

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Thursday, 3 September 2015
8 (The hearing starts in open session at 9.30 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you. We will start with appearances, and
19 I think that legal counsel could limit themselves to refer just to changes, if any,
20 compared to yesterday's composition of their teams.
21 Ms Bensouda, please.
22 MS BENSOU DA: Mr President, the representation for the Office of the Prosecutor is
23 the same, except that Rens van der Werf has been replaced this morning by Marion
24 Rabanit. Thank you, Mr President.
25 PRESIDING JUDGE FREMR: Thank you very much, Madam Prosecutor.

1 Defence please.

2 MR BOURGON: (Interpretation) Good morning, Mr President. Appearances for
3 Mr Ntaganda is the same except for one change, and it is Ms Elodie Victor, who is an
4 intern and is present today. Thank you.

5 PRESIDING JUDGE FREMR: Thank you very much.

6 Legal Representatives of Victims now.

7 MS PELLET: (Interpretation) Thank you, Mr President. The legal representation
8 team of the former child soldiers remains unchanged. Thank you.

9 MR SUPRUN: (Interpretation) Good morning, your Honour. For the victims of
10 the attacks, the appearances are the same.

11 PRESIDING JUDGE FREMR: Thank you very much.

12 At the beginning I would like just absolutely briefly summarize that yesterday we
13 listened to Madam Prosecutor Bensouda and Ms Samson who presented opening
14 statements of Prosecution. Today we are going to listen first to Legal
15 Representatives of Victims, each of them has been allocated roughly 30 minutes for
16 their opening statements, and those statements are going to be followed by opening
17 statement by Defence.

18 One question to Mr Bourgon, if I am not wrong, Mr Bourgon, Defence is going to
19 divide its opening statement among several speakers, am I right?

20 MR BOURGON: (Interpretation) Yes, indeed, Mr President. There will be four
21 speakers for the opening statement of the Defence.

22 PRESIDING JUDGE FREMR: Thank you. And after those four speakers we will at
23 the end of today's session listen to Mr Bosco Ntaganda for his unsworn statement.

24 So now is turn for Legal Representatives of Victims. Who will be the first?

25 Ms Pellet, I see. So, Ms Pellet, you have the floor.

1 MS PELLET: (Interpretation) Thank you, Mr President.
2 Mr President, your Honours, as a preliminary remark I would like to reassure the
3 Defence of Mr Ntaganda, which in its filings on the modalities of the participation of
4 victims, asked you to ensure that the legal -- or, rather, the opening statements of the
5 legal representatives are not a simple rehash of those of the Prosecution and should
6 not touch on the scope of the evidence. The Defence urged you to ensure that our
7 opening statements should be confined to the neutral and impartial observations of
8 the impact of the facts on the victims that I represent, as well as to a mere
9 recapitulation of the necessity for taking into account the views and concerns of the
10 victims, and I'm referring here to document ICC-01/04-02/06-548, paragraph 49.
11 You did not of course grant such a restriction. And I make no secret of the fact that
12 to compile the views and concerns of the victims, I consulted the victims, but certainly
13 not the Prosecution or the Defence. So I will present only their concerns, which as
14 the Defence itself has conceded, should be taken into consideration. And so the
15 opening statements are part and parcel of the proceedings. And I refer here to the
16 same document, paragraph 49. So we are simply presenting the views and concerns
17 of my clients, which were shaped by their experiences.
18 In this vein allow me to point out that even though there are simple participants in
19 the proceedings, the victims have rights. The Defence in the hearing of 22 April
20 acknowledged that the victims have to participate in the proceedings pursuant to the
21 provisions of the Statute. The rights of my clients arise from the Rome Statute and
22 they should not be influenced by the Defence or Prosecution. And these views and
23 concerns will be presented in a manner that is not prejudicial to the Prosecution or the
24 Defence in compliance with the relevant articles of the Statute. We will make sure of
25 that, and I have absolutely no doubt that the Defence will do likewise.

1 The views and the concerns are very important because the justice that you will
2 administer will be done on their behalf, even though it is done in the broader context
3 of the public interest and concern the most serious crimes of concern to the
4 international community as a whole according to the Rome Statute.

5 So together with Mr Mulenda, who unfortunately for health reasons is not present
6 today, we represent 297 victims. 140 of them have been participating in the
7 proceedings from the pre-trial phase, but two of them have long since died. One
8 member of the family of one of these victims was authorized to participate. The
9 141st victim has been participating ever since 16 June. In fact, you admitted 156
10 former soldiers to participate in the proceedings last 2 July, and one victim was
11 admitted to participate the day before yesterday.

12 Mr President, your Honours, 297 former child soldiers were members of an army of
13 children in the UPC/FPLC in 2002-2003. This group is not representative of the
14 scope of the phenomenon, but they needed courage to fill in the forms. In order to
15 protect them, because they still feel at risk, they all wish to remain anonymous and
16 that is why I will refer to them using the numbers allocated to them by the Victims
17 Participation and Reparations Section. However, make no mistake, despite the use
18 of these numbers, they exist and they deserve to be heard in the course of these
19 proceedings commencing today.

20 With your leave, I would like to present a brief overview of the various types of
21 victimization suffered by our clients. Subsequently, I shall elaborate on their
22 expectations on this day of the commencement of the trial against Mr Ntaganda.

23 Mr President, your Honours, the 297 victims that we represent constitute a group, of
24 course, that is former child soldiers, even though each one occupies a specific position
25 in the group, but it is important to note that the group is not homogeneous. We have

1 to accept the fact that our clients were child soldiers or parents of child soldiers, but
2 the common denominator is the fact that practically all of them are today in a
3 precarious and vulnerable situation.

4 I would like to reiterate the fact that a larger number of victims from the Hema
5 community are participating in the proceedings when compared to the number of
6 victims that participated in the Thomas Lubanga Dyilo case, who is the superior of
7 the accused. This difference is partly due to the fact that Mr Ntaganda is considered
8 as a stranger owing to the fact that he is of Rwandan extraction.

9 The considerations linked to the ethnic affiliation of our clients play an important role
10 in the way in which the events were perceived and interpreted by them, which give
11 rise to tangible differences and divisions amongst the various communities. In this
12 regard, your Honours, I would like to talk about the impact of the propaganda of the
13 UPC/FPLC on the Hema victims, because this was the foundation for an ethnic
14 allegiance policy. This impact is still present today in our clients from the Hema
15 community.

16 In fact, during the conflict which took place in Ituri in 2002-2003, Hema families were
17 compelled either to hand over a child to the militia or to hand over an amount of
18 money to be exempted. If the parents refused or did not have the money to pay, the
19 children were forcibly taken away. But even for children sent by their parents
20 to -- for the war effort, the scope and intensity of the propaganda exercised on the
21 Hema population deprived the families of any real choice.

22 A child, a Hema child, a/30182/15 explains as follows: It was difficult for any young
23 boy of my age not to become a member of the UPC. As part of this strategy, the
24 recruiters also targeted the most vulnerable people, including many orphans trying to
25 survive and looking for foster families.

1 Another child who was 13 years and a half at the time of the events, a/20118/14 states,
2 and I quote: "I enlisted in the UPC arms group because all my relatives had been
3 killed by the combatants and I had no one to take care of me and it is for that reason
4 that I decided to go to the UPC for my own security."

5 The recruiters also tried to nurture a mindset of vengeance, especially amongst those
6 who had lost loved ones, friends or members of their family; for example, a/585/13
7 states: "I joined the UPC group because I had lost half of the members of my family
8 who were killed as a result of the sad events that had taken place in Bororo, I joined
9 them in order to exact revenge."

10 Another strategy employed by the UPC/FPLC stressed the necessity to protect the
11 Hema people. A/2023/14 explains and I quote: "I was briefed by the young
12 militiamen who was in the UPC who advised me to take up a weapon because my
13 relatives had all been killed by Ngitu combatants. He told me that I would also be
14 able to protect the rest of my family. That is how I was compelled to participate in
15 the fighting."

16 Mr President, your Honours, the rehabilitation of our clients from the Hema
17 community can only be accomplished through the conviction of the people
18 responsible for their enlistment or for the enlistment of their children, who should
19 never have participated in that war. But the specific situation of the Hema children
20 must not overshadow the fate of the children from other ethnic groups; for example,
21 a/30258/15 explains, and I quote: "My mother was killed by the UPC armed group
22 because she had refused my recruitment. We were also pillaged because we were
23 considered as being accomplices of the enemies."

24 Mr President, your Honours, I would also like to further elaborate on the particular
25 situation of former female child soldiers.

1 In the case of the girl children who today are young women, they were reduced to
2 sexual enslavement after recruitment. Once integrated into the militia, they were
3 used as the wives of the commanders, a euphemism for sexual enslavement, or they
4 were simply distributed to the members of the group. These young girls will most
5 likely never recover from the repeated rapes and sexual enslavement suffered.

6 A/627/13 was a child of about 14 years at the time of the events and she states:
7 "During the short period when I was in the camp I was the wife of all the foot soldiers
8 that I met them and thereafter a commander decided to take me as a permanent wife."
9 Similarly a/30049/15 explains, and I quote: "The militiamen of the UPC came to our
10 place. They forcibly took us to their camp. They forced us to work very hard. I
11 did everything, housework, cleaning their uniforms. They raped me. It was very
12 difficult. I suffered in my life and my body was hurting all over." She was 12 years
13 old, your Honours.

14 A/30367/15 states, and I quote: "I was abducted by three members of the UPC.
15 They took me to their camp and three soldiers raped me one after the other up 'til the
16 morning. I was exhausted and I lost consciousness."

17 Even worse, the fact that of becoming a commander's wife paradoxically afforded
18 them a certain degree of protection because they were repeatedly raped only by the
19 commander when he was present.

20 For example, a/20010/14 explains, and I quote: "I was subjected to endless sexual
21 enslavement. It was after a high-ranking soldier took me as a wife that I had some
22 breathing space."

23 Similarly, a/20009/14 stated, and I quote: "I was living with a high-ranking
24 militiaman as his partner. In his absence I became the wife of others and if I refused
25 we were tortured."

1 The members of the UPC/FPLC did not hesitate to carry out their threats. For
2 example, a/20013/14, who herself was a victim of rapes, explained how her elder sister
3 was murdered for having refused to allow herself to be raped.
4 Following these rapes some of the girls gave birth to children whom they have never
5 abandoned but in whose eyes they inevitably see the faces of those who raped them.
6 They became unwedded mothers, but they were shunned by their families and one of
7 them explains, and I quote: "We were gang-raped by several men. I was
8 repeatedly raped by several men. I gave birth to a baby boy whose father I do not
9 know. I hate that child and he has no family -- he has no future. I have been cast
10 aside even by my own family."
11 Despite the systematic rapes of these girls, they were given rigorous military training
12 and they also played an active role in the hostilities. For example, a/20008/14, who
13 was barely 13 years old at the time of the events, stated, and I quote: "I was given
14 military training and at the same time I was a wife. I was subjected to the robust
15 exercises characteristic of military training and this resulted in great suffering."
16 These young girls, Mr President, your Honours, are faced with double victimization
17 because they are victims of rapes and sexual violence, and some of them gave birth to
18 other victims, children who will never know their fathers and who are a constant
19 reminder of the reprehensible acts inflicted upon their mothers. A great many of
20 these women also contracted sexually transmitted diseases or suffered irreversible
21 bodily harm as a result of the endless rapes. The punishment of the perpetrators of
22 such despicable acts is crucial for their rehabilitation.
23 Unfortunately, the abuses and ill treatment were not inflicted only on the girls.
24 Quite to the contrary. All the children were affected irrespective of age and gender.
25 The strategy of daily interaction with the children was designed to guarantee their

1 total submission and total unconditional compliance with all the orders issued.

2 A/30374/15 explains, and I quote: "In cases of disobedience we were beaten with
3 iron sticks. I still have a number of scars all over my body as a result of those
4 beatings."

5 Lastly, Mr President, your Honours, it is equally necessary to factor in the impact of
6 the recent developments in the Lubanga case on the victims participating in this trial.

7 It is definitely not my intention to re-open the trial of Mr Ntaganda's hierarchical
8 superior, but considering that a significant number of our clients also participated in
9 the Lubanga case, that experience necessarily has an impact on their expectations.

10 For some of us, Thomas Lubanga's conviction represents only partial justice,
11 particularly for the victims of rapes and sexual violence and because this trial is
12 opening, given that they were consulted on the process of review of the sentence of
13 Mr Lubanga, so there is the possibility of Mr Lubanga being released before having
14 served his entire sentence.

15 As I have already mentioned previously, as far as the victims of sexual violence are
16 concerned, the Lubanga trial was a source of deep frustrations which have altered the
17 perception of the Court and of justice in general. As if that frustration was not
18 enough, there is also the deep-seated resentment linked to the sluggish progress of
19 the proceedings and yet these victims continue to believe in the necessity to punish
20 the perpetrators of their abuses visited upon them.

21 Even though these children are not a homogeneous group, they have to experience
22 the punishment of the perpetrators of the crimes during 2002-2003.

23 I have just talked about the ambivalence of their feelings with regard to international
24 justice considering that some of the perpetrators may even be released. However,
25 they need to close this chapter of their lives as quickly as possible, even though they

1 can never recover their stolen childhood.

2 The youngest of our clients was seven and a half years old when he joined the UPC.

3 Others celebrated their 15th birthdays within the militia. All the victims were

4 compelled to drop out of school, so dropping out of school we all know is a logical

5 consequence of the conscription of children. Schools were a convenient location for

6 recruitment because the recruiters hand-picked the children who they felt were fit to

7 join the militia without the consent of their parents.

8 A nine year old child at the time of the events a/30371/15 states, and I quote: "I was

9 forcibly conscripted from the primary school at 10 a.m. by 10 well-armed elements of

10 the UPC, 14 of us were playing football and all of us were surrounded."

11 Similarly, a/30374/15, who was also nine years old at the time of the events, explains,

12 and I quote: "Two soldiers of the UPC were passing by my school. They found me

13 playing. They took my hand and they took me away. And when the commander

14 saw me he said I was going to add to the number of the kadogo bodyguards."

15 It is therefore not surprising that a vast majority of these children never returned to

16 the schools from where they were abducted. Even worse, these events destroyed

17 their lives and condemned them to their miserable fate. Many of them are battling

18 against addiction, drug and alcohol addiction, because the commanders compelled

19 them to develop these habits so as to make them more courageous in battle where

20 they were frequently positioned in the front line.

21 Your Honours, we have to acknowledge the irreversible damage that they have

22 suffered. They are expecting justice and they have been expecting justice since 2003.

23 Twelve years, your Honour, and this is more than half of their lives for most of those

24 boys and girls.

25 The rehabilitation of these young adults requires the acknowledgement of the

1 suffering that they were in -- they were subjected to, and they need to be recognized
2 by their families as victims rather than criminals.

3 Mr President, your Honours, there is one reality that is undeniable and profoundly
4 unjust. The effects of enlistment, conscription and active participation in hostilities
5 extend well beyond the age limit set at 15 years by the Rome Statute. I have stated
6 that because of the abuses suffered by our clients, most of them today find themselves
7 in an extremely precarious situation and unfortunately do not have much hope for
8 their future or for the future of their children. These are two generations which have
9 been sacrificed on the altar of ethnic conflict in Ituri.

10 For all the foregoing reasons, it is all the more crucial within the context of this trial
11 that the Court fully fulfils its role as a source of hope, dignity and reintegration for the
12 victims. To that end, all necessary measures have to be taken to avoid the impunity
13 of the people that the victims have identified as responsible, including Mr Ntaganda.
14 All the necessary measures must be taken to reverse the consequences of the harm
15 caused to these victims of the most serious crimes of concern to the international
16 community as a whole.

17 I would like to repeat, your Honours, our clients are participants in the proceedings,
18 our clients are participants in the proceedings, but they should be afforded their right
19 to contribute to the ascertainment of the truth. The victims do not seek to mislead
20 anyone but merely to bring the truth closer and possibly enable it to be apprehended
21 from a different perspective and in a simple and yet comprehensive manner.

22 Thank you very much for your kind attention, Mr President, your Honours.

23 PRESIDING JUDGE FREMR: Thank you very much, Ms Pellet.

24 And now it is time for the other representative of victims, Mr Suprun. Mr Suprun,
25 the floor is yours.

1 MR SUPRUN: (Interpretation) Mr President, your Honours, the trial opening
2 today marks an important milestone in the fight against impunity in regard to the
3 events which unfolded in Ituri in 2002 and 2003, these events which most probably
4 represent one of the most tragic chapters in the recent history of the DRC.
5 To date nobody has been found responsible, convicted or punished for the atrocities
6 committed in Ituri in an extreme widespread and systematic manner against the
7 civilian population.
8 In no other case before the ICC have the civilians waited as long as they have in this
9 case, because in this case the victims have waited for justice for over 12 years.
10 The victims of the attacks upon this case whom I have the honour of representing are
11 in a number of 1862, yet this is but a tiny portion of the entire group of victims of the
12 tragic events which unfolded in Ituri in 2002-2003 in localities such as Mongbwalu,
13 Sayo, Kobu, Kilo, Bambu, Lipri, Nyangaray and neighbouring villages.
14 The victims I represent all bear witness in their account of the events that affected
15 them to the particularly cruel nature of the crimes endured, but also to their
16 widespread and systematic nature.
17 Indeed, thousands of Lendu, Ngiti, Nande and Bira civilians, who only yesterday
18 were living in peace alongside their assailants, were savagely attacked, killed,
19 tortured, raped or looted, whether they be men, women, elderly, children or disabled,
20 and on the sole basis of their ethnic origin without any pity or distinction made
21 according to their gender or age.
22 The victims included a great number of women and children and they were killed
23 either -- they were either shot dead, they were killed by bow and arrow, bladed
24 weapons, machetes, spears or studded sticks. Most were maimed. Some were
25 decapitated and their heads brandished as a trophy through the attacked localities.

1 The victims' bodies were buried in mass graves, others were burnt. Many women
2 and young girls were abducted and sexually enslaved. Victims' property was
3 systematically looted and burnt. The victims' houses and many buildings, notably
4 offices within the collectivity, schools, churches and hospitals were burnt to the
5 ground.

6 Those victims who survived were forced to abandon their residence and flee, seeking
7 refuge in distant locations over a number of years.

8 Here is how the surviving victims describe the UPC/FPLC attacks on the various
9 villages in Ituri.

10 The UPC troops massacred civilians on ethnic grounds. They hunted down those
11 who sought refuge in the forests and captured and killed others at roadblocks. They
12 systematically killed all Lendu civilians in a door-to-door manner. If they caught up
13 with somebody they would ask which tribe they belonged to. If they were not the
14 enemy they would set them free. They killed all Lendus they came across, stating
15 without fear, shame or pity for all to hear, "We'll exterminate you, all of you. The
16 government can do nothing to help you now."

17 The UPC troops used incendiary grenades and burnt houses harbouring residents to
18 the ground.

19 One incident in Kobu is reiterated in a number of witness accounts, in particular that
20 of victim a/00291/13, who speaks of a reconciliation meeting to which civilians, Lendu
21 civilians, were invited. Upon their arrival they were locked in a house immediately
22 and this house was burnt to the ground killing men, women and children without
23 distinction.

24 The victims who survived the Mongbwalu attack in November 2002 recounted how
25 terrible it was to be Lendu after the UPC troops arrived and how all those who were

1 identified as Lendus were exterminated. They recall a Lendu man who tried to flee.
2 He had many children and he was trying to carry them. The UPC troops fired at
3 him. He fell on one of his children and died.
4 Another image that has marked the victims and which they recall is that of a Lendu
5 woman who was shot in the leg by UPC soldiers. She had a baby with her. They
6 caught up with her as she tried to crawl across the floor. They cut her into small
7 pieces and they also cut the baby to pieces with a machete.
8 The victims who returned to Mongbwalu, Kobu, Kilo, Bambu, Lipri after the UPC
9 attacks recall seeing many bodies in the streets, some of which were family members
10 and they also saw graves that had been freshly dug. They also recount numerous
11 cases of torture, mutilation and even cannibalism. The victims from Kilo recount
12 how UPC soldiers held men, women and children of suspected Lendu origin and
13 forced them to dig their own graves before killing them.
14 Mr President, your Honours, all the victims that I represent have voiced their
15 satisfaction that the case, this case, is finally due to commence before the Court, even
16 if they deplore the considerable delay in the proceedings since the events charged.
17 The victims are well aware of the fact that the trial will be long and that the process of
18 seeking the truth will not be an easy one. They were disappointed and desperate for
19 a long time because the wheels of justice had failed to gain any momentum over
20 many years, but they are now finally convinced that justice will be done.
21 The victims are, therefore, willing to be patient and they are especially determined to
22 help the Court in establishing the truth. Even if most of the victims have never left
23 their villages, they are determined to come to The Hague to testify before the Court
24 with regard to their knowledge of the events that unfolded in Ituri or simply to share
25 their stories and painful and tragic experiences with the Judges. They are

1 determined to contribute to the establishment of the truth, even if they are aware that
2 they might experience reprisals if they testify as there are still many people who
3 support the accused in Ituri.

4 The victims are determined because their hope for justice is all they have left, and
5 especially because many of the victims have nothing else to lose. Even if each of the
6 victim's story is linked to the same events, each is unique in nature as each victim's
7 experience is painful to the extreme, shocking, and the suffering endured by each
8 victim is unique, individual and not to be compared with any other. In most cases
9 the suffering is irreparable.

10 The majority of the victims participating in this senseless war lost at least one family
11 member, some lost their entire family. Nearly all of them were looted and they were
12 all forced to flee and seek refuge elsewhere.

13 By way of illustration let me provide you with some specific examples: Victim
14 a/00866/13, who is today 63 years of age, saw his 13-year-old son cut to pieces by
15 UPC/FPLC combatants during the attack on Mongbwalu. In addition, his
16 17-year-old son while attempting to flee fell into a hole and broke his neck. As if that
17 were not enough, his wife, seeing what fate had befallen her children, felt shocked
18 and desperate and subsequently suffered a fatal heart attack. Imagine this man's life
19 today. See how affected for life he is. He has been affected forever. This man
20 who during his youth acquired possessions in preparation for his retirement found
21 himself stripped of all these worldly possessions and deprived of those he loved from
22 one day to the next.

23 Victim a/00168/13 lost all of his children during the attack on Kobu. Following this
24 shocking event his wife had a stroke which left her paralysed. Now, or since this
25 time he is obliged to cater to her every need and can no longer depend on the

1 assistance of his children as they are all dead. This couple now lives in extreme
2 poverty. Overnight this victim and his wife lost everything and were scarred for life.
3 Victim a/00157/13 witnessed the slaughtering of his 13 brothers by bladed weapons at
4 the hands of UPC soldiers during the attack on Kobu.

5 As for victim a/00225/13, his 22-year-old daughter was abducted, raped, mutilated
6 and finally killed with a machete by UPC troops. In total this victim lost 33 family
7 members in addition to their house and all their possessions.

8 Victim a/01117/13 saw his brother buried alive after he was forced to dig his own
9 grave.

10 Mr President, your Honours, as these tragic events occurred a number of years ago
11 now the victims no longer feel extreme hatred towards the accused or towards their
12 attackers, as many of them have managed to live in peace alongside their former
13 enemies. They no longer harbour feelings of revenge. They request only one thing,
14 justice.

15 More than 12 years after the events the great majority of the victims has not managed
16 to re-establish themselves or rebuild their lives. Many of them live in extremely
17 difficult conditions, some of them have even lost all purpose in life, yet they continue
18 to live -- or, rather, they survive holding on to life despite everything. They are not
19 ready to turn this bloody page in their history as they can still feel the blood of their
20 loved ones flowing through their hands. Many of the victims remain traumatized
21 and devastated and nearly all of them live life in a state of anxiety, fear and suffering
22 whilst hoping that there will be no recurrence of these tragic events despite most of
23 them having nothing more to lose.

24 The victims of the 2002-2003 events in Ituri require concrete and effective help and
25 assistance and have done for a number of years now.

1 The humanitarian situation in the region is cause for great concern and is
2 compounded by a very unstable security situation, despite what appears to be a state
3 of apparent calm on the surface. As a result, humanitarian missions in Ituri have
4 been scaling down or even suspending their activities whilst waiting for the situation
5 to improve.

6 Recent incidents staged by various groups of local militia, who have committed
7 numerous acts of violence against civilians, has contributed further to the feeling of
8 insecurity within the communities and forced thousands of people to once again
9 abandon their homes and flee the fighting.

10 The lack of authority on the part of the state throughout the region, which can be
11 interpreted as a faulty or dysfunctional public administration has contributed and
12 continues to exacerbate further conflicts and can only compound the humanitarian
13 situation of those who have been waiting for some form of help for years now.

14 Martin Kobler, special representative to the secretary-general of the UN in the DRC
15 said the following over radio Okapi on his return from a mission in Ituri recently, on
16 24 June 2015, and I quote: "The military road is one thing, but we must restore the
17 authority of the state. We can fight the FRPI or the other armed groups, but if the
18 authority of the state is not restored or that of civil administration or security agencies
19 over there, it will not be a success story." End of quote.

20 Today the levels of poverty are increasing in a number of the families of the victims of
21 the 2002-2003 events. One need only visit some of the villages in Ituri where the
22 victims live to see the precarious conditions that they live in. The small children are
23 barely dressed in rags and a number of the war's orphans do not attend school. The
24 burdens of family life on the surviving victims has left them in a permanent state of
25 stress, even distress, and even if some efforts have been made to come to the

1 assistance of these victims, they have obviously not been sufficient to be able to
2 rebuild entire villages destroyed and burnt to the ground.

3 In the village of Lipri, for example, the Catholic church in the village that was rebuilt
4 after the war is virtually devoid of chairs. The benches in the church are
5 barely -- only barely serve the purpose by name. On Sunday the congregation sit on
6 uncomfortable tree trunks and children sit on the floor.

7 The congregation live in extreme poverty with very little food to put on the table, and
8 this makes the need for assistance to improve their church even more pressing.

9 Earnings from their farming activities is barely enough to put food on the table.

10 Those victims of the attacks who are participating in this case and who continue to
11 live in the Ituri villages that were the most affected by the events of 2002-2003 speak
12 of their intense frustration at never having obtained over the past 12 years any aid or
13 assistance, whether it be material, psychological, or medical from any source
14 whatsoever, be it from the Trust Fund for Victims, from national or international
15 humanitarian organisations, not to mention the Congolese authorities. For the past
16 12 years the victims of the war have felt and still feel abandoned without any
17 possibility of rebuilding their lives.

18 Another example is that of victim a/01480/13, who is the eldest son of a peaceful
19 family of three children, who saw the corpse of his father mutilated at the tender age
20 of 11, and helped his mother search for the remains of his younger brother in the
21 ruins of their burnt-down hut. This hut was burnt down by UPC troops in Mbindjo.

22 They were compelled to leave the village and settle in Bunia. His traumatized
23 mother died in 2004 leaving her children orphaned. Since then, the now 24 year old
24 has been living with her uncle, who is the father of a large family.

25 The victim was deprived of their adolescence and youth by the events of 2002-2003

1 and is forced to seek odd jobs here and there in order to pursue her studies. As his
2 uncle died recently, he will maybe never finish his studies due to a lack of any
3 financial support. Had there not been a war, had the victim's father not been killed,
4 the victim's life would have been very different.

5 Victim a/01721/13, who is 64 years of age, is obliged to continue farming in extremely
6 difficult conditions in order to make ends meet because, in addition to losing family
7 members, including his wife, he also lost all his worldly possessions and savings and
8 is obliged to continue farming the land despite his age.

9 Many of the victims live in a permanent state of trauma, either because they were
10 raped or because they saw their family members killed, mutilated or burnt. Many of
11 them are in a very fragile psychological state as they are forced to take on
12 considerable family responsibilities as survivors.

13 Such is the case for victim a/00069/13, who, in addition to his five children, is obliged
14 to raise the children of his uncle who was killed during the war on a very meagre
15 income. He is obliged to support a large family, but had his uncle not been killed, he
16 would only have had to cater to the needs of his own immediate family. This
17 situation means that this victim lives in a permanent state of stress, in addition to the
18 fact that he also lost all of his worldly possessions during the looting and burning
19 down of the houses as part of the atrocities committed by the troops, the UPC troops.

20 Your Honours, Mr President, unfortunately the story of the victims of the cruel
21 attacks on the civilian population in Ituri in 2002-2003 will not have a happy ending.
22 Indeed, even if the accused were to be convicted, nothing or nobody will be able to
23 bring back the victims who died as a result of the events or give the survivors their
24 lives back. Their lives are shattered. The surviving victims still deplore the death
25 of their loved ones and will cry over their loss until their last breath. Pain and

1 memories are all they have left despite the passage of time. They also feel intense
2 frustration as a result of the injustice that has befallen them.

3 Another thought is ever present in their minds; namely, the hope that the truth one
4 day will be uncovered and justice obtained. Some victims will not see the outcome
5 of the trial by virtue of their advanced age and state of health, but they believe in
6 justice, they believe in justice before the International Criminal Court.

7 The victims' eyes are on you, Mr President, your Honours, on the International
8 Criminal Court. Despite the irreparable nature of the suffering of all these victims,
9 they hope that justice will one day be meted out in this case in order to ease their
10 suffering and pain and pay tribute to those who died, who did not survive.

11 But the victims who have felt abandoned for over 12 years now hope that this trial
12 will draw the attention of the international community to their extremely difficult
13 situation, will draw the attention of the Trust Fund for Victims, humanitarian
14 organisations, and Congolese authorities and that real and effective means will finally
15 be put in place in order to bring assistance to the victims, whether it be on an
16 individual or collective basis, whether it be material, psychological or medical in
17 order to enable them to simply survive or to rebuild their shattered lives. They quite
18 simply hope that their hope will not be dashed and replaced by disillusionment.

19 And I thank you.

20 PRESIDING JUDGE FREMR: I thank very much to both Legal Representatives of
21 Victims and also for the exemplary timekeeping.

22 Now is high time to move to the Defence. So, Mr Bourgon, who will be the first
23 speaker on your behalf?

24 MR BOURGON: (Interpretation) Indeed, your Honour, I will take the floor first.
25 The Defence will need, as indicated previously, three hours, including the

1 presentation or the statement by Mr Ntaganda. Your Honour, for us it would be
2 preferable to take a break now and thereafter to have two sessions of one hour 30, but
3 if you so wish I can start now. I leave that to the discretion of the Chamber.

4 PRESIDING JUDGE FREMR: Mr Bourgon, I was even ready to offer you this
5 alternative, so I think it is fully fine with the Chamber, which means that we will now
6 break for 30 minutes and we will resume again at 11 o'clock.

7 THE COURT USHER: All rise.

8 (Recess taken at 10.28 a.m.)

9 (Upon resuming in open session at 11.00 a.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: First, one announcement for the record. Under
13 current circumstances we have changed a bit our schedule. So we will now have a
14 session for 90 minutes, which means we will finish half past 12. It will be followed
15 by 90 minutes lunch-break, and it means that we will start our afternoon session at
16 2 o'clock, this afternoon session should take one hour only. Am I right? Sorry,
17 sorry, I was wrong. I was thinking about the previous possibility. Sorry. So I am
18 correcting my statement. The afternoon session will start at 2 o'clock but will last 90
19 minutes, so we should finish half past 3. Sorry for my error.

20 Mr Bourgon, you have the floor.

21 MR BOURGON: (Interpretation) Good morning, your Honour. Good morning,
22 your Honours. I have the honour this morning of taking the floor with a view to
23 providing the Chamber with the other facet of the account that we heard yesterday
24 from the mouth of the Prosecution, because it is an account which we had a right to
25 yesterday, not much more than that.

1 It is certain, if I put myself into the position of an observer, then I would say having
2 listened to the Prosecution, well, he's really terrible this Mr Ntaganda. Your Honour,
3 everything remains to be proven. This is a "but" which is extremely important.
4 And then there is another side to the account given by the Prosecution. When you
5 put the two against each other, the reality of the other side of the story with regards to
6 what happened in the field between 2002 and 2003 is completely different.
7 As a former soldier for many years, I often heard my superiors say if it looks like a
8 duck and if it goes "quack quack" like a duck, well, it has to be a duck. But my
9 superiors also told me, if it's too clear, too obvious, if it's too easy, if it's too apparent,
10 then there is certainly a problem, so dig in, look for it and you will find it. And that's
11 exactly the exercise that I propose today, the duck which was swimming slowly
12 yesterday will no longer be the same tomorrow, and even less at the end of this trial.
13 If you would allow me to say a few words with regards to the importance of the trial
14 which started yesterday, the trial obviously of Mr Ntaganda.
15 First of all, the trial is of major importance for several different organisations and
16 persons, for the government of the Democratic Republic of the Congo, which
17 probably is listening to us today. It's of the highest importance.
18 The Prosecutor stressed during the press conference two days ago the extent to which
19 it was satisfied with the cooperation that it had received and the assistance it had
20 received from the government of the Republic of Congo. And this is the very least
21 from a government which used the provisions of the Statute to ensure that Mr
22 Ntaganda would find himself this morning before you because it is indeed the reason
23 why the proceedings initiated against Mr Ntaganda were carried out by the central
24 government, and it's the same for Mr Lubanga, and it is the same thing for the two
25 others, Mr Ngudjolo and Mr Katanga.

1 It is an important fact that cannot be neglected in light of this trial because the
2 government obviously had an interest in getting rid of him, such that people who
3 rejected his authority were no longer able to harm the government.
4 And the trial is important for the International Criminal Court. Three judgments in
5 approximately 12 years. I can understand the concerns of the international
6 community and of the Assembly of States Parties. A lot of money has been invested
7 in the International Criminal Court and the results are tardy in arriving. They want
8 trials, they're right, but that should not be a reason to harm a fair trial.
9 The trial is important when it comes to fighting impunity, but the fight against
10 impunity must not become synonymous with automatic conviction.
11 The trial is important for the Prosecutor because the Prosecutor has a dossier which, it
12 has to be said, is very large in terms of a case presented to the Court and in terms of
13 cases obtained within the Court. And it is well known that the Prosecution cannot
14 allow itself, give a quote to, to lose this trial. And its representatives will act by way
15 of consequence. And your Honour, by way of consequence, you have to be very
16 vigilant. Justice is not an issue of winning or losing a trial. The object thereof is to
17 render justice.
18 This trial is also important for the victims. We have heard this morning, and we
19 agree, that the trial is important for victims, but what mustn't happen is that victims
20 expect that a case is opened and as such a conviction must automatically follow.
21 That is not the same thing. However, if we want to re-establish the facts, the trial
22 will be important. It will also be important for NGOs working in the field and who
23 were working in the field at the time of the acts.
24 Just a couple of days ago I met a representative from a non-governmental
25 organisation who told me that he was interested in the acts of Bosco Ntaganda in

1 2007-2008 and that was the reason for being present and that she intended to use the
2 trial obviously in order to make her organisation's cause progress.

3 But we have to be very vigilant in this regard. We can't have a situation where the
4 trial helps certain causes advance while the aim of a trial is criminal justice and
5 individual criminal responsibility among the NGOs and non-governmental
6 organisations. Some representatives of these organisations will come to testify
7 before this Chamber during the trial. That is the way -- it's the way in which you
8 evaluate the testimony of these people, and that is a subject which we will speak
9 about later, but you have to show the greatest vigilance possible in this regard.

10 Finally, the trial is also important for the rule of law and for international criminal
11 justice. It is about the trial of Bosco Ntaganda and nothing else. This trial must
12 focus on the acts and conduct of Mr Ntaganda at the time of the alleged acts, alleged
13 by the Prosecutor and confirmed by the Chamber, and nothing else.

14 Irrespective of the importance of the trial for other reasons, it has to be the only
15 function and objective of proceedings before this Chamber during the upcoming
16 months. The trial must not be turned to benefit other aims.

17 Now, your Honour, with regards to the state of preparations of the Defence, I will
18 address this subject very quickly. We've spoken quite a lot about it and the Chamber
19 has decided thereon. However, in the name of the accused I have to remind you of
20 our position. We haven't had enough time to prepare for this trial.

21 Just a couple of remarks. We think that the presentation of the Prosecution
22 yesterday made it possible to establish at least one thing: The quantity of work
23 which has been carried out by the office of the Prosecutor since 2004 to put this case
24 together and for us, unless the International Criminal Court is of the opinion that the
25 Defence can prepare a trial on the basis of disclosed material, disclosed by the

1 Prosecution, and this against our conception of the work of the Defence, then the
2 presentation of the Prosecution establishes the need there is and with regard to the
3 type of work and the amount of work which is necessary for the Defence to carry out
4 with a view to preparing itself for such a trial.

5 Already we are going to speak about this later, we're going to speak about the attacks
6 which haven't been mentioned by the Prosecution, which we have to address in order
7 to understand the fact of the matter, but the Prosecution just spoke about two main
8 attacks yesterday, those which led to the charges and we have already seen 50 places
9 where attacks took place.

10 Now, the Chamber knows the situation of the Defence because we have made this
11 clear over several months. Without going into further detail thereon, the Chamber
12 also knows our position concerning the evidence which is lacking. I won't address
13 that further. However, I have to say that the fact that we do not have an investigator
14 in the field and have not had since June, that considerably harms us and it's a major
15 difficulty. It prevents us from being ready for the first witness on 15 September.
16 Furthermore, I'll take this opportunity to inform you unfortunately that the
17 investigator that we recently recruited on Sunday told me that he had to leave those
18 functions. So we are once again in a position of having to recruit a new investigator.
19 I won't say more in that regard.

20 I shall now turn on to the nature of our presentation this morning. In a status
21 conference some time ago I explained what I believed was the point of opening
22 statements within the framework of a trial, and I told you that our objective was to
23 give details, to give detailed information to the Chamber concerning evidence which
24 would be presented or which we envisaged would be presented by the Prosecution.
25 We also wanted to give you a detailed insight into the evidence that would be

1 presented by the Defence.

2 In these circumstances it is not possible. We even thought at a certain time not
3 making opening statements. And then we said no, this is a unique opportunity for
4 us to address the Chamber and to point out or make several remarks and to give our
5 general position concerning the responsibility of Mr Ntaganda and above all to alert
6 the Chamber and to suggest respectfully to the Chamber the way of addressing the
7 assessment of the evidence in this trial.

8 And by way of consonance my colleagues and I will make presentations. As you can
9 see on the screen, this will be divided up into six parts. We will address the
10 Chamber in French; however, our slides are in English with a view to facilitating your
11 work.

12 And I'm coming to my first part. In this part my objective is to react to certain
13 aspects of the opening statement of the Prosecution given yesterday, aspects which
14 give rise to certain precise comments on our part. Some of these subjects have
15 already been envisaged in the opening statement and I will be brief in addressing
16 those and tell you that one of my colleagues shall go into further detail on that matter
17 later.

18 As mentioned, the Prosecution yesterday presented a one-sided account with a view
19 to convincing you that Bosco Ntaganda should be convicted, that they have the
20 necessary evidence to convict Bosco Ntaganda.

21 They spoke about mutineers, persons who had no other objective than being criminals
22 and committing crimes for personal ends. You were told that the UPC was nothing
23 more than a militia and you were told that Bosco Ntaganda was just a criminal who
24 had profited from the situation with a view of personally gaining riches and for the
25 aims of power.

1 The Prosecution presented an old lady. This is a very well-known figure in
2 psychology. The Defence will show you the pretty lady. It's the same in the same
3 photo. Do you see it? If you look, the nose of the old lady and that is also part of
4 the beautiful lady. If you look at the mouth of the old lady, that's the necklace of the
5 pretty lady. If you look at the eye of the old lady, it's the ear of the pretty lady.
6 There are always two ways of looking at these things. The Prosecutor shows you
7 something that's obvious. We're going to show you something that is as obvious if
8 you take the trouble to analyse the evidence properly.

9 The first subject taken up by the Prosecutor which I would like to look at is the fact
10 that my colleague, the lead counsel of the Prosecutor, gave you an account stating
11 that -- or saying what witnesses are going to say this, they're going to establish this,
12 but only on very rare occasions did it say which witnesses. That's not surprising
13 because it's an opening statement, it's made in public, and the names and identities of
14 those witnesses is often, if not always, confidential.

15 For us, this is very concerning because we are seeing the -- going into the public
16 nature of the proceedings, and the people who are going to come and provide
17 testimony here, whose identity is confidential, should necessarily also testify often in
18 private session. And why? Well, because the answers that they're going to give
19 risk easily to identify them when they have known positions within a military
20 movement.

21 In testifying in private session, if not in closed session, that's something we don't even
22 know yet, well, the trial cannot be considered as a public trial. There is a reason,
23 your Honour, for the accused having the right to a public trial. That is a gauge of the
24 reliability and truthfulness of the witnesses and witness testimony.

25 The Prosecutor and the lead counsel of the Prosecution made reference to acts which

1 involve -- would involve Mr Ntaganda during the period charged. And in reference
2 to the DCC, the Document Containing the Charges, this is a practice, your Honour,
3 which I put to you respectfully should cease right from the very beginning. It is
4 recognized, your Honour, that the probative value of evidence linked to the accused,
5 which is not part of the scope, is beyond the temporal scope of the charges laid
6 against him, has been gone over with regards to the harm against him.

7 Throughout the trial we have tried to ensure that such references to Mr Ntaganda
8 beyond the temporal scope are not allowed. The Prosecution also makes reference to
9 certain crimes which are not part of the Document Containing the Charges. One
10 quick example thereof, a particular rape which my colleague mentioned, yes, it's not a
11 charge that was confirmed, but we're going to use it in order to establish intent.
12 Your Honour, we have already addressed this subject. The Prosecution intends to
13 do through the back door what's already been prohibited, and for us, this is an
14 inadmissible process and my colleague, Chloé Grandon, will also deal with that
15 subject.

16 Now, the Prosecutor also made reference to exhumations. A lot of work was carried
17 out by the Office of the Prosecutor and various experts in 2014. And just a quick
18 remark in that regard, beyond the conclusions of these experts, in accordance with
19 what we heard yesterday, it is clear that the Prosecution takes its own conclusions
20 and inferences from the report, which goes beyond the conclusions of the report itself.
21 And once again we have to be very vigilant in this regard.

22 With regard to the expert report, one should not make it say what it does not say.
23 And above all, it shouldn't be used to make inferences therefrom with a view to
24 establishing the guilt of the accused.

25 The Prosecution also used imagery, satellite imagery. And the Prosecutor told you

1 that these -- admitted itself that it wasn't reliable. They say it's difficult really to see
2 what it represents. But the Prosecutor tells you that we're going to use them
3 nevertheless because it makes it possible to say that something happened, this was
4 the state, this was the state of a house with a roof on a particular day and two months
5 later it doesn't have one, and then it corroborates other evidence.
6 Your Honour, the cumulative evidence of weakness does not make strong evidence.
7 If you look at the destruction of a house during a period between two different photos,
8 who destroyed the house? How was the house destroyed? Why was the house
9 destroyed? By whom? For what reason? Above all, one shouldn't jump to
10 conclusions on the basis of a satellite image of such kind.
11 The Prosecutor also mentioned 5,000 victims in the conflict. And I think that she
12 said exactly between July 2002 and March 2003. This does not correspond, your
13 Honour, according to what we know of the evidence, in accordance to what the
14 Prosecution intends to prove. There are reports of NGOs and MONUC organs
15 which point out a large number of victims, but this takes me to my next point, which
16 is the reference to nonjudicial means carried out by nonjudicial personnel with
17 nonjudicial ends. And that is not evidence which should be accorded probative
18 value in a trial of this type. My colleague will speak more about the evaluation of
19 this, such types of reports.
20 The Prosecution, furthermore, in its account yesterday according to our evaluation,
21 Mr President, does not care about the context. As far as it is concerned, the story is
22 very clear. Just Bosco Ntaganda, FPLC, UPC, the mutineers and criminal
23 responsibility. But the situation is much more complicated than that. My colleague
24 will give several facts referring to the context which we would respectfully submit
25 need to be considered. The identity of the co-perpetrators, well, I think the Chamber

1 is aware there are only three left among the people who are alleged -- or the alleged
2 co-perpetrators. There are only three of them; Rafiki, Tchaligonza and Thomas
3 Lubanga. All the others are deceased.

4 Necessarily that has an impact on the trial. We put it to you, Mr President, that you
5 have to show vigilance, such that the fact that all these people are deceased does not
6 harm the conduct and evaluation of the responsibility of Bosco Ntaganda.

7 The Prosecution also yesterday in its opening statement mentioned the motivation, a
8 motivation linked to economic gain and the possibility of regaining power. And I
9 have to say already at this stage that the evidence presented, both by the Prosecution
10 and by the Defence, will reveal a completely different picture concerning the
11 character and motivation of Bosco Ntaganda.

12 We're also presented with organisational charts, org charts, military organisational
13 charts. The soldiers love them. However, military organisational charts contains
14 persons who are identified as commanders, persons who are identified as officers, the
15 staff officers, lines of command and also staff lines as well.

16 The Prosecutor presents an organigram which makes light of military organisational
17 charts. And I would take advantage of the opportunity to tell you that these
18 organigrams -- well, there were such organisational charts in 2003, but the one that
19 the Prosecutor is going to put forward to you -- well, we're going to present
20 something very different to that because these organisational charts, even if they were
21 planned, the chart presented by the Prosecutor, which says, well, in 2002 there were
22 these lines like this. Look very nice. A person there with a great nasty commander
23 at the top called Bosco Ntaganda.

24 Well, it's much more complicated than that situation, I can tell you, because when the
25 FPLC was created officially, when Mr Ntaganda was appointed chief -- deputy chief

1 of staff, the situation was completely different. There were three appointments at
2 the start and afterwards the appointments were done one after another with a view to
3 coming to an organisational structure which was as efficient, effective and organised
4 as a state army.

5 That was never the case. But I am not saying that the FPLC was not organised
6 because they were indeed organised. There was also reference to a logbook and
7 communications. We would like to say, Mr President, that this evidence is evidence
8 that is important and that we will also use, but we have to put it in context and you
9 have to understand it. It is very easy to read a sentence from a logbook and
10 misinterpret it if you do not understand the context and if you do not understand
11 military affairs.

12 Furthermore, when it comes to communication, we have to know that the phonic,
13 which is the high frequency communication mechanism, it was a means of
14 communication, but there were other means of communication. And this shall be
15 important in the trial.

16 The Prosecution also referred to certain military terms. I will spare the Chamber
17 those terms which I can hardly pronounce. The Prosecution gave its interpretation
18 of those sentences, taking by the hand or seizing by the hand and so on. We are
19 going to give you interpretations and explanations of those same sentences and
20 expressions.

21 The Prosecution talked about the attacks. And I will not dwell on those because the
22 only description of the attacks yesterday will require from the Prosecution an
23 immense volume of evidence to which we shall respond.

24 But the Prosecution referred to Mongbwalu as the golden prize. And we would like
25 to respectfully say, Mr President, that the evidence will show the contrary because

1 Mongbwalu was not the golden prize. There was a mine in that area, but which had
2 been dysfunctional for some time, so this was not the reason why operations were
3 carried out in Mongbwalu. But there are reasons, and these reasons will be
4 explained to you in the evidence.

5 The main reason is that Mongbwalu was the main headquarters of the APC. And
6 the second reason, which is also as important as the first, is that there was an airport
7 in Mongbwalu. There was an airstrip there and it had to be captured. We are
8 going to present to you the evidence and the military facts as they are.

9 The airport had to be captured, otherwise the APC would be able to resupply its
10 troops and relaunch an attack against Bunia. So there was a strategic objective in
11 Mongbwalu, but it was not the golden prize. This gives the wrong motive for the
12 attack.

13 The Prosecution also repeatedly used the word "children." Mr President, when you
14 look at the situation in the Democratic Republic of the Congo, and even in Africa, the
15 word "child" really does not have the same meaning as we probably have in this part
16 of the world.

17 The children in those parts of the world may well be 30 or 40 years old. So when
18 you see documents with the word "child" or "children," and the Prosecutor tells you
19 these are children, Mr President, take the time to assess the real meaning of that word
20 "child."

21 And lastly, there is an observation regarding what my learned colleague said. She
22 said you will have the Defence evidence, but you do not have to believe it. They
23 provided video evidence. But I would like to ask you, Mr President, that the
24 Chamber has to be very alert, you have to assess the reliability of a video that was
25 made at that time and compare it with evidence that is given testimonially.

1 So the Pre-Trial Chamber did not accept the argument of the Prosecution that the
2 Defence position was a masquerade.

3 Now I will talk about the fairness of the proceedings. There is an important point
4 that has to be pointed out because the Prosecution referred to the fact that the
5 Chamber handed out a decision indicating that there were reasonable grounds to
6 believe that Mr Ntaganda had been involved in attempts to interfere with certain
7 witnesses.

8 This is a very important issue for us, first of all, because the basis on which this
9 conclusion was arrived at is very instructive to us, and in the coming days and weeks,
10 we will remedy this situation by carrying out an in-depth analysis of some of the
11 evidence.

12 But there is a more important fact. Within the framework of the cases brought by the
13 Prosecution, they mention actions of intimidation. The Prosecution made several
14 allegations. These confidential allegations, most of them remain confidential and ex
15 parte, but we have to note, Mr President, that the Chamber received that information,
16 but the Defence did not have the information. We have to bear in mind that those
17 allegations of the Prosecution concern witnesses who will come and testify in this case
18 and we still do not have the information that will enable us to cross-examine them.
19 This is very worrying for us, and it is a great concern because we want the trial to be
20 very fair, and the evidence from those witnesses should not undermine the
21 assessment of the evidence.

22 There is something I am not going to dwell upon today, that is the fact that Mr
23 Ntaganda even probably tried to interfere with certain Defence witnesses. This is
24 very worrying to us, that is particularly the manner in which the conclusion was
25 reached. We did not carry out any assessment on this procedure leading to that

1 conclusion.

2 Regarding the disclosure of evidence, I have a few words to say. There are filings
3 and ongoing litigation on certain issues, but I'm not going to elaborate on that, but it
4 is important for the Defence to have that evidence. The Defence has to have that
5 evidence. It has to be disclosed.

6 I also want to underscore the fact with all due respect that there has been a great
7 number of ex parte disclosures, ex parte materials, ex parte filings, and we do not
8 imagine how a trial can be fair with so many ex parte filings seen by the Chamber but
9 not seen by the Defence. We are aware, Mr President, that you will do everything to
10 ensure that the trial is fair, but there is a principle according to which justice must not
11 only be done, but must be seen to be done. So what are we to think given the
12 number of ex parte filings made to the Chamber without the Defence knowing about
13 it?

14 Now, regarding investigations, we must have the possibility of investigating. We
15 have made urgent appeals, particularly given that witnesses will start appearing.

16 Now, regarding the assessment of evidence, there is the importance of fully
17 considering the circumstances of the specific moment, that is the context. My
18 colleague Mr Boutin will elaborate on that.

19 There is the importance of considering the evidence with a minimum of military
20 context. It is necessary to understand the profession of the military. Unfortunately
21 the Prosecution has been acting -- of calling a military expert. The Defence will call a
22 military expert for the purpose of enabling the Chamber to assess the evidence linked
23 to military activities, military ethics, and military actions so that you should be better
24 placed to assess the evidence.

25 This is very important for us. There is also the importance of taking into account

1 cultural differences. I would like to submit respectfully, Mr President, that if the
2 Chamber assesses the evidence from the point of view of their own countries, just like
3 us, if we look at it from an occidental point of view, I would like to point out that
4 there are significant cultural differences between what happened in Bunia in 2002 and
5 2003 and the way we see things. We are not talking about cultures that are better or
6 worse. That is not the case. The cultures are simply different. Something that
7 may seem to be insignificant in Africa can be very significant here.
8 Before moving on to my colleague, I would like to close with documentary evidence.
9 I would like to appeal to you, Mr President, your Honours, the Prosecution
10 announced that they will be filing Bar table motions and we would like to appeal to
11 you that when a document is presented not through a witness, but by Bar table
12 motion, if a witness could have been used to present that document, its probative
13 value has to be affected, it has to be taken into account. And before presenting such
14 a document, the Prosecution must explain why they wish to introduce that document
15 without a witness and in sufficient time for us to be able to respond.
16 I will now hand over to my colleague Mr Luc Boutin, who will continue on the other
17 issues. Thank you, your Honour.

18 PRESIDING JUDGE FREMR: Mr Boutin, you may proceed.

19 MR BOUTIN: Thank you, Mr President, your Honours. This is the first
20 opportunity that I have to address the Chamber. It is a privilege for me to be here on
21 behalf of Mr Ntaganda and to be his voice during this trial with the rest of the team.
22 My presentation I intend to cover some issues that we believe are necessary to be kept
23 in mind during this trial. I would first give you an overview and a brief overview of
24 who is Mr Bosco Ntaganda, where he is from, his training, at least his past, some
25 years back before reaching Bunia. I also would like to make some comments

1 pertaining to the assessment of the evidence, reliability, credibility, probative value.
2 Some very general comments.
3 Obviously my intent is not to pretend that I can teach anything to professional judges.
4 I've been in this business so long that I know by now that it's not wise to do so.
5 However, we believe that because of the context in which this matter is to unfold, it is
6 important to as a reminder at least to ensure that it is done at this stage.
7 And finally, your Honour, I will like to make a few comments, very brief comment on
8 the issue of child soldier. They will be general remarks in scope, but we believe that
9 those remarks need to be made at this juncture.
10 Mr President, I'm a French Canadian. I speak with an accent, a thick accent both in
11 English and French, so if you allow me to move to my mother tongue so I can express
12 myself in an easier way and fashion.
13 PRESIDING JUDGE FREMR: For sure.
14 MR BOUTIN: (Interpretation) Thank you, Mr President.
15 Who is Bosco Ntaganda? As I have said, it is not my intention to give you too many
16 details about the life of Mr Ntaganda. As you already know by now, Mr Ntaganda
17 is neither a Hema or an originaire of Ituri. There are more than a dozen ethnic
18 groups in Ituri. The Hemas and the Lendus represent about 40 percent of the
19 population. The Lendus are more numerous and the Hemas have historically been
20 dominant.
21 Mr Ntaganda is not a member of any of those two groups. He is a Tutsi from north
22 Kivu. He was born in 1973 and he grew up in the Masisi region in north Kivu in the
23 DRC which at that time was Zaire.
24 The Tutsis of that region, unfortunately throughout history were subjected to
25 institutional discrimination either inflicted on them by the Mobutu government or

1 others. So you had problems of access to education for Mr Ntaganda, which was
2 limited just like for many people in his region.

3 In the early '70s, the movement of Paul Kagame, that is in the beginning of the '90s,
4 that is the Rwandan Patriotic Army, which of course later became the government in
5 place in Rwanda, that movement of Rwandan exiles recruited members from the
6 entire region. Bosco Ntaganda, at the age of 17 years, voluntarily joined the
7 Rwandan Patriotic Front. Mr Ntaganda is a professional soldier. He is not a
8 politician and he has never been one.

9 When he went to the training camp in the Nakivle -- and I will spell that. It is
10 N-A-K-I-V-L-E. That was the refugee camp in Uganda, and that is where Mr
11 Ntaganda received his initial training, his basic training as a soldier.

12 At one point he was selected and appointed as a sergeant after conclusion of his
13 training, that is after a period of seven months. And after that he was appointed as
14 an instructor. And at that time he became what is known as an RSM, regimental
15 sergeant major. And this is generally one of the highest-ranking non-commissioned
16 officers responsible for discipline amongst the troops. This is a very important
17 position in any army.

18 Within the RPA, the training that is given is based on the British model, that is it is
19 based on a national army. It was trained like national armies such as those of Great
20 Britain, Kenya, Tanzania, Uganda and even the United States. We all know the
21 profile of Paul Kagame, even before he became the head of the RPA. He received
22 training in the United States.

23 So, Mr President, your Honours, Bosco Ntaganda received military training in the
24 Swahili language, which was the language used at that time, and then he continued
25 his military career within the RPA until he reached Kigali in 1994, where he was one

1 of the soldiers who liberated the country.

2 Later on in '96, he was transferred to Congo by the Rwandan army to pursue the
3 former Rwandan forces and rebels hiding in Congo. At that time he joined the FDLR,
4 that is the democratic forces for the liberation of Rwanda.

5 Still in 1996, Burundi, Uganda and Rwanda provided military support to Laurent
6 Kabila when he overthrew Mobutu. At that time, Mr Ntaganda was already a
7 member of the AFDL, the democratic alliance for the liberation of Congo, and he took
8 part in the operations. He was assigned to the training centre in Kamanyora. He
9 was the head instructor in south Kivu. And once again, I will spell the location,
10 K-A-M-A-N-Y-O-R-A.

11 Lastly, in 1997, he was promoted to the rank of lieutenant, and he was the head of the
12 instructors of the AFDL in Lubumbashi. And we know that subsequently the AFDL
13 became the Congolese national army.

14 And now we come to 1998. Because of his ethnic belongings, Ntaganda was chased
15 out of the Congolese armed forces. He returned to his home in Kivu and joined the
16 RDC of Mbusa Nyamwisi and others. These are names, your Honours, that you will
17 hear frequently in the course of this trial.

18 In 1999 there was a division within the organisation that he had joined. Bosco
19 Ntaganda then chose to follow Wamba Dia Wamba and his group to Kisangani
20 within the armed branch of the military, the APC. This is once again an acronym
21 that you will hear again and again.

22 And he took part in the war through and whilst Rwanda was giving itself over in the
23 Kisangani area. And he was in fact injured in the process and had to go to Uganda
24 to seek treatment. And it was in July of the year 2000 that Bosco Ntaganda went
25 back to Bunia. He was joined there -- or he joined the APC there. And the

1 headquarters of the APC went from Kisangani to Beni at that time. The APC at the
2 time was operating in Ituri with the support of Uganda.
3 Bosco Ntaganda and other Hema fooled into disgrace with their Chief Wamba Dia
4 Wamba for reasons that is not necessary for us to cover during this presentation but,
5 essentially, Mr President, there were a number of ethnic prejudices within the ranks
6 and these prejudices were omnipresent, which meant that a group of officers of the
7 APC, up against such a situation and in view of the violent reprisals that Wamba Dia
8 Wamba was carrying out on some of his officers, Bosco Ntaganda went out to seek
9 hiding in the bush and was to be joined by hundreds of soldiers from his group who
10 were also disillusioned with the APC at the time.
11 You will have heard about the Chui mobile forces. You will have heard that name.
12 That is the group known by this name, which is essentially a group without any
13 structure, without any formal form of command. And in October of the year 2000 at
14 the initiative of Uganda and President Museveni, Bosco Ntaganda went to Uganda
15 with Floribert Kisembo and approximately 700 other individuals, soldiers in order to
16 follow training at the Kyankwanzi camp and also at the Jinja camp, near Kampala.
17 This training, alongside with the UPDF, the Ugandan forces notably, lasted for nine
18 months. However, it was in July 2001 that the -- that Uganda incarcerated Mr Bosco
19 Ntaganda for a number of months on the basis of a number of very vague allegations.
20 And it is only in March 2002 that his release was secured. And at that time he was
21 able to return alone to Bunia.
22 In the meantime and during his time in detention, of course, the other soldiers who
23 had accompanied him were deployed in a number of locations, mainly in the
24 Équateur province in order to join up with the MLC under Mr Jean-Pierre Bemba.
25 Those soldiers who were also disillusioned of their situation and being far afield from

1 Ituri and who were commanded by Floribert Kisembo, he who would become chief of
2 staff of the UPC/FPLC four years later, so these soldiers went back to Bunia in May of
3 2002. And it was then and there that Mr Ntaganda saw his fellow soldiers or
4 companions again, those he had trained with.

5 And we will see subsequently that in September 2002, the FPLC was officially set up.
6 Bosco Ntaganda was then appointed deputy to Floribert Kisembo, he who had a few
7 months earlier returned in the company of the soldiers under his command.
8 So Mr Ntaganda is appointed deputy chief of staff for operations and military
9 organisation.

10 In the year 2002, Mr Ntaganda joined the UPC/FPLC because he believed in the
11 objectives of the organisation. And what he attempted to do was to set up an
12 organised and disciplined force capable of fulfilling military operations in a
13 successful manner against combatants and against military targets.

14 We will attempt, and I hope that we will be in a position to give you an insight into
15 who Mr Bosco Ntaganda actually is. He has been depicted as a sanguine torturer,
16 somebody who has acted without any restraint whatsoever during military
17 operations. And the evidence will show, Mr President, your Honours, that the
18 underlying premises of the Prosecution theory, notably that he is a blood-thirsty
19 military soldier is quite false.

20 Mr Bosco Ntaganda's actions, because of course it is he who we are trying in this case,
21 should be assessed in minutia within the context itself, not only political but also
22 military and the situation in Ituri at the time.

23 And this brings me to my following point, Mr President which, Mr President, brings
24 me to my following point: The context, the importance of placing the evidence that
25 you will hear in its context, in its own context, that is to say, the ethnic context, the

1 political context and the military context.

2 Before 1999, Mr President, your Honours, the causes of the conflict were ethnic in
3 nature between Hemas and Lendus, but this is still matter for debate. However,
4 from the year 1999, the objectives of the combat was not or were not ethnic in nature,
5 they were essentially political in nature, and by virtue of this, they were military. So
6 ethnicity as such was not the determining factor or element in the conflict in Ituri at
7 that time, and evidence will be brought in this regard by an expert as to the context
8 and he will give you further information.

9 Now, as to the political context, there was an absent functioning Congolese state since
10 the overthrow of Mobutu in 1997, there was no such state. The Ugandan forces has
11 intervened in the meantime in Ituri. And at a certain time the conflict had become
12 international in nature because a number of countries had intervened.

13 So there were a great number of troops present. Some of them were exploiting
14 ethnic tensions that were already in existence in furtherance of their own agenda, and
15 there was a lack of security which led to the creation of auto defence groups and that
16 were autonomous in nature whether they be in the villages or communes or either in
17 the farms or in areas that were for the most part Hema or even Lendu, because the
18 Lendus also set up their own militia.

19 I'm trying to make sure, Mr President, that I stay within my allocated time slot.

20 So I was talking about the political context, Mr President. And you will hear
21 evidence to the effect that there was incessant or continuous combat, political combat
22 between the RCD-K/ML and other political groups or political military groups. The
23 RCD-K/ML was constantly in the sights and was constantly the source of internal
24 tension, was constantly the source of political infighting amongst the various factions.
25 And at the time the RCD-K/ML was still supported by Uganda and controlled a good

1 area within Ituri.

2 There was another political division that occurred within the group and our
3 understanding of the situation following the analysis of the documents that have been
4 disclosed to us is that the UPC has essentially filled a gap or made the most of a
5 political gap or failing in view of the instability that was reigning at the time and the
6 effervescent situation.

7 So to say or to contend that the UPC and its military group had a very specific plan to
8 kill civilians, Lendus, to make some money, well, we believe, Mr President, that in the
9 light of the evidence that you will hear and in a good assessment, you will see that
10 this is not the case. An analysis of the context is very important and one particular
11 fact. We will recall that in the year 2002, the RCD-K/ML and the APC and armed
12 forces of Congo set up an integrated force in Beni in order to support the Lendu
13 militia throughout the Iturian region, which also comprised the militia, the APC and
14 the allied Lendu militia in the Mongbwalu area notably and other areas of Ituri.

15 This is a contextual factor that is very important in nature and that should be
16 considered by the Court, because it really does change the state of affairs, the
17 equilibrium that was in place at the time. And this might enable us to better
18 understand why things unfolded in 2002-2003 as they did.

19 And to this end of course the Defence, as you will have understood, has a very
20 different reading to the situation -- of the situation to that of the Prosecution.

21 The aim of the UPC was to take the political control, the military control of Ituri, to
22 defend the population from the massacres organised by the RCD-K/ML and the APC,
23 its army. These massacres upon the population, these operations were fulfilled with
24 the support of the government from Kinshasa. And evidence will show that at the
25 time there was a rapprochement between UPC/FPLC and RCD Goma that at the time

1 was very close to the Rwandan government in Kigali.

2 Evidence will also show in our opinion that even though there was an attempt to set
3 up a very structured military structure, the result was in fact that the UPC/FPLC was
4 never a political military movement with a coherent internal structure. The various
5 ideological fractures, the political and military alliances and the various interferences
6 in political nature, of a political nature from outside had an impact on the functioning
7 of the UPC/FPLC, and you need to take account of this in the assessment of the
8 evidence, Mr President, your Honours.

9 As an example, and there are a number of examples that I might give, but I shall limit
10 myself to but a few. As an example, even though some self-defence groups were
11 integrated within the UPC, others remained independent during the period under
12 study. And from February 2003, we will see that the leaders of the UPC with their
13 staff and their troops were affiliated to the FPLC whether to join other groups or to set
14 up their own group. We can think here of the PUC, Madam Prosecutor referred to
15 this yesterday, which is the party set up by Chief Kahwa. We're talking also here
16 about the FARPC, the forces of the Congolese -- Congolese armed forces headed up
17 by Jérôme Kakwavu.

18 Therefore, Mr President, your Honours, the Prosecution does not take into account
19 the complexity of the situation that reigned at the time and the impact of these
20 circumstances on the actions of the UPC/FPLC and Mr Ntaganda himself. The
21 Chamber therefore needs to take into consideration all the actors on the scene at the
22 time.

23 Now briefly, rapidly, Mr President, your Honours, I am going to move on to my next
24 point, that is to say the assessment of evidence by the Chamber. And of course, we
25 are not talking here about giving any lessons to anybody, but one should warn the

1 Chamber that we in the Defence consider that there are a number of elements that are
2 very vital when assessing the evidence and the manner in which this evidence should
3 be assessed and as to its probative value.
4 Hearsay, for example, well, before this Court hearsay is admitted. You will be
5 hearing hearsay at a second, third or fourth level to such an extent that it is impossible
6 to say precisely what the source of the hearsay is. A number of witnesses are to be
7 called, and you will be up against this difficulty I would say in the majority of the
8 cases with most of these witnesses what I call composite scenarios where for all
9 practical means it is impossible to determine what -- the story that the witness is
10 recounting, whether that person actually lived that story, because the story is
11 actually -- actually comprises a number of piecemeal, pieces of evidence that have
12 been reconstructed to make a one. These are elements that you will need to be
13 taking into account.
14 Of course, we need not underscore the fact that confusion in war zones means that
15 witnesses and their memory can be affected. Also, trauma has an impact on the
16 witness's memory, and we will talk about that later on.
17 Mr President, this brings me to discuss the situation and the assessment of the
18 evidence. And here I'm talking about insider witnesses. In Canada, when we find
19 ourselves up against criminal groups and witnesses who have repented, well, we
20 consider them as insiders, and we all know that whoever has a minimum of
21 experience in this field that there will be a real danger of collusion. And in the
22 particular case, this particular case of insiders in a military context, it is even more apt
23 because they know each other and they might still be in contact.
24 The Defence intends to during its cross-examination cover these various elements,
25 because the establishment of the truth depends upon this. But, of course, the Court

1 and the general public has to know where those individuals come from.
2 Of course, there shall be total immunity for some of these witnesses, not only at the
3 level of the ICC, but also at a national level. And also it is problematic for us and it
4 is an element that can have a very important influence on the testimony of an
5 individual and on the probative value of their testimony and their credibility, and we
6 intend to raise this issue.

7 As my learned colleague just underscored, some of the witnesses will be testifying in
8 open court, and it is problematic in our opinion. I would even go so far, Mr
9 President, as to say that for some of these witnesses, some of these insider witnesses,
10 and by virtue of their training and their profession, they are experts in fabrication, in
11 providing false information and lying.

12 Now, as for the ordinary witnesses, your Honour, there is also a danger of collusion, a
13 real danger, and this is not a fantasy on the part of the Defence. It is just merely that
14 common sense shows that people who have family ties or who hail from a small
15 community, who have been approached by pressure groups, whether they be political
16 in nature or other in order to recount their story, well, this means that doubts can
17 come to light as to the probative value of their story. And some of these groups set
18 up organised campaigns in order to provide false information to the community.
19 They might be activists and pursuing their own agenda. But one has to ask oneself
20 the question, when a witness is testifying, as to where he or she comes from, have
21 they been under any political or social pressure or any pressure of any form within its
22 community?

23 And lastly, Mr President, I can see that my allocated time slot is virtually over, so I
24 shall bring my presentation to a close on this last point. My learned colleague, Mr
25 Bourgon, underscored the problem associated with the assessment of pressure groups

1 and documentary evidence. We know that these studies have an undeniable social
2 value and, of course, I would be the first to admit that. But it still remains that these
3 empirical studies in the absence of any corroboration by one or two individuals who
4 are credible and reliable in nature and to have a personal and direct knowledge of the
5 events, well, as such, these reports have a very low or low probative value.

6 Now, as to the individuals who will be testifying in support of these studies, and I call
7 them the special witnesses, because I have nothing else to call them, they're called
8 indirect witnesses or expert witnesses, they are neither one nor the other. But I
9 submit to you, Mr President, your Honours, that these individuals with all the good
10 faith that might be attributed to them when they come to speak before the Court will
11 in fact be advocates. They will be lobbying. They will come to sell their assessment
12 of the situation. And without assessing the direct evidence that will be brought
13 before the Court, we are of the opinion that the probative value of the evidence
14 brought by these witnesses is very low indeed.

15 I had another point that I wanted to broach, Mr President, your Honours, but in view
16 of the advanced hour, I shall finish now with these remarks, and I thank you for your
17 attention.

18 PRESIDING JUDGE FREMR: Thank you very much, Mr Boutin. So it means we
19 reached half of the Defence presentation. We will break now and we will resume at
20 2 o'clock.

21 THE COURT USHER: All rise.

22 (Recess taken at 12.31 p.m.)

23 (Upon resuming in open session at 1.59 p.m.)

24 THE COURT USHER: All rise.

25 Please be seated.

1 PRESIDING JUDGE FREMR: Good morning, everybody. During the
2 opening -- sorry, during the previous session we had listened to Mr Bourgon and
3 Mr Boutin who presented the first half of opening statements on behalf of Defence.
4 And now we are going to continue with the second half.

5 Madam Bensouda, you probably want to address the Court please.

6 MS BENSOUA: Thank you. Thank you, Mr President. If I may just make a
7 small adjustment for those who are attending for the Office of the Prosecutor this
8 afternoon. Representation remains the same, but Kristy Sim, assistant trial lawyer, is
9 replacing Marion Rabanit. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: Thank you very much, Ms Bensouda.

11 So, Mr Bourgon, who will be the next speaker on behalf of the Defence?

12 MR BOURGON: (Interpretation) Thank you. I will be next.

13 Good afternoon, your Honour. Good afternoon, your Honours. I would also like
14 to take the opportunity to let you know of a change within the Defence team this
15 afternoon Maître Martineau, Isabelle, is joining us and replacing the intern, Victor.

16 PRESIDING JUDGE FREMR: Okay. Well noted.

17 MR BOURGON: (Interpretation) Three of us will speak this afternoon. I'm going
18 to start speaking about the case for the Defence within this case and, as mentioned
19 this morning, we would have preferred to be more ready in order to tell the Chamber
20 in a more precise way with regards to the evidence we intend to present and to make
21 comments on the evidence which will be presented by the Prosecution, but the
22 Prosecution has not let us know the details of the evidence it intends to introduce via
23 individual witnesses. So I think that the Chamber can understand our position in
24 this case.

25 I will be brief. It covers the essential part of the charges against Bosco Ntaganda.

1 First of all, your Honour, there is the issue concerning the UPC and the FPLC. Our
2 position, which will be developed with evidence, is you have to make a distinction
3 between the two movements. First, the UPC was a -- the FPLC was a -- excuse me,
4 the UPC was a political movement, while the second, the FPLC, was an organised
5 armed group, which was obviously part of the UPC. Having said so, it is important
6 for us to make a distinction between the acts of both groups and also where it
7 concerns their precise objectives.

8 For us, the objective of the UPC as a military movement, we would put it to you -- I've
9 made an error against -- that's the second time I've made this mistake. Please, excuse
10 me. As a political movement the objective was to reestablish peace and security in
11 Ituri and to put an end to the numerous crimes committed against all Iturians. These
12 crimes were sponsored, in our opinion, by the RCD-K/ML. They were committed by
13 the APC and its armed -- its armed wing of -- armed wing of RCD-K/ML and they
14 were committed not only by the APC acting on its own but also with its allies.
15 These allies at the time were the Lendu militias. They were called Lendu combatants.
16 And these crimes committed by the APC and the Lendu combatants were committed
17 with the assistance of the central government of the Democratic Republic of the
18 Congo.

19 This is the conclusion that we think the Chamber will come to at the end of the trial
20 on the basis of the evidence that shall be heard.

21 Now, this objective of the UPC as a military movement could only -- could not just be
22 accomplished like that. This objective implied -- first of all, it involved driving the
23 APC from Ituri. This objective also was to replace RCD-K/ML as the de facto
24 government in Bunia.

25 When my colleague this morning spoke about filling the gaps that's what they were

1 speaking about. Our position, indeed, is that the evidence will demonstrate that
2 there was no common criminal plan within the UPC.

3 The policy of the UPC, and here I say you have to make a distinction between policy,
4 it was one of reconciliation and justice for all without taking into account differences
5 of ethnicity without discrimination. The UPC and, by extension, the armed wing,
6 the FPLC, was not involved in a systematic or widespread attack against any civilian
7 population. You will have understood, your Honour, and here I'm referring to the
8 contextual element of the crime against humanity.

9 My colleague, Maître St-Michel, will have the opportunity of speaking more about
10 this when he deals with purely legal aspects of the case.

11 Our aim, your Honour, on the basis of the evidence, which will be presented on both
12 sides of this Chamber, concerns Bosco Ntaganda. This evidence will show that he
13 was a professional military officer who adhered to the objectives and policy of the
14 UPC and who became the deputy chief of staff of the armed movement, the FPLC.

15 The evidence shall also show that as deputy chief of staff of the FPLC, Mr Ntaganda
16 aimed at the creation of an armed group which was effective, organised and
17 disciplined and which was capable of supporting military operations with success
18 against other armed groups.

19 Our aim, as well, is to show that Mr Ntaganda punished members of the FPLC who
20 committed breaches or violations when he had the possibility to do so.

21 In order to be more precise, Mr Ntaganda was involved in certain attacks, which are
22 named, they are among the charges brought by the Prosecutor. One of these attacks
23 is the attack on Mongbwalu. However, the involvement of the attack in Mongbwalu
24 is far from that which is alleged by Prosecution. We think that the evidence will
25 show that the attack on Mongbwalu was divided up into three segments.

1 During the first segment, Mr Bosco Ntaganda had no involvement in that, or he only
2 had involvement in it in the second segment where he issued orders without being
3 present. While with regard to the third part or segment, he was present, but here I'm
4 talking about the third part, the Sayo.

5 Our position is that during these activities Mr Ntaganda always led the military
6 operation of the FPLC.

7 With regard to military objectives and people who took part in the hostilities, in no
8 case did he target people who were civilians.

9 Now, where it concerns the alleged attacks, attacks alleged by the Prosecution on
10 Kobu, Bambu and Lipri, we state that the evidence shall show that he had no
11 involvement in those attacks.

12 The FPLC military operations were directed at armed groups and, in particular, the
13 group mentioned earlier, the Lendu combatants. And the evidence shall also show
14 that the Lendu combatants were involved -- I'm looking for the right word here.

15 There was cannibalism that was being practiced among the Lendu combatants.

16 As regard to the military forces of the FPLC, they always carried out their military
17 operations against people who were fighting, taking part in the fighting, people who
18 were fighting against them. And the evidence will show how the operations were
19 carried out by the APC with the combatants who were the target thereof.

20 Our position is also that the evidence will show that when attacks were carried out by
21 the FPLC, attacks during which support weapons were used, the support weapons,
22 you will hear, there were two types of them, direct ones and there are indirect ones,
23 those are military notions that we will develop during the trial, but the use of support
24 weapons within the FPLC was organised and directed only at military objectives and
25 not at civilian population. And the evidence will show the care the FPLC took to use

1 people who were well trained, who had been trained in Rwanda. They were among
2 the most educated people within the FPLC because the use and firing of support
3 weapons requires careful manipulation and use thereof.

4 I'm now coming to my conclusion on the part of child soldiers. This is a sensitive
5 issue. And why? Because what we've heard this morning from the Legal
6 Representatives of Victims we see that you are in the presence of two diametrically
7 opposed theories.

8 What's the truth in it? In the Lubanga case, the Chamber came to the conclusion,
9 despite the absence of direct proof of child soldiers, that there had indeed been
10 recruitment and use of child soldiers. In appeal, this verdict was confirmed, but it's
11 useful to recall that in appeal there was a dissenting opinion. One Judge out of the
12 three, and this is not banal, that person would have acquitted him of all the charges.
13 And that's not a banal fact. Obviously, you are not bound by it, the Chamber is not
14 bound by the conclusions of the Lubanga case. Furthermore, the role of Bosco
15 Ntaganda within the FPLC is completely different to the role of the president of the
16 political movement that the UPC was.

17 In light of these facts and the evidence that shall be heard, we put it to you that within
18 the FPLC, and within the UPC, there was not a policy of recruiting, or conscripting, or
19 of use of soldiers under the age of 15. This was not UPC policy, nor FPLC policy.

20 Is it possible that young persons under the age of 15 could have got in and could have
21 been part of it? Well, we think not, but if that was the case, we respectfully would
22 like to put that the evidence will not make it possible to establish an intent, whether
23 on the part of Bosco Ntaganda or on the part of anyone else.

24 And, in particular, we think that the evidence shall show that among the bodyguards
25 of Bosco Ntaganda, and people have spoken a lot about that so far, and this is a term I

1 have a lot of difficulty with this, escorts, the group of escorts, this is a group which
2 you will see the way in which these groups are composed, who is responsible for
3 them within these groups.

4 Our position is that there were no child soldiers therein. This is our account in
5 response to the Prosecution's given yesterday.

6 It's difficult for me to put myself in your position, your Honours, because these
7 positions are really opposed to each other and that's the reason why we insist so
8 firmly on the need that there is to evaluate and assess the evidence with the greatest
9 prudence and precaution.

10 And having finished this part, I would now like to pass the floor to my colleague, Mr
11 William St-Michel, who will speak about certain precise legal elements within this
12 case. Thank you, your Honour.

13 PRESIDING JUDGE FREMR: Okay, Mr St-Michel. As soon as you will be ready
14 you may proceed.

15 MR ST-MICHEL: (Interpretation) Mr President, your Honours, it is indeed an
16 honour for me to address the Court today on behalf of my client, Mr Bosco Ntaganda.
17 My name is William St-Michel. I'm a lawyer and I have been a lawyer of the
18 Quebec bar for over seven years now. I joined the Ntaganda team in October last, in
19 October of 2014.

20 As my colleague, Mr Bourgon, just said, I will, in the few minutes that are allocated to
21 me today, address a major oversight on the part of the Prosecution yesterday.

22 PRESIDING JUDGE FREMR: Sorry, Mr St-Michel. Maybe could you kindly a little
23 bit slow down. I think it would be better for interpreters. Thank you.

24 MR ST-MICHEL: (Interpretation) I do apologise, Mr President. As I was saying,
25 today I shall be addressing a major oversight on the part of my colleague from the

1 Prosecution yesterday, notably the law applicable to some of the crimes with which
2 Mr Ntaganda is charged.

3 And the reason why one of -- the reason why part of the Defence's opening statement
4 is given over to the applicable law with regard to the crimes of which Bosco Ntaganda
5 is charged is simple, a number of grey areas remain.

6 The legal questions that I shall address today are not only theoretical in nature, they
7 are in fact the very *raison d'être* of the case file. The case will be opening in less than
8 two weeks and you will constantly be mulling over the applicable law when listening
9 to the witnesses recounting what they saw of the crimes outlined in the 18 counts of
10 the Document Containing the Charges, and that is why it seems important to us to
11 draw the attention of the Chamber at this juncture to number of legal issues to which
12 special attention should be paid. I am aware that the law can seem dry and arid and
13 I am sure you will be very grateful to me if I am concise and clear, and I shall make
14 sure that I do so.

15 My presentation is divided into three parts. As an introduction, I will broach the
16 importance of the evidence of the elements of crimes in this case, in the case against
17 Mr Bosco Ntaganda.

18 In the second part of my presentation, I will cover some of the war crimes with which
19 Bosco Ntaganda is charged. The Prosecution dossier, as borne out in the great
20 number of war crime counts versus the counts of crimes against humanity, that is 13
21 against 5 is essentially a dossier on the conduct of hostilities. As a result we should
22 remind ourselves of the fundamental legal principles with regard to armed conflict
23 that the Chamber should retain when assessing the evidence.

24 Finally, I will briefly address a number of issues concerning crimes against humanity
25 alleged by the Prosecution. In the cases before the ICC, and this case is no exception,

1 it is tempting to concentrate solely on the responsibility of the accused. This is easily
2 understandable. The status of the individuals appearing before the ICC for the most
3 part is one of political leaders and high-ranking soldiers, and, of course, this leads us
4 to focus our attention quite naturally on the acts and omissions of the accused whilst
5 omitting to concentrate on the details of the crimes charged.

6 However, we should not lose sight of the fact that the criminal responsibility of an
7 accused is dependent first and foremost on the existence of the crimes charged. The
8 burden of the Prosecution does not limit itself to establishing Mr Ntaganda's
9 liability or responsibility, but also to establishing beyond a reasonable doubt that the
10 crimes list in the Document Containing the Charges were actually committed. In
11 order to do this, the facts, if they are established, must all support the essential
12 elements of the crimes.

13 The onus upon the Prosecution is considerable and in this regard no shortcut or
14 diversion is possible. Vague and imprecise testimony will not suffice.

15 The DCC describes the conduct of the soldiers, members of the FPLC in 2002-2003 as
16 intrinsically criminal. The prosecution allegation that the FPLC soldiers committed a
17 series of criminal acts, notably, raping, pillaging, murder, forcible displacement and
18 destruction of enemy property.

19 The work of the Defence during the Prosecution case will not merely limit itself to
20 showing through cross-examination that the various Prosecution theories on Bosco
21 Ntaganda's criminal liability unfounded. But the Defence will also aim to ascertain
22 whether the evidence brought by those who come to testify on the commission of
23 such crimes exposed in the DCC proves the evidence for each of the essential
24 elements of the crimes.

25 Discussing the legal characterisation of conduct or behaviour is a vital area of

1 discussion that cannot be ignored during a criminal trial. If the Prosecution does not
2 bring sufficient evidence of the crimes alleged, you will have no choice but to acquit
3 Mr Ntaganda. It is a difficult decision that can be made.

4 PRESIDING JUDGE FREMR: Excuse me, Mr St-Michel. Sorry to interrupt you
5 again. I know it's unnatural, but please try a little bit to slow down, because it's not
6 easy for the transcript and for the interpreters to follow you. I know if it would be
7 no translation, it would be easy, but, you know, the conditions are the specifics, so
8 please try to respect that. Thank you.

9 MR ST-MICHEL: I thank you, Mr President. And I shall make sure that the
10 interpreter still needs to catch up with the speaker.

11 As I was saying, in view of the emotional presentation given yesterday by the
12 Prosecution, it is a decision that is difficult to be taken by the Chamber, but it is the
13 only decision that would be compliant with the law, and you are, after all, the
14 guarantors of the law.

15 The task of the Chamber is complicated yet further by the facts that the Court's
16 jurisprudence is piecemeal and for some crimes nonexistent. In addition to the
17 crimes of rape and enslavement of child soldiers, of which the basis was challenged in
18 an application filed on Tuesday, I shall not broach this extensively. I am here
19 referring to the crimes alleged under Counts 13, the displacements of civilians as war
20 crimes, and Count 17, attacks against protected objects as a war crime.

21 This is the first time in the history of the Court that an accused has been charged with
22 such crimes. In fact, these questions were raised during the confirmation of charges
23 and were analysed summarily by the Pre-Trial Chamber. You are not bound,
24 however, by the interpretation of the PTC. It is stated in Article 21 and it is dictated
25 by logic. In fact, the legal analysis conducted by a preliminary Chamber or Pre-Trial

1 Chamber has limited scope. The Pre-Trial Chamber established a legal framework
2 merely in order to determine if the Prosecution has brought sufficient evidence giving
3 reasonable grounds to believe that the suspect committed crimes, the crimes that he is
4 charged with.

5 During the Confirmation of Charges evidence is minimal, and there is no justification
6 for an in-depth analysis of the applicable law. Rather, it is the trial proper that lends
7 itself to a discussion of applicable law concerning the charges against the accused.

8 Mr Ntaganda wants these legal debates to take place not in the hope of ridding
9 himself of criminal liability on purely technical grounds. Quite the contrary.

10 Mr Ntaganda would like these debates or discussions to take place to ensure that the
11 judgment against him is based on solid legal foundations, and that is the most
12 legitimate of rights for an accused.

13 I would like now to talk about the various war crimes of which he is charged.

14 Firstly, I would like to talk about Count 3, that is attacks against civilians. For the
15 most part the Defence shares the interpretation provided by the Pre-Trial Chamber,
16 and I will only underscore three points. Firstly, only the acts committed before the
17 civilians fell into the hands of the attacking forces are mentioned. Any acts
18 committed after the military operations cannot be used as evidence of an attack.

19 Secondly, the acts committed far from the combat areas are excluded from the scope
20 of application of the crime of attacks upon civilians in Article 8(2)(i).

21 Thirdly, any conduct may constitute an act of violence in the furtherance of the crime
22 of attacking civilians in as far as the perpetrator adopts such conduct as a method of
23 combat and not for any personal agenda.

24 However, there was a remark made by the Pre-Trial Chamber in its Decision on the
25 Confirmation of Charges which was repeated by the Prosecution in its filing 403,

1 which was the filing accompanied the filing of the updated DCC. And this is,
2 however, cause for concern with the Defence. This notably is the multi-faceted
3 nature of the crime alleged under Count 3.

4 And here I have quoted the relevant paragraph of this document, and you will note
5 that the Pre-Trial Chamber refers to one or more acts. So it talks about one or more
6 acts of violence, and it says that it would suffice to be qualified, and it talks about the
7 Rome Statute and the elements of the crimes. As a comparison, the crime of attack
8 against protected property can only be committed against one building.

9 Now, the objective behind the crime of attacks against civilians is not to protect a
10 civilian, an individual, but the entire civilian population as such. In summary, the
11 crime of attack upon civilians is made up of a multitude of illegal acts committed by a
12 multitude of individuals against a civilian population.

13 I would like now to give you a few observations on the crimes that I talked to you
14 earlier on and which have never been explored in the jurisprudence of this Court,
15 notably, the crime of attack upon protected possessions. It says, it is said that this
16 should -- that this attack must be led against a protected building. The Prosecution
17 seems to be adopting a rather broad view of this. Indeed, in the DCC it would seem
18 that in the opinion of the Prosecution, acts of pillaging against the health centres and
19 other matters that were committed would be sufficient to establish the crime of attack
20 against protected objects.

21 The Defence is worried about this broad interpretation which makes pillaging and
22 murder superfluous and undermines Article 8(2)(e)(iv). In the opinion of the
23 Defense and consistently with international law, Mr Ntaganda cannot be declared
24 guilty of this crime against protected property if the perpetrator did not attack the
25 integrity of the property.

1 The second crime that was never alleged is the displacement of civilian -- members of
2 the civilian population. Some of the acts alleged against Mr Ntaganda are both
3 crimes against humanity and crimes of war. And you have, for example, the
4 allegations of murders and rapes. In most cases there is no significant difference
5 between the essential elements of crimes against humanity and crimes of war, except
6 that each of those crimes was committed within a different context. In fact, there is a
7 notable example, Counts 12 and 13, the crime against humanity and forced
8 displacement of members of the civilian population. The essential elements are
9 different in certain aspects and not in others.

10 Regarding war crimes and the displacement of civilians, the wording of Article 8 is
11 clear, the text of the elements of the crimes is clear. There is a crime only if there is
12 an order to displace the civilian population. The Pre-Trial Chamber adopted a
13 different position, and with all due respect, that decision is not binding on this
14 Chamber.

15 The evidence will reveal that there was never an order from Bosco Ntaganda or
16 anyone else from the FPLC to displace members of the civilian population, and in the
17 absence of any order there is no other choice than to acquit Mr Ntaganda of this crime
18 under Count 13.

19 The crime against humanity of transferring the population, contrary to the war crime,
20 the evidence of the presence of the people concerned in the region was not legal.

21 The legality of the residence of these people assumes that the people residing in that
22 area were residing there legally. In the case where a civilian population is chased
23 out of a village and another population settles in that village, can we say that this new
24 population is legally settled? This is the issue in this case.

25 Let us look at Mongbwalu. The evidence will show that the Lendus residing in

1 Mongbwalu at that time were actually living in houses belonging to Hemas who had
2 been chased out by the APC. So the issue of the legality of the presence of the
3 victims in Mongbwalu shall arise.

4 I will now move on to the importance of the characterisation of the armed conflict.
5 The Defence does not contest the existence of a conflict in Ituri. We agree that the
6 Prosecution says that it was a non-international conflict. The position of the
7 Prosecution is more ambiguous. When they submitted the updated DCC on
8 14 November, the Prosecution slipped something into the document.

9 (Speaks English) For the purposes of this case, it is a matter of whether the conflict is
10 characterised as non-international or international, although the Prosecution
11 maintains that it was a non-international armed conflict.

12 (Interpretation) The Defence stated at the time and reiterates today that this does
13 not bind the Defence, so the Defence will only deal with the provisions in the DCC.
14 However, if during the trial the evidence shows that foreign powers exercise control
15 on certain parties in the conflict and the Chamber felt it necessary to recharacterise the
16 charges, this will have legal consequences.

17 The essential elements of most of the war crimes alleged against Mr Ntaganda
18 committed within the framework of non-international armed conflict are the same as
19 with the international armed conflict. However, the Statute and the elements of the
20 crime establish several distinctions or differences involving, for example, the
21 displacement of civilians under Article 8(2)(e)(viii), but this provision requires a
22 specific order.

23 Inversely, the equivalent of this Article for an international armed conflict, Article
24 8(2)(a)(vii) does not have this requirement. Another example is the crime against
25 child -- the use of child soldiers. I would like to draw your attention to the wording

1 of these Articles. There is a major difference.
2 The first one that is international conflict talks about national armed forces, whereas
3 the second simply talks about armed groups or forces.
4 So if the evidence reveals that the armed conflict in Ituri in 2002 and 2003 is an
5 international armed conflict, Mr Ntaganda cannot be found guilty of crimes of
6 enlistment, conscription and use of child soldiers because the FPLC is not a national
7 armed force.
8 I will now conclude with crimes against humanity.
9 Now, regarding the contextual elements, when we talk of the nature of the attack, the
10 Prosecution has made its case known. In the DCC and in the pre-trial brief the
11 Prosecution refers to the attack of the crimes against humanity purely from a military
12 point of view. It is significant that the Prosecution presents the attack as a campaign
13 of political oppression and domination against one ethnic group. So the proceedings
14 will be limited to military issues.
15 The Defence submits that the evidence will show clearly that the attacks were
16 widespread and systematic, whether they were collective or individual, but at no time
17 did the FPLC direct its military operations against the civilian population.
18 In fact, the Defence does not fully understand the scope of the alleged attack by the
19 Prosecution. The Prosecution claims that the attacks against the Banyali-Kilo and
20 Walendu-Djatsi collectivités each was an attack within the meaning of Article 7. The
21 Prosecution really does not trust its own theory because in the alternative it claims
22 that the attack was made up of two attacks in addition to six other attacks launched
23 by the FPLC between August 2002 and May 2003.
24 The proceedings can only be limited to the eight contextual attacks. The evidence
25 will reveal that during the period in the DCC more than 50 attacks were launched by

1 the FPLC and also most frequently by the APC and the Lendu fighters. The Defence
2 will endeavour during its cross-examination to bring out the circumstances of each of
3 these attacks. And the evidence will reveal that considered generally and
4 individually, those attacks were not launched or directed against a civilian
5 population.

6 My last remark will concern Count 10, that is persecution as a crime against humanity.

7 All throughout the trial it will be important to make a distinction between
8 discriminatory conduct and the conduct directed against the enemy force. As I have
9 mentioned previously, the evidence will show that the actions of the FPLC were
10 directed against an enemy force. More particularly, the actions of the FPLC were
11 directed against the soldiers of the APC and against their combatants.

12 Sometimes it is mentioned that the combatants were Lendu combatants. The
13 soldiers attacked individuals participating directly in the hostilities. Any action
14 directed against the combatants was legal and did not involve any discriminatory
15 dimension.

16 Mr President, your Honours, that is the end of my presentation and I will now hand
17 over to my colleague, Maître Grandon.

18 PRESIDING JUDGE FREMR: Thank you very much, Mr St-Michel.

19 And, Madam Grandon, you may proceed.

20 MS GRANDON: (Interpretation) Your Honour, your Honours, my name is Chloé
21 Grandon. I'm a barrister at the Paris Bar and legal assistant for the Defence since
22 November 2014. And it's a great honour to take the floor before you for the first time
23 on this opening day of the trial before -- of Mr Ntaganda.

24 In the time that I have I will address two issues: The modes of liability --

25 PRESIDING JUDGE FREMR: Sorry to interrupt you again. Ms Grandon, the same

1 advice as to Mr St-Michel. You know, we have a translation here, we have a
2 transcript here, so please try to slow down a bit in order to get a really perfect
3 transcript. Okay? Thank you.

4 MS GRANDON: (Interpretation) Please excuse me, your Honour.
5 (No interpretation)

6 PRESIDING JUDGE FREMR: Sorry. Sorry, we don't -- (Microphones overlapping)

7 THE INTERPRETER: A technical issue, your Honour. Please, could that be
8 repeated?

9 PRESIDING JUDGE FREMR: So please, Ms Grandon, could you just kindly repeat it,
10 maybe the last two sentences in order to get the English translation of that. Thank
11 you.

12 MS GRANDON: (Interpretation) In order to introduce my subject on the modes of
13 responsibility, your Honours, I wanted to justify why I wanted to speak about this
14 subject today. And why? Because the approach adopted by the Prosecution is a
15 multi-directional approach which consists of prosecuting Mr Ntaganda on almost all
16 modes of responsibility.

17 This strategy puts you in a situation which is very difficult. You are going to have to
18 choose among these modes of responsibility, the mode which is perhaps the most
19 appropriate, and this calls upon you to show the greatest vigilance because, with each
20 mode of responsibility, there are certain criteria which respond thereto which have to
21 be analysed under the terms of legality of crimes.

22 So I would, therefore, like to say certain words with regards to the principle of
23 legality of crimes on nullum crimen, nulla poena sine lege.

24 This was a concept came up by Montesquieu and mentioned afterwards by Beccaria.

25 And according to this principle, "Only law can set out the sentences for each crime

1 and the right to make criminal laws is exclusively that of a legislator." End of quote.
2 And its corollary, as such, is the principle of strict interpretation of criminal law.
3 Your Honour, your Honours, this principle prohibits the Judge from creating new
4 offensive or from enlarging or extending existing offences. And it is in this way that
5 Mr Portalis, who is a lawyer and a philosopher of French law and one of the drafters
6 of the civil law said that "In criminal matters," it is important -- "there have to be
7 precise laws and points of jurisprudence."
8 The criminal judge, therefore, has to stick to the law without extending the legal texts.
9 And this principle is also set out in Article 22 of the Statute of the ICC, and I quote:
10 "The definition of a crime shall be strictly construed and shall not be extended by
11 analogy. In case of ambiguity, the definition shall be interpreted in favour of the
12 person being investigated, prosecuted, or convicted." End of quote.
13 Because, indeed, only the principle of legality is -- and the predictability of sentencing
14 will prevent judicial arbitrariness and, as such, make it possible for each individual to
15 know whether that person's conduct will call into bear the criminal responsibility or
16 not on that person's part.
17 However, because we are looking at Article 25 of the Statute, the interpretation of this
18 Statute, and Article 25 thereof, is far from being the subject of unanimity among
19 lawyers specialized in international criminal law.
20 And here I would like to say something with regards to the modes of responsibility in
21 the Rome Statute.
22 If the pleadings of this day do not intend to present the interpretation that the
23 Defence makes of each mode of responsibility, there are certain grey areas which
24 persist among some of them and, in particular, with regards to the point at which the
25 responsibility is engaged. And there is lots of debate to be had on that in the coming

1 months.

2 And this uncertainty that there is persists because of two reasons: Firstly, because
3 the drafters of the Rome Statute made the choice of moving away from the ICTY
4 statutes and jurisprudence; and, secondly, because despite 13 years of the service, the
5 jurisprudence of the Court were compared to national systems is still very much in its
6 infancy.

7 In this regard, one could ask questions with regards to the impact in the Rome Statute
8 of legal certainty because, indeed, how can one ask Mr Ntaganda, a Congolese person
9 who joined these armed forces at the first time when he was 17 years old, to know in
10 2002-2003, at the time the acts were committed, the conditions under which his
11 responsibility would be engaged under Article 25(3)(a), for example?

12 And this, while the Rome Statute had only just entered into force and that very major
13 lawyers were still having discussions with regards to these issues and, furthermore,
14 in September 2008 the Trial Chamber II confirmed the charges of an accused in -- for
15 mode of responsibility which wasn't envisaged by the Rome Statute.

16 Furthermore, in light of this first difficulty, the Defence, with full respect for your
17 function, would ask you to show the greatest attention in the applications of Articles
18 25 and 28 of the Statute because each of these Articles in particular reply to very strict
19 conditions and don't allow any jurisprudential creation with a view to violating the
20 principles and fundamentals of criminal law.

21 Your Honour, your Honours, a second difficulty is added thereto, the use that's been
22 made by the Prosecution of these modes of responsibility in the charges against
23 Mr Bosco Ntaganda.

24 Indeed, without being able to identify what exactly the acts and conduct of Bosco
25 Ntaganda was, and with a view to multiplying their chances of a success, almost all

1 the modes of responsibility have been envisaged by the Prosecutor. There are seven
2 modes of responsibility: Direct commission, indirect co-perpetration, order,
3 soliciting or inducement, responsibility of commanders, complicity and attempt.
4 You will agree once this list is made there's not a lot left unless perhaps responsibility
5 for genocide.

6 This, your Honour, your Honours, is the first case in which an accused is being
7 prosecuted on so many modes of responsibility, including as a direct perpetrator, and
8 it's a bit as if Mr Ntaganda's dossier, as put together by the Prosecution, was upside
9 down. The Prosecutor had a target, Mr Ntaganda, and thereafter they drew a line
10 between the target and the crimes committed in Ituri in 2002-2003 for all possible lines
11 of responsibility such that Bosco Ntaganda would not escape the net.

12 However, the minimum that one could be expected from the Prosecution is that it has
13 enough in its case to be -- to be able to say if Mr Ntaganda is responsible under Article
14 25 or 28, how do you expect him to be able to organize his defence if not? And is it
15 possible to do so before a Court where everybody is convicted?

16 By way of consequence, your Honour, your Honours, you have to show great
17 precaution when it comes -- caution when it comes to analysing the facts that are put
18 to you and with regards to the type of responsibility that's allocated thereto.

19 Now, a third difficulty is the use of Regulation 55, because as if that wasn't sufficient,
20 the Prosecution has already filed two applications, the objective of which is to make it
21 possible for you at a subsequent stage of the proceedings to modify the legal
22 characterisation of the responsibility for which Mr Ntaganda is being prosecuted.

23 The modes of responsibility were two previously, direct co-perpetration and direct
24 commission for conscripting of children under the age of 15. In this regard one
25 would note that these are two modes of responsibility which were rejected during the

1 Confirmation of Charges.

2 Without, of course, going into the details today of these applications to which the
3 Defence has already replied, it is imperative to recall today that the trial of Bosco
4 Ntaganda can only be carried out on the basis of modes of responsibility confirmed
5 by the Pre-Trial Chamber.

6 In the case that the Chamber decides on a recharacterisation of responsibility, it is
7 imperative therefore, your Honour, your Honours, that you give the Defence
8 additional time in order to be -- in order to prepare for this new mode of
9 responsibility and to carry out investigations thereon. Proceeding differently would
10 be a serious violation of Article 67(1) of the Statute, which guarantees all the accused
11 be informed promptly and in detail of the charges against them, but also to have the
12 time necessary for the preparation of their defence and more widely the right of each
13 accused to have a fair trial.

14 I would now like to go back to certain modes of responsibility. The first is that of the
15 alleged responsibility as direct perpetrator. You will have noted that the Prosecution
16 during its presentation yesterday stressed the crimes that Bosco Ntaganda allegedly
17 committed personally. This calls for several observations.

18 The first, according to the Document Containing the Charges, the allegations against
19 Mr Ntaganda as a direct perpetrator is limited only to certain crimes. Also, each
20 time that the Prosecution tries during the trial to bring in evidence on other crimes,
21 the Defence will present its objections. This has already happened, because in its
22 pre-trial brief the Prosecution mentions a new murder, that of Colonel Lusala. That's
23 in paragraph 474 of the pre-trial brief. And this murder does not appear in the
24 Document Containing the Charges.

25 And the second observation is that when it's a matter of establishing whether or not a

1 crime was personally committed by Mr Ntaganda, no shortcut can be admitted. Not
2 only all the material elements of the alleged crime have to be shown, but also the
3 evidence that Mr Ntaganda was indeed the person who committed the crime and,
4 furthermore, that he had the intent to do so in this regard. Your Honour, your
5 Honours, the evidence will show that he committed no crime personally.
6 Now, this takes me to another issue, which is that of intent and common plan.
7 Article 30 of the Statute envisages criminal intent at three levels. Firstly, when there
8 is intent when with regard to conduct a person means to engage in the conduct.
9 Also, there is intent in relation to a consequence where a person means to cause that
10 consequence and also when that person is aware that will occur in the ordinary
11 course of events.
12 To put it in other terms, there is either intent to adopt a certain conduct or intent to
13 obtain via a certain conduct a certain consequence or, furthermore, the quasi-certainty
14 that this consequence will occur which is expressed through the term "ordinary
15 course of events."
16 In the last case, jurisprudence seems to link its reasoning to the ordinary course of
17 events around the concept of common plan and it is done in two stages. The first
18 stage is to determine if the common plan is criminal in nature or not, and if the
19 conclusion is negative, then the second stage of reasoning intervenes to determine
20 whether commission of crime is an almost certain consequence of its implementation.
21 As regards the nature of the common plan, the Prosecution has not ceased from
22 saying that the actions of UPC and its armed forces, the FPLC, were controlled by a
23 plan of criminal nature, so the control of Ituri and driving out the non-Hema
24 population.
25 In this regard, and to go back to what my colleague previously said, here we

1 shouldn't confuse constitutional illegality and criminal illegality, because in effect if
2 the UPC did have the objective of taking political control of Ituri, this plan did not
3 include in any way the commission of crimes.

4 Furthermore, with a view to analysing the responsibility of Bosco Ntaganda on the
5 basis of Articles 25(3)(a) and 25(3)(d), which refer to a common plan, it is necessary,
6 your Honour, your Honours, for you to go to the second phase of reasoning, which
7 consists of questioning whether the alleged crimes were a quasi-certain consequence
8 of the policy implemented by the UPC.

9 It's at this level of reasoning that the ordinary course of events notion comes to the
10 fore on this subject. The Prosecution will explain to you that even in the possibility
11 that you will -- that you conclude that the plan had no criminal nature, Bosco
12 Ntaganda's criminal responsibility should be triggered once the plan could not be
13 implemented without it resulting in the commission of crimes.

14 The Prosecution also suggests that the crimes only had to be a possible or probable
15 consequence of the plan to trigger his criminal responsibility. The reality, your
16 Honours, is that the notion of ordinary course of events has a much higher standard
17 than that. It is a notion which was applied in many cases, in the case against
18 Mr Bemba and also the case against Mr Katanga, where he was judged with the
19 recourse to ordinary course of events and made it -- it doesn't make it possible to
20 consider that the drafters of the Rome Statute intended to include *dolus eventualis*,
21 that is to say the awareness of the existence of simple probability or possibility.

22 Indeed, the standard developed to this day with regards to the arrival of a certain
23 consequence is close to certainty. Furthermore, applying criminal responsibility of
24 Bosco Ntaganda for crimes for which the Prosecution state are a consequence of the
25 plan, suppose it is demonstrated that Bosco Ntaganda knew that the consequence of

1 his acts would be committal of the crimes in question -- commission of the crimes in
2 question.

3 In other terms, it would have been impossible for Bosco Ntaganda to have envisaged
4 this consequence does not occur.

5 Your Honour, your Honours, in light of the evidence put to you in the coming
6 months, you will have no other choice than to acquit Mr Ntaganda on the basis of
7 Article 25(3)(a) and 25(3)(d) for crimes allegedly committed by others when the plan
8 was not of a criminal nature and Mr Ntaganda was not able to know that the alleged
9 crimes were a quasi-certain consequence of the UPC's programme.

10 To finish with regard to the modes of responsibility, I would like to say something
11 about Article 28, responsibility as a superior. Once again, the use of this mode of
12 responsibility conjointly with six other modes of responsibility demonstrates the
13 absence of a clear case of the Prosecution against Mr Ntaganda. Indeed, accusing the
14 same person as a hierarchical superior and as a direct perpetrator presupposes very
15 different legal reasoning. In the framework of Article 25, evidence should be
16 brought that the accused had the intent to commit the crime, but also that he's
17 involved to a certain degree in its commission. Direct evidence is therefore needed.
18 On the contrary, as a superior, the accused is faced with acts for which he did not
19 want the commission and is not involved in its commission. There is no
20 participation of the accused nor mens rea on his part. The reasoning which is
21 applied is there a reasoning by deduction.

22 How can, therefore, the same person be prosecuted for the same crime by two
23 different modes of responsibility? This is what the Prosecution is doing for the crime
24 of pillaging. And this is all the worse given that the jurisprudence of the ICTY
25 established that the conviction of an accused jointly on the two modes of

1 responsibility linked to the same charges and based through the same facts is quite
2 simply impossible.

3 Furthermore, Article 28 can under no case be suppletive to Article 25, because the
4 Prosecution has not met the conditions for triggering the mode of responsibility.
5 This is all the more the case because Article 28 has its own conditions for coming into
6 being, a real link of subordination between the superior and the subordinates.

7 In this regard, your Honour, your Honours, you've heard the theory of the
8 Prosecution, which would have you believe that the person who exercised effective
9 control on the FPLC was not Mr Kisémbu, the chief of staff of the FPLC, but the
10 deputy chief of staff, Mr Ntaganda. However, the organisational charts
11 communicated by the Prosecution do put Mr Kisémbu at the head of the FPLC and
12 Mr Ntaganda only as deputy.

13 Furthermore, it's very easy for the Prosecution to put this theory forward while
14 Mr Kisémbu is now deceased. At the time that the Prosecution was preparing its
15 charges, this person was named brigadier general in the government army of
16 President Kabila. It's also noted that since the first arrest warrant against Bosco
17 Ntaganda, only issued several months after the Prosecutor met Mr Kisémbu and the
18 significant inflation in the number of charges between the first arrest warrant was
19 done some months after Mr Kisémbu died. Now you're going to hear us talk about
20 Mr Kisémbu. And why? Because he was the true commander of the FPLC.

21 Furthermore, as the deputy, the criminal responsibility of Ntaganda can only be
22 examined in light of Article 28 for the military actions for which he had command.
23 Outside these very limited cases, his position as deputy chief of staff in 2002-2003
24 means that he was not de jure or de facto commander and excludes, therefore, the
25 application of Article 28. That finishes my part on the modes of responsibility.

1 Now with regard to participation of victims. By permitting an
2 organisation -- organising the participation of victims in criminal proceedings, the
3 ICC has drawn the consequence of criticism, which was addressed to the ICTY, ICTR
4 who said that the victims had been sidelined from the judicial process.
5 The Legal Representatives of Victims, the Defence welcomes that the victims can
6 participate because not having them participate would cut off part of the *raison d'être*
7 of the legal process. Having said this, the Court must not go overboard in the other
8 direction. It is necessary that the main point of the trial is to determine criminal
9 responsibility as opposed to becoming a trial for victims.

10 In this regard, I would like to quote Mr Badinter, a lawyer and former *Garde des*
11 *Sceaux*, in France, who abolished the death sentence a few years ago, who said the
12 following: "Criminal justice does not have the mission of being therapy for the
13 suffering of victims. Also in the name of suffering of victims who call for all
14 solidarity from the whole society, we should not change the difficult balance of
15 criminal justice which is based on the principles of fair trial set out by the European
16 Court of Human Rights."

17 Article 68(3) takes these terms, and what does it say? It says, "Where the personal
18 interests of victims are affected, the Court shall permit their views and concerns to be
19 presented and considered at stages of the proceedings determined to be appropriate
20 by the Court and in a manner that is not prejudicial to nor inconsistent with the rights
21 of the accused and a fair and impartial trial." End of quote.

22 So therefore, your Honour, your Honours, it is up to your Court or Chamber to
23 ensure that these victims who are not parties to the proceedings but participants do
24 not cross the line which separates the Prosecution from them with a risk of becoming
25 a second Prosecutor.

1 By way of conclusion, your Honour, your Honours, there is a need for great vigilance
2 to ensure that the difficult balance between the Prosecution and the Defence is not
3 broken by the participation of victims and that the proceedings remain determining
4 criminal responsibility.

5 Thank you very much.

6 PRESIDING JUDGE FREMR: Thank you very much, Ms Grandon.

7 Mr Bourgon, who will be the next speaker?

8 MR BOURGON: (Interpretation) Thank you, Mr President. I will provide you
9 with a very brief conclusion over a number of minutes and then leave the floor to
10 Mr Ntaganda.

11 The last point that I would like to raise as a conclusion is that of Mr Ntaganda's
12 reputation, The Terminator. That is not a very easy reputation to have. And how
13 can one have a just and fair trial when one has such a reputation?

14 At a very early stage in his military career, Bosco Ntaganda called attention to himself,
15 and you will hear evidence during this trial to the effect and how, indeed, he came
16 upon this reputation of a wonderful combatant. And from the rank of sergeant he
17 went through all the various ranks to that of general and, in the meantime, he
18 demonstrated determination, efficiency, and his various aptitudes in terms of
19 command and control were recognized.

20 But Bosco Ntaganda's reputation, where does it come from precisely? It comes from
21 a number of events that you will be hearing about during the trial. This is what I call
22 a smoking gun in the sense that he was implicated or involved in events during
23 which he should have died. There was an attempted murder that he escaped.
24 An attack when he was in the Chui mobile forces, an attack with a group that was far
25 smaller in size, he was able to capture an entire company from the APC without firing

1 a single bullet.

2 When Chief Kahwa was placed in detention in Bunia at around the same time, he was
3 released during an operation in which Bosco Ntaganda took part. And these are the
4 events and the response that Mr Ntaganda had during these events that made him the
5 combatant who has the reputation that he enjoys today.

6 This reputation also comes from people who do not like Bosco Ntaganda because they
7 say that he's a Rwandan. He's not Rwandan, he's Congolese, but he speaks
8 Kinyarwanda. He is spoken of as a spy, a Rwandan spy. He has links with Uganda,
9 sometimes he has links with Uganda, with Rwanda, with RCD-K/ML, but always in
10 his capacity as a soldier.

11 Now, for all of the above reasons, he was given the name of "The Terminator,"
12 amongst others. There are other names that were -- that he was given. And that's
13 where his reputation hails from. But this case will not be that of his reputation. It
14 will be that of his behaviour and his actions in the years 2002-2003.

15 Now, this draws to a close the presentation of the opening statements for the Defence.
16 Mr Ntaganda has informed me that he would like to address the Chamber.

17 And I thank you, Mr President, on behalf of my entire team. Thank you.

18 PRESIDING JUDGE FREMR: Thank you very much.

19 Mr Ntaganda, sit down for a moment. I would like -- can you hear me? I would
20 like to instruct you a bit.

21 You are now going to address the Court and present your unsworn statement in
22 accordance with Article 67(1)(h) and that is why I would like to instruct you.

23 Mr Ntaganda, are you listening to me because I would like to instruct you on one
24 important point. Yes?

25 So the only thing I would like to stress that this unsworn statement will not be part of

1 evidence and that is also why you are not required to take an oath. Is it clear to you?

2 MR NTAGANDA: (Interpretation) Yes, it is clear.

3 PRESIDING JUDGE FREMR: Then sequent you can address the Court. Please, go
4 ahead.

5 MR NTAGANDA: (Interpretation) Thank you, Mr President, your Honours. This
6 is the first time I'm taking the floor after having arrived here at The Hague after
7 having handed myself over to the US embassy in Kigali in 2013.

8 I am quite confident, I understand the charges against me and I know that the
9 allegations against me, as reported in the press, are not beneficial to me.

10 I have been described as The Terminator, as an infamous killer, but that is not me.

11 I had that reputation not because I did any such thing, but it was because of the
12 hatred against Rwandans. Today I am being described as a Rwandan.

13 I am not the Bosco Ntaganda depicted to you by the Prosecutor yesterday. I

14 acknowledge that I was at the front in the DRC. I am not ashamed to tell you that I
15 fought in many war fronts in Congo in 2002 and 2003 and, more specifically, in Ituri.

16 As those who were in Ituri are aware, the ethnic conflict in Ituri started between 1998
17 and 1999 and initiated by the authorities of Kinshasa on 4 August 1998. There was
18 an announcement to kill all the Tutsis or those who looked like them. So everything
19 came from there. It is for this reason that I joined the UPC whose objective was to
20 restore security and protect civilians.

21 I am a soldier and I was trained by Ugandan and Rwandan military experts. I,
22 myself, have trained a large number of soldiers. I am a seasoned instructor. I have
23 always respected military tactics and strategies and I have always considered
24 discipline as the foundation of my service. That is why I was appointed general in
25 the Congolese army while I was still a young man, and it is also the reason why I was

1 appointed as the deputy chief of staff of the FPLC.

2 I have been referred to as a rebel revolutionary. And I know that since 1990 and in
3 1994 I was fighting and I was one of those who put an end to the Rwandan genocide.
4 Between 2002 and 2003 I joined the UPC. There was another objective for which I
5 was fighting and that is the peaceful return of the Congolese refugees who had been
6 chased out of their country.

7 As an officer, I have always fought with people in uniform. I have never attacked
8 civilians. On the other hand, your Honours, I have always protected them.

9 At the time of the commencement of my trial, I would like you to make a distinction
10 between a revolutionary rebel and a criminal. And I am not a criminal. The two
11 terms should not be confused, your Honours.

12 Furthermore, I would like to appeal to you to be careful when you will be assessing
13 the evidence of the Prosecution witnesses in this case. And I am saying this because
14 of several reasons. There are few people who would like to be associated with a
15 revolutionary rebel accused of crimes, such as those alleged against me. This is why
16 the people accusing me have always described me as such, but this cannot lead to the
17 ascertainment of the truth.

18 Even before the beginning of my trial there have been allegations that I have tried to
19 interfere in Prosecution evidence by attempting to corruptly influence witnesses, but I
20 have never done such a thing. This is why I asked my Defence team to do
21 everything possible to explain the truth to you.

22 I thank you for having granted authorisation to my children to come and visit me
23 after two years without my having met with them. You have also allowed my wife
24 to visit me and I am happy about that. And I hope that they will have the
25 opportunities to come and see me again before the beginning of my trial.

1 To conclude, I would like to address myself to all the victims of the Ituri conflict since
2 1998 and a conflict that has lasted 'til today.

3 In 1998 and 1999 there was a conflict between the Lendus and the Hemas. At that
4 time I was not even in Ituri and I did not know that region. Between 2000 and 2001,
5 the Ugandan soldiers and the UPC fought against each other. Between 2002 and
6 2003 the APC was fighting against the UPC. And in March, the Ugandans and the
7 APC chased out the UPC.

8 During all those conflicts, during all those battles, many of my Congolese compatriots
9 suffered. I empathized with them. My objective was to restore peace without
10 ethnic original discrimination.

11 I must stress that when UPC was in control of Ituri there was security there.

12 Lastly, your Honours, I have asked my Defence team to do everything within their
13 powers to make it possible for you to understand the background of the conflict that
14 took place in Ituri between 2002 and 2003 and to fully explain to you what I did in my
15 capacity as deputy chief of staff of the FPLC, and you will be able to understand what
16 I did, the activities that I carried out in an impartial manner.

17 I thank you for having given me the opportunity to address the Court and thank you
18 for your kind attention.

19 PRESIDING JUDGE FREMR: Thank you very much, Mr Ntaganda.

20 Having listened to Mr Ntaganda we reach the end of this opening session.

21 So at this moment I would like to thank to all speakers for their very informative and
22 impressive presentations that had been delivered in a very dignified manner. I also
23 believe that these opening statements was very useful and important for public to
24 hear how differently parties and participants see the case at this moment.

25 So it means that we will adjourn now and we will resume on 15 September when we

- 1 are going to start the evidentiary phase of the case by hearing the first witness of the
- 2 Prosecution.
- 3 Court is adjourned.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 3.27 p.m.)