where the crime is
18 charged.

19 Some witnesses of the Prosecutor confirmed that arms which had been used to
20 attack Bogoro came from Kinshasa via Beni, where the EMOI was based, the integrated
21 operational staff and the headquarters of Mbusa Nyamwisi, who allegedly coordinated
22 the supply operations for the troops with arms and ammunition. It is in public
23 knowledge that the torches were always burning between the UPC and RCD-KML of Mbusa
24 Nyamwisi.

25 The UPC, supported by the Ugandan army, its ally at the time had driven out

1 Mr Lopondo, the military governor of Mbusa Nyamwisi, from the town of Bunia on 9
2 August 2002. It is also established with facts that numerous agreements were
3 concluded between the two groups to put an end to hostilities in Ituri before 24
4 February 2003.

5 It is also -- there are also particularly the Kampala agreements of 2002 and
6 the Dar es-Salaam accord of 10 February 2003. During this, the UPC had asked, but
7 in vain, the Congolese President Joseph Kabila to withdraw his troops from Beni and
8 for the RCD-KML to cease all military activity in Ituri. All these accords
9 therefore failed, and the APC, the military wing of the RCD-KML of Mbusa Nyamwisi
10 continued its military activities in Ituri, at a given time, a conflict put against
11 each other UPDF and the UPC.

12 Prior to this conflict, the Ugandan armies and Rwandan armies had already
13 clashed in Kisangani. Therefore, during this period, there are several conflicts
14 which need to be pointed out. Firstly, the conflict between Rwanda and Uganda in
15 Kisangani. RCD-Goma with the support of Rwanda. And the UPC had the support of
16 Uganda.

17 Secondly, the conflict in Uganda -- between Uganda and the UPC against
18 RCD-KML of Mbusa Nyamwisi from 9 August 2002. Mr. Lopondo, the military governor
19 of Mbusa Nyamwisi, was driven out of the town of Bunia by the allied forces UPDF
20 and the UPC.

21 Thirdly, the UPC turned its back on Uganda and allied itself with RCD-Goma of
22 Dr Adolphe Onosumba supported by Rwanda; hence, the hostility of Uganda in January
23 2003 and the open conflict with Uganda against the UPC.

24 Fourthly, agreement between Uganda, Kinshasa and RCD-KML of Mbusa Nyamwisi
25 against the UPC.

1 Fifthly, after this agreement, Uganda which had the total governance of Ituri
 2 created the FRPI, *Front du L'integration pour Pacification de L'Ituri*, the
 3 objective of which was to dislodge the UPC from Ituri. And then, as it would seem,
 4 it was opposed to peace in Ituri with a view to the traceability of this
 5 hyper-conflictual situation, who was interested in driving the UPC from Bogoro?

6 Instead of trying to find the real people responsible for this tragedy, who
 7 should be found within the Ugandan army or among the people in power in Kinshasa,
 8 the Prosecutor takes these two young people, Katanga and Ngudjolo, in its
 9 submissions and recommendations on the interethnic conflict between the Hema and
 10 the Lendu Ngugu territory in Orientale Province, and in its report of 7 December
 11 1999, the Congolese Association of Human Rights, l'ASADHO, asked in the short-term
 12 that:

13 One, an investigation be carried out under the responsibility of a neutral
 14 and credible authority, such as the special rapporteur for the commission of human
 15 rights of the United Nations with a view to establishing the responsibilities,
 16 particularly within the ranks of the Ugandan military hierarchy, and the leaders of
 17 the RCDML who had the control of the territory in which these events took place.

18 Secondly, that the Ugandan authorities and the RCDML should have had all
 19 authorisations or should have granted all authorisation and access rights to the
 20 humanitarian organisations such as the International Committee of the Red Cross
 21 with a view to assisting those displaced and the wounded.

22 The objective of the trial which commences today is the establishment of the
 23 truth regarding what truly happened on 24 February 2003 in Bogoro. This criminal
 24 court is very much attached to the establishment of the truth, both with regard to
 25 its basic tests and the practice of the Court. The objective is therefore the

1 establishment of the truth.

2 The legal arguments in your Chamber will seek the theory of the -- to ensure
3 that the law decides on the adjudicatory facts. Who did what? Where? When? Why
4 and how?

5 The importance of facts in international jurisdictions has already been
6 proven. One only has to read the decision of the International Court of Justice of
7 19 December 2005 in the case DRC v Uganda, a decision condemning Uganda for the
8 exercise of illegal military activities in the Democratic Republic of Congo. One
9 can also read the decision by this same court on 27 June 1986 in the case United
10 States v Nicaragua. The value of the exact account of the facts in the events that
11 happened in Bogoro must be examined on the basis of the evidentiary standards at
12 this level of the proceedings. That is beyond any reasonable doubt.

13 This means that the Chamber has to be very rigorous vis-à-vis the parties
14 when it comes to the presentation of the facts and the presentation of the
15 evidence. Your Chamber must ascertain whether, with a view to establishing the
16 truth, it has at its disposal all the verified facts. Did the key persons -- were
17 the key persons interviewed by the Prosecution? Did the Prosecution set aside the
18 testimony of certain individuals who could have contributed to the reality of the
19 massacre in Bogoro? Given what clearly could appear to be grey areas in the
20 investigation, wouldn't it be possible to resort to some of the witnesses called by
21 the Court itself? In other words, in this search for the truth, the Court must ask
22 itself the following fundamental question:

23 Who precisely had an interest in chasing out the UPC from Bogoro? Which were
24 the duties of Mr Ngudjolo and Mr Katanga at the date of the alleged crimes?
25 Wouldn't it be more logical for the Court to interview the Ugandan authorities who

1 were managing Ituri politically, administratively and militarily? The Ugandan
 2 Generals Kale Kahihura, who was a sort of military governor of Ituri as well as
 3 General Kasini, who had created the Kibali-Ituri province through his decree of 22
 4 June 1999, and had even authorised a Canadian company to exploit petroleum in
 5 Ituri. Wouldn't these people -- shouldn't these people have been interviewed?

6 Some have also stated that the UPC had turned their backs on the Ugandans at
 7 one point and this is how come the Ugandans concluded another pact with the APC of
 8 Mbusa Nyamwisi, who is currently a Congolese minister and who, with the support of
 9 the Congolese government in the structure known as EMOI, had decided to throw out
 10 UPC from Bogoro. It could be said that a plan to throw out the UPC from Bogoro was
 11 hammered out by the highest authorities in Uganda and Congo. And for purposes of
 12 the establishment of the truth, wouldn't it would be appropriate to interview these
 13 authorities with a view to clarifying the Court on the ins and outs of the attack
 14 at Bogoro?

15 The Defence of Mathieu Ngudjolo will show that the allegations against their
 16 client are not founded in fact or in law. They will not develop the argument of
 17 tu quoque, given that Ngudjolo was never involved personally, or through
 18 intermediaries, in the attack against Bogoro, on 24 February 2003. We must
 19 underscore the biased and incomplete nature of the investigation carried out by the
 20 Prosecutor in this case. They have gathered materials that point to the
 21 involvement of Ugandan officers who were clearly identified, but it is curious and
 22 disappointing to note that the Prosecutor did not deem it useful to interview those
 23 people as witnesses.

24 An august jurisdiction such as yours has the right to expect fair answers to
 25 questions, the questions that we have just formulated, and which may lead to

1 others. These answers will reveal whether the accused actually concocted a scheme
2 to wipe out Bogoro from the map or whether the perpetrators of these Machiavellic
3 plan are not amongst the Ugandan and Congolese authorities who were the
4 decision-makers in Ituri.

5 This is very important within the context of the imputability of facts and
6 also within the definition of the modes of liability. The Defence of Mathieu
7 Ngudjolo is of the opinion and remains convinced that the International Criminal
8 Court has all the legal means to implement its criminal policy. Even the United
9 States, which has not yet condescended to ratify the Rome Statute, have faith in
10 this court. On 3 November 2009 we heard them asking the DRC to arrest and transfer
11 Bosco Ntaganda to The Hague, and this is another perpetrator who was directly
12 involved in the events in Ituri.

13 Mr President, your Honours, the Congolese people, and in particular the
14 population of Ituri, are waiting for justice. They know that if the ICC implements
15 all the relevant provisions in its statute and rules that justice will be rendered.
16 In answer to that legitimate expectation, your Chamber owes it to itself to fill
17 all the gaps left by the investigations of the Prosecutor and to correct all the
18 inequalities created which are incompatible with the main objective of this
19 jurisdiction, which is to fight against impunity while ensuring the rule of law.

20 During the trial on the merits, which commences today, your Chamber will bear
21 in mind the guiding principle of the irrelevance of official capacity as stipulated
22 in Article 27 of the Statute of the ICC. In the search for the truth with regard
23 to the events that took place in Bogoro on 24 February 2003, nothing should be
24 allowed to stand in your way, neither the political positions currently occupied by
25 some of those who ordered these crimes in the Congolese government or the military

1 ranks of the Ugandan and Congolese officers who were directly or indirectly
2 involved in that tragedy.

3 The Congolese people are waiting for the truth. The Congolese people are
4 waiting for justice. And now, which is in the Democratic Republic of Congo, a
5 period of zero tolerance, as correctly decreed by the head of state, who is the
6 same person who referred the situation in the DRC to your august Court.

7 Mr President, your Honours, I have finished my presentation.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. We are now
9 at the end of this first hearing on the trial on the merits. In accordance with
10 the provisions governing our Court, we asked whether Mr Katanga and Mr Ngudjolo
11 intended to plead guilty or not guilty. They clearly indicated that on each of the
12 counts they pleaded not guilty. Today, each of the participants had the
13 opportunity to make an opening statement, and to make it freely using their very
14 own words and developing the ideas that they wished to develop.

15 The Court thanks you, Mr Prosecutor, Deputy Prosecutor, Mr Luvengika,
16 Mr Gilissen, Mr Hooper, Mr Kilenda for the statements that you have made; for the
17 information that you have provided; for the proposals that you have made to the
18 Court each in your own capacity. And the Court also thanks you for your conduct
19 during this hearing. It was important that you maintain a positive contact and
20 that was the case today because we have not only these people who are with us in
21 the courtroom today but we are also being followed from afar, particularly in
22 Ituri, in the Democratic Republic of Congo.

23 So we will adjourn and resume tomorrow morning as planned at 9.30 a.m., with
24 the appearance of the first witness, who is the head of investigations in the OTP.

25 Court is adjourned.

1 (The hearing ends at 3.28 p.m.)