

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom 1
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul
4 and Judge Cuno Tarfusser
5 Situation in the Republic of Kenya - ICC-01/09-01/11
6 In the case of the Prosecutor versus William Samoei Ruto,
7 Henry Kiprono Kosgey and Joshua Arap Sang
8 Initial Appearance
9 Thursday, 7 April 2011
10 The hearing starts at 9.32 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE TRENDAFILOVA: Good morning again.
15 Unfortunately, we start with three-minutes' delay. The Judges had been
16 waiting outside the courtroom, and I would take the opportunity just to
17 ask all the participants in these proceedings related to the case of the
18 Prosecutor versus Mr. Ruto, Mr. Kosgey, and Mr. Sang to respect the start
19 of every hearing, every session, because this Chamber is very strict
20 about this. And regardless of the needs of every one of us, it is a nice
21 practice just to respect the timing as provided in the decision of the
22 Judges. So I would like to welcome everyone who is here today in the
23 courtroom.
24 Mr. Ruto, Mr. Kosgey, and Mr. Sang, on behalf of the Chamber,
25 good morning and welcome to this hearing.

1 I would also greet the Office of the Prosecutor, the three
2 Defence teams, and the team of the Registrar. I welcome as well the
3 interpreters, the courtroom staff, and the security officers who
4 diligently assist us all in our work.

5 Finally, I greet those in the public gallery and outside the
6 court joining us this morning.

7 Now I turn to the issue of photography and video recording. The
8 Chamber has authorised video recording and the taking of photographs for
9 one minute and a half and no longer.

10 Court Officer, may I ask you to usher the photographers into the
11 courtroom. Thank you.

12 Good morning. You have one minute and a half to take your
13 pictures and no more. Please go ahead.

14 Have you had the opportunity to take your photographs? Very
15 well. Thank you.

16 I would now turn to the Court Officer and ask that he calls the
17 case, please.

18 COURT OFFICER: Thank you. We are sitting in the case of the
19 Prosecutor versus William Samoei Ruto, Henry Kiprono Kosgey, and
20 Joshua Arap Sang, ICC-01/09-01/11.

21 PRESIDING JUDGE TRENDAFILOVA: On behalf of the Chamber, I would
22 now ask the parties and the Registrar in this hearing to introduce
23 themselves, beginning with the Office of the Prosecutor. But before you
24 start, Mr. Prosecutor, I would like to ask the parties and participants
25 to speak slowly and to make a pause before responding to any question in

1 order to provide the interpreters the necessary time to do their job.

2 Could I ask you, Mr. Prosecutor, to present the members of your
3 team.

4 MR. MORENO-OCAMPO: Yes, Madam President, your Honours. The
5 Office of the Prosecutor is represented by Madam Fatou Bensouda,
6 Deputy Prosecutor; Mrs. Cynthia Tai, senior trial lawyer;
7 Adesola Adeboyejo, senior trial lawyer in the case; Alice Zago, senior
8 investigator; then we have Adeniran Akingbolahan, trial lawyer;
9 Karen Corrie, associate trial lawyer; Shkelzen Zeneli, Legal Officer; and
10 Grace Goh, case manager; and myself, Luis Moreno-Ocampo, Prosecutor.

11 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Prosecutor.

12 I now turn to the Defence teams. In this case we have three
13 suspects and consecutively three Defence teams. The Chamber suggests
14 that the Defence teams present themselves in the order adopted by the
15 Prosecutor in his case. As such, I ask the Defence team of Mr. Ruto to
16 introduce themselves first, followed by the team of Mr. Kosgey and
17 thereafter the Defence team of Mr. Sang. Following this order, I invite
18 the Defence team of Mr. Ruto to take the floor and present themselves.

19 MR. HOOPER: (Microphone not activated)

20 THE INTERPRETER: Counsel's microphone is not on. Can counsel
21 switch on his microphone.

22 PRESIDING JUDGE TRENDAFILOVA: Microphone. Thank you.

23 MR. HOOPER: I, of all people, should have remembered that, but I
24 apologise. Let me start again. On behalf of William Samoei Ruto, he is
25 represented today by myself, David Hooper, of the English bar; and

1 Mr. Kioko Kilukumi, who sits next to me of the Kenyan bar and we are
2 assisted by Professor Kithure Kindiki, who sits at the end of this Bench.
3 I understand that there is a formality that has not been followed in
4 respect of myself, and that is that there has been no power of attorney
5 delivered to the Registry. And this will be corrected forthwith, as you
6 can see I am on my feet announcing my status as a member of this team in
7 the presence of Mr. Ruto. And I hope, at least for the purposes of this
8 hearing, that is sufficient and satisfactory.

9 PRESIDING JUDGE TRENDAFILOVA: Of course. Thank you, Mr. Hooper.

10 Mr. Ruto, would you confirm that you are granting power of
11 attorney to Mr. Hooper to represent you in this case because it could be
12 submitted in writing which, Mr. Hooper, you say you are going to do, but
13 orally as well.

14 MR. RUTO: Madam President, your Honour, I confirm that
15 Mr. David Hooper is a member of my Defence team.

16 PRESIDING JUDGE TRENDAFILOVA: Thank you. Thank you.

17 Now we proceed with the Defence team of Mr. Kosgey. You have the
18 floor.

19 MR. ORARO: If it may please you, Madam President, your Honour,
20 my name is George Oraro. I am counsel for Honourable Kosgey. I am a
21 member of the Kenyan bar. I am assisted in my team by Julius Kemboy,
22 legal assistant, also a member of Kenyan bar; and Allan Kosgey will also
23 be my legal assistant, a member of the Kenyan bar as well,
24 Madam President.

25 PRESIDING JUDGE TRENDAFILOVA: Thank you. Thank you.

1 And finally, the team -- the Defence team of Mr. Sang, please
2 take the floor.

3 MR. KIGEN-KATWA: Madam President, your Honour. My name is
4 Katwa-Kigen. I represent Mr. Joshua Sang, together with my learned
5 friend Mr. Kimutai Bosek. Both of us are members of the Kenyan bar.

6 PRESIDING JUDGE TRENDAFILOVA: Thank you.

7 Now I turn to the Registrar to present the members of her team
8 attending this initial appearance hearing.

9 MS. ARBIA: Madam President, your Honours, for the Registrar,
10 myself, Silvana Arbia, Registrar; with me, Marc Dubuisson, director of
11 court services division; and Cyril Laucci, Legal Officer.

12 PRESIDING JUDGE TRENDAFILOVA: Thank you, Madam Registrar.

13 Finally, I will introduce the Bench and its legal support staff.

14 On my right is Judge Hans-Peter Kaul and on my left,
15 Judge Cuno Tarfusser. I am Ekaterina Trendafilova, the Presiding Judge
16 of Pre-Trial Chamber II. Seated in front of the bench is the senior
17 legal advisor of the pre-trial division, Gilbert Bitti; the
18 Legal Officers, Mohamed El Zeidy and Eleni Chaitidou; the Associate
19 Legal Officer, Silvestro Stazzone; also in the courtroom are legal
20 support staff, Simon Grabrovec and Niccolo Pons; and Habiba Gani, who is
21 an intern to the Chamber.

22 Now, I turn to Mr. Ruto, please identify yourself, Mr. Ruto. In
23 particular, I invite you to tell us your full name, your date and place
24 of birth and your current professional. Please do switch on your
25 microphone.

1 MR. RUTO: Your Honour, my name is William Samoei Arap Ruto. I'm
2 a Kenyan born in a village called Kamagut, in Kamagut location, Sugoi
3 division of the now Uasin Gishu county, on 21st of December, 1966.
4 Apparently, I am a Member of Parliament for Eldoret North Constituency,
5 which is 320 kilometres north-west of Nairobi, again in Uasin Gishu
6 county. I have been explained why I'm here.

7 PRESIDING JUDGE TRENDABILOVA: We shall proceed with this issue
8 later on. Thank you, Mr. Ruto, you perfectly well answered the questions
9 that, on behalf of the Bench, I posed to you.

10 MR. RUTO: Okay. So I will have another opportunity to say what
11 I want to say?

12 PRESIDING JUDGE TRENDABILOVA: Please be seated. Yes. As far as
13 it is related directly to the subject matter of today's hearing.

14 MR. RUTO: That is correct.

15 PRESIDING JUDGE TRENDABILOVA: That will be explained in some
16 minutes to come.

17 MR. RUTO: Thank you.

18 PRESIDING JUDGE TRENDABILOVA: With regard to your language
19 proficiency, the Chamber has concluded that you fully understand and
20 speak English, Mr. Ruto. The Chamber has arrived at this conclusion on
21 the basis of the facts enumerated in your biography that the Chamber
22 knows as well as your answer to the Bench a minute ago. Thus, Mr. Ruto,
23 the Chamber is fully satisfied that in requirements with the
24 Court Statute, in particular, Article 67(1)(a) and (f) concerning your
25 knowledge of the English language are met.

1 Now, I will proceed with the same questions to Mr. Kosgey.

2 Mr. Kosgey, please identify yourself to the Chamber, stating your full
3 name, your date and place of birth, as well as your current profession.

4 MR. KOSGEY: Your Honour, I'm Henry Kiprono Kosgey. I was born
5 on 14th July, 1947, in Ol'Lessos location, Nandi county, county of Nandi
6 in Kenya. I am a Member of Parliament for Tinderet Constituency in Nandi
7 county.

8 PRESIDING JUDGE TRENDABILOVA: Thank you. Thank you, Mr. Kosgey.
9 The Chamber, based on the information as specified in your biography and
10 on the answers that you have given right now to us, came to the
11 conclusion that the requirements about your proficiency in English as
12 provided for in Article 67(1)(a) and (f) are fully met. Now we proceed
13 with Mr. Sang.

14 Mr. Sang, would you answer the same question? You might not
15 stand up because we were informed about the accident that you experienced
16 some days ago so you can reply to the Chamber seated. Your name, your
17 date and place of birth and your current occupation.

18 MR. SANG: Madam President, your Honour. My name is
19 Joshua Kirwa Arap Sang, born in Saum (* phon) village, Cherangani
20 division, Trans-Nzoia county in Kenyan. I am an innocent journalist
21 working with Kass FM International as a presenter as well as head of
22 operations. Thank you.

23 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Sang. At this
24 juncture, the Chamber would like to take pause and to remind the parties
25 that they have certain obligations under the statutory framework of this

1 Court, as embodied in the Rome Statute in the Rules of Procedure and
2 Evidence, the regulations of the Court, and the Code of Professional
3 Conduct for counsels. The Bench expects the parties to continuously and
4 in good faith respect the relevant provisions concerning their conduct
5 and to state that any deviation therefrom will not be tolerated.

6 Furthermore, the Chamber will not hesitate to implement sanctions as
7 provided for in Article 70 and 71 and Rules 170 to 172, if need be.

8 I received a notice from my dear colleague, Judge Kaul, that,
9 Mr. Sang, you didn't provide the birthday, your birthday.

10 MR. SANG: I was born on 9th September 1975.

11 PRESIDING JUDGE TRENDABILOVA: Yes. Thank you. As far as we
12 have the biographies in our files, we know this date but we wanted a
13 confirmation on your behalf.

14 It came to the knowledge of the Chamber by way of following some
15 articles in the Kenyan newspapers that there are some movements towards
16 re-triggering the violence in the country by way of using some dangerous
17 speeches. I would like to remind the suspects - and I'm not referring to
18 anyone in particular but this is a general point to be made to all the
19 suspects - that such type of action could be perceived as a sort of
20 inducement which may constitute the breach of one of the conditions set
21 out in the summonses to appear, namely, to continue committing crimes
22 within the jurisdiction of the court. Accordingly, this might prompt the
23 Chamber to replace the summonses to appear with warrants of arrest,
24 something that the Chamber wouldn't do with willingness because we would
25 rather that you appear as free persons in this courtroom.

1 Having dispensed with the necessary preliminary matters, the
2 Chamber finds it necessary to highlight the nature and the purpose of the
3 initial appearance in order to convey to the parties the Chamber's
4 expectations that they strictly and professionally adhere to the subject
5 matter of today's hearing. Moreover, for the sake of clarity and mindful
6 of those joining us in the public gallery and outside the court, this is
7 not a trial, nor is it a confirmation hearing. No evidence will be
8 presented or collected, nor will the issue of guilt or innocence be
9 addressed or decided. As such, the scope of the initial appearance is
10 limited and is governed by two provisions of the statutory documents:
11 Article 60(1) and Rule 121(1), which delineates the subject matter of the
12 hearing, namely, that the Pre-Trial Chamber is satisfied that the persons
13 summoned to appear before it has been informed of the crimes which he or
14 she is alleged to have committed. Second, that the Pre-Trial Chamber is
15 satisfied that the person has been informed of his or her rights under
16 the Statute. And finally, the Pre-Trial Chamber must set up the date on
17 which it intends to hold a hearing to confirm or to decline to confirm
18 the charges.

19 Therefore, the Chamber will now proceed consecutively with the
20 three issues shaping the subject matter of the day's hearing. Being
21 cognizant of the public nature of this hearing and the duty of the
22 Chamber *vis-à-vis* the rights of the Defence, I would ask the
23 Court Officer to please read the counts for which the Chamber decided to
24 summon Mr. Ruto, Mr. Kosgey, and Mr. Sang.

25 Please, Court Officer, proceed with the counts and the mode of

1 individual criminal responsibility for each of the suspects.

2 COURT OFFICER: Thank you, Madam President.

3 Mr. William Samoei Ruto. There are reasonable grounds to believe
4 that William Samoei Ruto is criminally responsible as indirect
5 co-perpetrator under Article 25(3)(a) of the Statute for the following
6 crimes committed in locations including Turbo town, the greater Eldoret
7 area (Huruma, Kiambaa, Kimumu, Langas and Yamumbi), Kapsabet town and
8 Nandi Hills town in the Uasin Gishu and Nandi districts,
9 Republic of Kenya, from the 30th of December, 2007, until the end of
10 January 2008:

11 (i) Murder constituting a crime against humanity within the
12 meaning of Article 7(1)(a) of the Statute.

13 (ii) Forcible transfer of population constituting a crime against
14 humanity within the meaning of Article 7(1)(d) of the Statute:

15 (iii) Persecution constituting a crime against humanity within
16 the meaning of Article 7(1)(h) of the Statute.

17 Mr. Henry Kiprono Kosgey. There are reasonable grounds to
18 believe that Mr. Henry Kiprono Kosgey is criminally responsible as
19 indirect co-perpetrator under Article 25(3)(a) of the Statute for the
20 following crimes committed in locations including Turbo town, the greater
21 Eldoret area (Huruma, Kiambaa, Kimumu, Langas and Yamumbi) Kapsabet town
22 and Nandi hills town in the Uasin Gishu and Nandi districts, Republic of
23 Kenya from the 30th of December, 2007, until end of January 2008:

24 (i) Murder constituting a crime against humanity within the
25 meaning of Article 7(1)(a) of the Statute.

1 (ii) Forcible of population constituting a crime against humanity
2 within the meaning of Article 7(1)(d) of the Statute.

3 (iii) Persecution constituting a crime against humanity within
4 the meaning of Article 7(1)(h) of the Statute.

5 Mr. Joshua Arap Sang. There are reasonable grounds to believe
6 that Joshua Arap Sang is criminally responsible as having contributed to
7 the following crimes committed by group of persons within the meaning of
8 Article 25(3)(d) of the Statutes in locations including Turbo town, the
9 greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas and Yamumbi),
10 Kapsabet town and Nandi Hills town in the Uasin Gishu and
11 Nandi districts, Republic of Kenya from the 30th of December, 2007, until
12 the end of January 2008:

13 (i) Murder constituting a crime against humanity within the
14 meaning of Article 7(1)(a) of the Statute.

15 (ii) Forcible transfer of population constituting a crime against
16 humanity within the meaning of Article 7(1)(d) of the Statute.

17 (iii) Persecution constituting a crime against humanity within
18 the meaning of Article 7(1)(h) of the Statute.

19 Thank you.

20 PRESIDING JUDGE TRENDABILOVA: Thank you, Court Officer.

21 Now, I will turn with a question to Mr. Ruto, Mr. Kosgey, and
22 Mr. Sang whether they have been sufficiently informed, pursuant to the
23 Chamber's decision on the summonses to appear, of the crimes which they
24 are alleged to have committed, in particular as read a minute ago by the
25 Court Officer.

1 Mr. Ruto, what is your answer? Have you been informed?
2 Although, let me make it clear that we have received two reports by the
3 Registrar to this effect, but the Chamber wants to hear the answer of
4 Mr. Ruto, Mr. Kosgey, and Mr. Sang. Shall I repeat the question,
5 Mr. Ruto, whether you have been informed of the crimes that you have
6 allegedly committed as identified a minute ago by the Court Officer.

7 MR. RUTO: Your Honour, I have been sufficiently informed of
8 these allegations.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you.

10 MR. RUTO: And I have an occasion to even pay a visit to the
11 Office of the Prosecutor --

12 PRESIDING JUDGE TRENDAFILOVA: Yes.

13 MR. RUTO: -- to try and ascertain the issues that are being

14 raised and alleged against me. I was, however, unsuccessful in trying to
15 get details of these allegations. And, to me, the allegations that have
16 been made here sound, to me, like they can only be possible in a movie.

17 PRESIDING JUDGE TRENDAFILOVA: Mr. Ruto, could I just ask you to
18 sit down and I shall give you some explanations.

19 MR. RUTO: Thank you.

20 PRESIDING JUDGE TRENDAFILOVA: First of all, we have agreed that
21 the purpose of today's hearing is quite limited to these three issues as
22 identified in Article 60(1) and Rule 121(1) of the Rules of Procedure and
23 Evidence. The Chamber, by majority, has taken a decision to the effect
24 that we found that you have allegedly committed the crimes as read by the
25 Court Officer. And the proceedings that are going to follow, up until

1 the confirmation of charges hearing, will give you all the opportunities
2 to receive enough evidence for the purposes of the confirmation hearing
3 to be presented by the Prosecutor, who is the triggering force of this
4 case. So he's going to come with strong evidence, hopefully, and you
5 will, of course, be assisted throughout these proceedings by very
6 competent and highly professional counsels. Because in order to be put
7 on the list of counsels or to satisfy the requirements, you have really
8 to be a high professional in the field of criminal law and international
9 criminal law.

10 And during the confirmation of charges hearing, you will have all
11 the opportunities to make extensively your points, but on the basis of a
12 thorough knowledge of the evidence on which the Prosecutor bases his
13 case.

14 So now I proceed with Mr. Kosgey. Please, Mr. Kosgey, answer the
15 question of the Chamber, whether you have been informed of the crimes
16 that you have allegedly committed as read by the Court Officer, and, of
17 course, you have been served with the summonses and there were visits by
18 the Registrar and representatives of the Registry in order to fulfil this
19 responsibility of the court.

20 MR. KOSGEY: Your Honour, I have been sufficiently informed of
21 the charges, alleged charges, against me. I have also been served with
22 summons. However, as already stated by my other colleague, the details
23 of these alleged crimes have not been provided. Thank you.

24 PRESIDING JUDGE TRENDABILOVA: This will happen in the future.

25 And finally, this Chamber is going to take a decision at the end

1 of the pre-trial stage whether the Chamber should confirm the charges and
2 send the case to trial, or the Chamber is going to decline confirming the
3 charges and this will terminate the proceedings related to this case.

4 Mr. Sang, would you please explain to us whether you have been
5 informed about the crimes.

6 MR. SANG: Yes, I have been informed about the allegation --

7 PRESIDING JUDGE TRENDABILOVA: Yes.

8 MR. SANG: -- and the charges.

9 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Sang.

10 Now the Chamber has to address again Mr. Ruto, Mr. Kosgey and
11 Mr. Sang with the next question, whether you have been informed of the
12 rights as provided to you by the statutory documents of the
13 International Criminal Court.

14 Mr. Ruto.

15 MR. RUTO: Your Honour, the -- my rights have been explained to
16 me, and I have had occasion also to read both the Statute, the Rules of
17 Procedure and whatever is contained in there that refers to me. My
18 counsel have also had occasion to explain to me my rights, to the extent
19 that whatever allegations that have been made against me. I need to have
20 the full knowledge of those allegations and who has made them to enable
21 me to respond because, as I said earlier on, an innocent person like me
22 to be dragged all the way here, really, is a matter that baffles me --

23 PRESIDING JUDGE TRENDABILOVA: Thank you.

24 MR. RUTO: And I believe the Court will make it possible for me
25 to get sufficient information, enough information, on these allegations

1 so that I can respond to them and demonstrate my innocence.

2 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Ruto.

3 MR. RUTO: Thank you.

4 PRESIDING JUDGE TRENDAFILOVA: Thank you. You will be granted
5 all the opportunities.

6 Mr. Kosgey, have you been informed of the rights provided to you
7 by the Statute --

8 MR. KOSGEY: Thank you, your Honour. I have been sufficiently
9 informed of my rights.

10 PRESIDING JUDGE TRENDAFILOVA: Thank you.

11 And the same question, Mr. Sang, to you.

12 MR. SANG: Your Honour, yes, I've been informed of my rights and
13 I followed that one of the rights has been broken in terms of me getting
14 the -- the Prosecutor interrogating me before coming here, which was not
15 done.

16 PRESIDING JUDGE TRENDAFILOVA: Thank you. We are going to
17 discuss in detail when we go into the issue itself that follows this
18 hearing.

19 In addition to your statements made right now in the present
20 hearing, I would like to reiterate, albeit not exclusively, the rights of
21 the accused that are central to the conduct of the proceedings.

22 Mr. Ruto, Mr. Kosgey, and Mr. Sang, the statutory regime of this
23 Court, in accordance and consistent with the international recognised
24 human rights standards, affords you with the following rights, inter
25 alia: You will be presumed innocent until proven guilty beyond a

1 reasonable doubt at trial if this case proceeds to trial, with the onus
2 firmly placed on the Prosecutor to prove your guilt, Article 66. You
3 have the right not to be imposed any reversal of the burden of proof or
4 any onus of rebuttal. You have the right to receive and to have
5 disclosed to you material which shows or tends to show innocence,
6 mitigates guilt, or which may affect the credibility of Prosecution's
7 evidence, material which are in the possession of the Prosecutor. You
8 have the right at the confirmation of charges hearing that will follow to
9 object to the charges, to challenge the evidence presented by the
10 Prosecutor, and to present evidence. There will be no trial in case the
11 charges are not confirmed. You will be informed promptly and in detail
12 of the nature, cause, and content of charges in a language which you
13 fully understand and speak. You are entitled, you have the right to
14 waive your right to be present at the hearing on the confirmation of
15 charges, as provided for in Rule 124(1). However, the Chamber is
16 entitled to order you to appear if it considers it necessary and decides
17 not to hold the hearing in your absence, as provided for in Rule 125(4).
18 You are also entitled to waive your right to attend any
19 Status Conference to follow and to be conducted for the purposes of the
20 proper and efficient disclosure procedure. You will have adequate time
21 and facilities for the preparation of your defence. You will be tried
22 without undue delay if the case proceeds to trial in order that you know
23 your fate regarding the present case as soon as possible. You may put
24 questions or examine witnesses. You can present evidence and witnesses
25 which duly applies to the confirmation hearing of charges. You may make

1 unsworn oral or written statements in your defence. You have the right
2 to appeal certain decisions in accordance with Article 82(1) of the
3 Statute and the relevant Rules of Procedure and Evidence.

4 Furthermore, the Registry is obliged to organise the staff of the
5 Registry in a manner that promotes the rights of the Defence consistent
6 with the defence -- the right of the Defence to a fair trial, Rule 20 and
7 Article 43(1) of the Rome Statute.

8 Finally, the Chamber, having satisfied itself that the suspects
9 have been informed of the crimes they are alleged to have committed and
10 of their rights, now proceeds with setting the date for the confirmation
11 of charges hearing. This is the third issue that is on our agenda
12 pursuant to Rule 121(1). In keeping with the Chamber's respect for
13 international human rights standards and taking heed of the fact that the
14 parties will require some period of time for the preparation and
15 thereafter disclosure of evidence for the purposes of the confirmation
16 hearing, as well as taking into account the number of suspects in the
17 present case, also the simultaneously running proceedings of the two
18 cases pending before the Chamber and the fact that there are no detained
19 suspects in the present case, the Judges of this Bench have decided to
20 set the date of 1st September 2011 for the commencement of the
21 confirmation hearing. The Judges of this Chamber have decided that as of
22 today until the set date there is sufficient time for highly professional
23 lawyers on both sides to prepare for the confirmation of charges hearing.
24 Certainly, depending on the development of the proceedings, the date set
25 by the Chamber may change.

1 I would like to listen if there are comments on the side of the
2 Prosecutor and of the Defence teams with regard to the day,
3 1st September, for the commencement of the confirmation hearing in the
4 case of the Prosecutor versus Mr. Ruto, Mr. Kosgey, and Mr. Sang.

5 Yes, Mr. Prosecutor.

6 MR. MORENO-OCAMPO: The Defence is requesting full disclosure of
7 the Prosecutor's evidence and the Prosecutor agrees. It is the
8 cornerstone of the trial, full disclosure. The issue is the timing. The
9 Prosecutor considered that (* indiscernible) challenge presented by the
10 Kenyan government is an obstacle to disclosure, and we will request the
11 Chamber to provide the parties opportunity to present filings on that to
12 have a ruling.

13 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Prosecutor. On
14 behalf of the Chamber, I will answer your concerns. First of all, if I'm
15 not mistaken - and I don't believe that I am - the application made by
16 the Kenyan government raising challenge with regard to the admissibility
17 of this case only prevents the Prosecutor from further on going with the
18 investigation but not with the disclosure. So you can proceed with the
19 disclosure, Mr. Prosecutor, and you know that there are provisions that
20 even give the opportunity if some investigative activities that have
21 already been undertaken by the Prosecutor based on the assessment of the
22 Chamber could be granted to proceed.

23 Another point that I would like to make is related to the
24 principal approach of Pre-Trial Chamber II to respect the principle of
25 expeditiousness. So the Chamber already issued the decision pursuant to

1 Rule 58(2) setting up the procedure to be followed. With regard to the
2 application of the Kenyan government, we have given a certain period of
3 time to the parties to respond and the Chamber -- this will be the first
4 decision that the Chamber will take as soon as possible in order to avoid
5 the concerns that you have validly, especially with regard to the
6 investigation.

7 On behalf of the Defence? Yes, Mr. Hooper.

8 MR. HOOPER: Well, on behalf of Mr. Ruto, well plainly as the
9 Court knows, the Defence hasn't been drawn into any discussion in terms
10 of the date of confirmation. It's a date that's been presented this
11 morning by your Honours. I've got nothing to add in respect of that this
12 morning.

13 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Hooper.

14 The Chamber has not discussed with any of the representatives of
15 the Defence teams or the Prosecutor this date. We have just strictly
16 applied Rule 121(1) that it is the decision of the Chamber, given the
17 circumstances, given the charges -- not the charges, but the items in the
18 summonses to appear. And we consider this to be enough time, almost five
19 months, for the proper conduct of the disclosure. If need be, of course,
20 we always have the opportunity to postpone as the law correctly says in
21 Rule 121(1) that the confirmation hearing could be postponed, if need be.
22 However, with regard to your concern, Mr. Hooper, I would like to make a
23 very strong point that the timely date for the confirmation of charges
24 hearing is beneficial to the suspects because the Chamber realises the
25 psychological burden imposed on them with the decision to summon them as

1 suspects before this Court. So we have been led by the concern to take
2 our decision as soon as possible whether this case is going to trial or
3 not. So this was -- this was our leading concern when we have set up the
4 date, the 1st of September, with the opportunity to postpone it of
5 course.

6 MR. HOOPER: And, in fact, my observation was merely to reflect
7 the fact that I'm not in a position, as it were, today to argue for an
8 early or a later confirmation. It's not a matter that's been the subject
9 of significant discussion, and I appreciate that the Court's declared
10 itself, at least to some extent, flexible should certain unforeseen
11 difficulties arise. Thank you.

12 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Hooper.

13 If there are no some other points to be raised with regard to the
14 1st of September date, I would like to proceed with a decision that the
15 Chamber is going to issue orally now to convene a Status Conference.

16 On the 18th of April, 2011, at 9.00 a.m. in this same courtroom,
17 the Chamber has already issued a decision on the evidence disclosure
18 which I saw now on my screen, although I do not have the habit to follow
19 my personal computer, but this is an important decision so it has been
20 issued already. And in this decision alongside other matters, related
21 matters, the principles as to the scope and the modalities of disclosure
22 of evidence and its communication to the Chamber have been established.
23 The decision is meant to present to the parties the policy of the Chamber
24 to be followed in the disclosure proceedings, and guided by the said
25 decision the parties could start doing their job as of the moment they

1 leave this courtroom.

2 The Chamber recalls that pursuant to Rule 121(2)(b) of the
3 Rules of Procedure and Evidence, the Pre-Trial Chamber shall hold
4 Status Conferences to ensure that disclosure takes place under
5 satisfactory conditions and that a Single Judge designated for this
6 purpose shall organise such Status Conferences, either *proprio motu* or at
7 the request of either party, with a view to ensure that disclosure is
8 conducted in a matter which is transparent, efficient, and expeditious.

9 Thus, considering this duty of the Chamber, a Status Conference
10 is convened for the 18th of April where all issues relevant for the
11 purposes of establishing an adequate calendar of disclosure proceedings
12 in light of the principles already established in the decision that is
13 issued this morning, at the Status Conference we invite for the
14 Status Conference the Prosecutor with his team, the Defence, and the
15 Registry. At the Status -- of course, I remember the suspects that they
16 are not obliged to attend the Status Conferences. They have highly
17 qualified counsels upon their choosing who are going to attend the
18 Status Conferences and to the best of their abilities represent and
19 defend the interests of their clients.

20 At the Status Conference, the Prosecutor will be requested to
21 provide information on the following: An estimate of the overall amount
22 of documents he intends to use as evidence at the confirmation hearing.
23 Second, the number of witnesses, if any, that he intends to call to
24 testify at the confirmation hearing and the number of witness statements
25 he intends to use at the confirmation hearing pursuant to Rule 76 of the

1 Rules of Procedure and Evidence. Third, an indication as to whether the
2 Prosecutor intends to request that certain documents be disclosed to the
3 Defence in redacted form and, in the affirmative, an estimate at the
4 amount of such documents, an estimate. Fourth, an indication as to
5 whether the Prosecutor and his team intend to request that protective
6 measures be put in place in order to protect witnesses, victims or other
7 persons at risk, prior to disclosure of the names of the witnesses or of
8 certain documents or otherwise, including any relevant information on the
9 steps he is taking and he intends to take in this respect. Finally, an
10 indication as to whether the Prosecutor obtained documents and how many
11 or information on the condition of confidentiality in accordance with
12 Article 54(3)(e), 72, and Article 93 of the Statute that contain
13 exculpatory information under Article 67(2) of the Statute or are to be
14 considered material for the preparation of the Defence pursuant to
15 Rule 77 of the Rules. In the affirmative, whether measures to obtain
16 consent of the information provider regarding disclosure of such material
17 have already been taken.

18 The Defence teams are invited to indicate whether they anticipate
19 presenting evidence at the confirmation hearing, and, if so, its
20 envisaged amount, including whether they intend to call live witnesses at
21 the hearing. The Registry is invited to be present at the
22 Status Conference in order to indicate the technical modalities that
23 would be most suitable for ensuring the efficiency and expeditiousness of
24 the disclosure proceedings.

25 I trust that ten days are sufficient for the parties in this case

1 to familiarise themselves with the decision on disclosure issued this
2 morning and to prepare for a meaningful discussion for the purposes of
3 establishing an efficient disclosure calendar. Of course the Chamber is
4 very well aware of the fact that at the beginning of the disclosure
5 proceedings we cannot expect the parties to be extremely strict with
6 regard to all the information that you would like to discuss, but at
7 least to start from somewhere and to proceed in an organised and
8 efficient manner the disclosure proceedings. This is the purpose of the
9 initial appearance -- of the Status Conference to be held on the 18th.

10 Do the parties have some comments to make? Yes, Mr. Prosecutor.

11 MR. MORENO-OCAMPO: The Prosecutor will make a comment in a
12 filing.

13 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Prosecutor.

14 Anyone from the Defence teams? Thank you very much.

15 (Microphone not activated)

16 THE INTERPRETER: Microphone please.

17 PRESIDING JUDGE TRENDABILOVA: Sorry.

18 I would ask the state -- the Court Officer and the Registrar to
19 make the necessary arrangements to organise this Status Conference.

20 Madam Registrar, I would ask you to do your best as you have done
21 up until now that we have a very meaningful and very useful for the
22 proper conduct of disclosure proceedings, Status Conference in this
23 courtroom at 9.00 on the 18th of April.

24 Could I consider that we have come to an end of the initial
25 appearance hearing? It seems that we have fulfilled our duties very

1 strictly adhering to the subject matter of today's hearing. On behalf of
2 my colleagues and on my behalf, I would like to thank the parties for
3 conducting themselves in a very extremely professional manner. My
4 thankfulness goes also for the Registrar and her team, for the
5 interpreters, for the security and the courtroom staff. The hearing on
6 the initial appearance in the case of the Prosecutor versus Mr. Ruto,
7 Mr. Kosgey, and Mr. Sang is closed.

8 COURT USHER: All rise.

9 The hearing ends at 10.26 a.m.

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