

1 International Criminal Court
2 Trial Chamber V - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap
5 Sang - ICC-01/09-01/11
6 Presiding Judge Kuniko Ozaki, Judge Christine Van den Wyngaert
7 and Judge Chile Eboe-Osuji
8 Status Conference
9 Thursday, 14 February 2013
10 (The hearing starts in open session at 2.31 p.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE OZAKI: Good afternoon, parties and participants, and good
15 afternoon to Mr Ruto and Sang. For the record, can you, can parties and participants
16 introduce themselves, starting with Prosecution team?
17 MR GARCIA: Good afternoon, your Honours. I am Lucio Garcia for the
18 Prosecution. With me today as well for the Prosecution is Mr Lorenzo Pugliatti, who
19 is right here at my right; Mr Hesham Mourad as well. In the second row Ms Regina
20 Weiss; Mr Alex Whiting and in the back row Ms Grace Goh, who is our case manager
21 and just before we start I would like to extend my apologies to the Chamber because I
22 will not be able to sit for the full extent of the status conference and upon my leave
23 Mr Hesham Mourad will be taking over for the Prosecution in answering any
24 questions that the Bench might have.
25 Thank you.

1 PRESIDING JUDGE OZAKI: Defence team of Mr Ruto?

2 MR HOOPER: Yes. Good afternoon, Madam President. My name's David

3 Hooper, and I'm here this afternoon together with Judy Mionki, who sits next to me,

4 who is Mr Ruto's case manager, and Sophie Menegon, who is an intern in this case.

5 And in Nairobi, and appearing on your screens by video link, is Mr Kilukumi,

6 counsel again for Mr Ruto, together of course with Mr Ruto, who may I say expresses

7 his thanks and appreciation to the Court for facilitating his being able to be present, as

8 it were, today through that video link.

9 Thank you very much.

10 PRESIDING JUDGE OZAKI: Mr Sang's team, please.

11 MR KIGEN-KATWA: Madam President, my name is Katwa Kigen, I am counsel,

12 and I'm present in court together with Silas Chekera, assistant counsel, and Logan

13 Hambrick, legal assistant. I also have Philemon Koech and Joel Bosek who are also

14 assisting as case managers, and present also is our client, Joshua Sang present in

15 court.

16 Thank you very much.

17 PRESIDING JUDGE OZAKI: Legal representative of victims.

18 MR SUPRUN: Thank you, your Honour. Good afternoon, your Honours. Two

19 members of the Office of Public Counsel for Victims are appearing on behalf of the

20 Common Legal Representative this afternoon, Mr Orchlon Narantsetseg, legal officer

21 and myself, Dmytro Suprun, counsel. We are also accompanied by Ms Caroline

22 Herzig, case manager.

23 Thank you.

24 PRESIDING JUDGE OZAKI: Thank you. Representatives of Registry?

25 MS ARBIA: Madam President, your Honours, good afternoon. For the Registry

1 myself, Silvana Arbia, together with the Director of Court Services, Marc Dubuisson,
2 and Pieter Vanaverbeke, legal co-ordinator.

3 Thank you.

4 PRESIDING JUDGE OZAKI: Thank you very much. I would like to start with
5 some introductory issues. First of all, this status conference is to last no longer than
6 one-hour-and-a-half. So please, parties and participants, be concise, focused and
7 complete in their submissions and not to repeat their written submissions.

8 We are in open session. If any party or participant needs to refer to confidential
9 information, particularly with regard to disclosure issue, please ask to go into private
10 session. And today's discussion is without prejudice to any of the motions currently
11 pending before the Chamber, for example, the motion for the in situ trial. Lastly but
12 not leastly, please remember to speak slowly and to pause for several seconds in
13 between speakers. This is very important in order to ensure accurate transcription
14 and interpretation.

15 The first agenda item is modalities of the accused attendance at trial. The parties
16 have not requested any changes to the conditions of the summons to appear issued by
17 the Pre-Trial Chamber and subsequently modified by this Chamber's protocol
18 concerning the handling of confidential information and contacts of a party with
19 witnesses whom the opposing party intends to call.

20 The Chamber decides that the summons to appear issued by the Pre-Trial Chamber
21 continue in effect for purposes of the trial and that the existing conditions shall
22 remain in effect until varied by the Trial Chamber.

23 Therefore, the Chamber asks each of the accused in person to confirm that he
24 understands that it is the decision of the Chamber that the summons to appear issued
25 by the Pre-Trial Chamber continues in effect for purposes of the trial and that the

1 existing conditions shall remain in effect until varied by the Trial Chamber.

2 Mr Ruto, can you confirm?

3 MR RUTO: Yes, Madam President and your Honours, I confirm that I understand
4 the conditions that were proffered by the Court and I will abide by those conditions.

5 PRESIDING JUDGE OZAKI: Thank you very much.

6 MR RUTO: Thank you.

7 PRESIDING JUDGE OZAKI: Mr Sang?

8 MR SANG: Yes, Madam President, I confirm that the condition stays as it is.

9 PRESIDING JUDGE OZAKI: Thank you very much. Mr Ruto and Mr Sang have
10 also made submissions on several practical matters related to the modalities of their
11 stay in The Netherlands during trial. The Registry has indicated that it may be in a
12 position to inform the Chamber as soon as additional information on the conditions to
13 be applied to the accused persons in The Netherlands is available. Is the Registry
14 now in a position to do so?

15 MR DUBUISSON: (Interpretation) Thank you, your Honour. Yes, the Registry
16 can confirm that we received correspondence from the host country yesterday
17 evening, stating that in the case of the presence of those individuals in The
18 Netherlands, they can stay for 12 months. Beyond a period of 12 months, it will be
19 necessary to consult once again with the Dutch authorities. Thank you.

20 PRESIDING JUDGE OZAKI: Thank you very much.

21 Are there any additional submissions from the Defence teams in this regard?

22 MR HOOPER: In respect of that particular matter, no. There are some ancillary
23 matters which perhaps I could raise or touch upon now, with the leave of the
24 Chamber.

25 The first matter is you would have noticed in one of our filings, and I think this

1 applied, did indeed apply in respect of both Mr Sang and Mr Ruto that there was a
2 request for an extension on the limits within which the accused here have to remain;
3 that is 30 kilometres of the Court, and it was asked that that be extended to 60
4 kilometres. The purpose of that being that if they're here for some time they're
5 within reach obviously here of both Amsterdam and Rotterdam. That might very
6 well be a matter that needs to be negotiated with the Host State, and I see you
7 nodding Madam President, so perhaps I'll say no more about that at the moment.
8 It's a matter perhaps we can take up with the Registry in due course subject to any
9 views you may have.

10 In terms of the practical modalities, I don't know if that subject stretches as far as the
11 next point I'm going to raise. May I say that we've had the opportunity of either
12 being present this morning or listening over the link to the hearing that preceded us,
13 the Kenya II hearing, and so there are quite a number of issues obviously in common
14 that have been dealt with and in respect of which we have, as it were, had a distinct
15 flavour of the perhaps Chamber's view, not least of all of course in respect of its
16 announcement that it's been purposefully seeking, through the Presidency, the
17 opportunity of establishing a second Chamber so that each of these two trials will
18 have its own Chamber in which the trial can be conducted.

19 In respect of that, obviously that's a matter completely outside my hands and I make
20 no observations in respect of it. We notice of course that the primary motive behind
21 that is expedition of trial and that is a significant and important right, and we're
22 grateful to the Chamber for bearing that very much in mind.

23 In terms of hearing within that context, it is the view of both the Ruto Defence, and
24 may I say also the Sang Defence on this particular subject, that we would as a matter
25 of preference, if we may be permitted to express that preference, prefer hearings that

1 were in chunks as it were of three to four weeks at a time. So it would be Kenya I for
2 three or four weeks followed by Kenya II for three or four weeks. That would be our
3 preference, in order to -- now I just pause.

4 PRESIDING JUDGE OZAKI: Sorry to interrupt.

5 (Pause in proceedings)

6 PRESIDING JUDGE OZAKI: I'm sorry, there have been some technical problems
7 but it's been solved. But in any case, Mr Hooper, if you are referring to the mode of
8 trials, maybe you can talk about it later under the third agenda item.

9 MR HOOPER: Very well then. Perhaps I'll reserve other matters contingent really
10 on that until later. Thank you very much.

11 PRESIDING JUDGE OZAKI: Thank you. Anything to add, Mr Kigen-Katwa?

12 MR KIGEN-KATWA: Madam President, apart from what the counsel for Mr Ruto
13 has indicated, we also pray that a provision be made if possible by the Chamber for
14 an option to contact the presence of the accused for trial through video link, and may
15 I qualify by saying that my client wishes and desires to be present and would only
16 seek it in exceptional circumstances if that provision is secured.

17 Other than that, Madam President, we also request on behalf of Mr Sang that the limit
18 and the scope of the area within which he can operate when he visits the country for
19 trial be expanded to 60 kilometres from the initial and the previous 30 kilometres.
20 Thank you, Madam President.

21 PRESIDING JUDGE OZAKI: Thank you, Mr Kigen-Katwa. As for the request for
22 video link, may I ask you to make a submission - written submission - on this issue,
23 including the legal basis of such request and modalities - concrete modalities - of
24 video link by the end of this month?

25 I am not sure if Registry is in a position to respond to any of the issues raised by the

1 two Defence teams, but in any case I would like to ask the Registry to liaise with the
2 Defence team on detailed issues such as geographical limitation of visa and update
3 the Chamber if necessary.

4 Second agenda item is delayed Prosecution disclosure and the impact on the trial start
5 date. Mr Ruto has asked the Chamber to consider providing the Defence with more
6 time to prepare its case. The Chamber would like now to hear the submission of the
7 parties on the trial start date in light of the current state of disclosure.

8 The current state of disclosure as understood by this Chamber is that the identities of
9 between five to seven witnesses out of 41 witnesses have still not been disclosed to the
10 Defence. I would like to ask the Prosecution to update, witness by witness, but
11 please do not go into detail because of the time limitation and please be reminded that
12 we are in open session.

13 The first witness whose identity, disclosure of identity, is delayed is Witness 15, to be
14 disclosed on 25 February, and as for Witness 16, can the Prosecution confirm that this
15 witness's identity has been disclosed to Defence already?

16 MR GARCIA: Yes, indeed, your Honour. Witness 16, his identity was disclosed on
17 11 February. And just to be clear on the matter, there are eight witnesses for whom
18 the identity has not yet been disclosed to the Defence, and if the Chamber wishes
19 I can give their numbers immediately and we can be clear on that matter before
20 proceeding.

21 PRESIDING JUDGE OZAKI: I prefer to go witness by witness. And the next is
22 Witness 336.

23 MR GARCIA: As well, your Honour, Witness 336 was disclosed on 11 February.

24 PRESIDING JUDGE OZAKI: 356.

25 MR GARCIA: Witness 356 was also disclosed on 11 February.

1 PRESIDING JUDGE OZAKI: I understand that 397 is to be disclosed on 20 February;
2 right?

3 MR GARCIA: Your Honour, actually, we are intending on disclosing him on
4 18 February; that's next Monday.

5 PRESIDING JUDGE OZAKI: Can you update the situation of Witness 495?

6 MR GARCIA: Yes, your Honour. In regards to Witness 495, we're still waiting for
7 return from VWU on that matter regarding the implementation of security measures
8 and once that has been effectuated then the Prosecution will be in a position to
9 disclose the identity of this witness to the Defence.

10 PRESIDING JUDGE OZAKI: I understand Witness 516 be disclosed on 18 February;
11 am I right?

12 MR GARCIA: That is correct, your Honour, on 18 February for Witness 516.

13 PRESIDING JUDGE OZAKI: Can you identify -- can you -- oh, yes, sorry. How
14 about 524?

15 MR GARCIA: Similarly, your Honour, as Witness 495, the same situation prevails
16 for him. Once we get a return from VWU on the issue of implementing security
17 measures for this witness we'll be able to disclose his identity to the Defence.

18 PRESIDING JUDGE OZAKI: And the same as 534?

19 MR GARCIA: Indeed, your Honour, that is the case for 534 as well.

20 PRESIDING JUDGE OZAKI: 536?

21 MR GARCIA: Yes, for 536, once again, we are waiting for VWU to come back on us
22 for that witness and the moment they do so we'll be able to effectuate disclosure.

23 PRESIDING JUDGE OZAKI: Thank you very much. Can the Registry update us
24 with this situation of 495, 524, 534 and 536?

25 MR DUBUISSON: (Interpretation) Thank you, your Honour. Yes, this is

1 scheduled for next week; that is the decision of the Registrar on the acceptance of the
2 protection measures.

3 PRESIDING JUDGE OZAKI: Thank you very much. May I ask the Prosecution if
4 Prosecution is contemplating any measures to mitigate any prejudice to the accused
5 resulting from delayed disclosure?

6 MR GARCIA: Yes, your Honour, the answer is yes to that question. For most
7 of -- for these witnesses we have already disclosed to the Defence summaries in
8 certain cases and I think one of the most important measures that we can implement
9 in order to mitigate any prejudice that the Defence might have in this case and so that
10 they can have time to do adequate investigation if that is the case is that we can
11 actually in practical terms put these witnesses to the end the case in chief of the
12 Prosecution, and in this fashion we have 41 witnesses in all. This will indeed, in our
13 humble opinion, give the Defence ample time to investigate their material.

14 PRESIDING JUDGE OZAKI: Thank you very much. Now I would like to give the
15 floor to Defence teams on this issue. Mr Hooper, would you like to start, or
16 Mr Kigen-Katwa?

17 MR HOOPER: I'm quite happy to start. The phrase just used was that with the
18 matters, that is summaries, and by effecting a particular ordering of witnesses, the
19 prejudice that this late disclosure necessarily creates for the accused can be overcome
20 and we will have ample time "to investigate the material." I can only think that that
21 is a statement made by someone who hasn't prepared a case such as this.
22 The first thing that I'd wish to emphasise is the importance to an accused, to a defence
23 preparing its case, to have an overview and a detailed overview and a reliable,
24 effective overview of all the aspects of the Prosecution case and in particular of course
25 that of the evidence or anticipated evidence of its witnesses.

1 The Defence of course knew and the Prosecution were told that 9 January was the
2 effective date for final disclosure, and as we've said and stressed in many of our
3 filings, that was the final date of disclosure. And I hope without encroaching on the
4 view of the Chamber, I'd be very much surprised if the Chamber, let alone the
5 Defence, thought that that date meant that the Prosecution could leave effective
6 disclosure until -- I was going to say 3.59 on 9 January. It was actually 8 p.m. on
7 9 January. There was no disclosure before that, effective disclosure. The material
8 that was disclosed before that was not of the level of relevance that of course we're
9 most concerned with.

10 Secondly, at that point 46 witnesses were disclosed, which was I'd say fairly more
11 than was anticipated when you consider that the confirmation hearing had eight
12 witnesses. It was certainly more than we found in other cases so far before this
13 Court. Of those 46 witnesses, we're at this juncture today. Five of those witnesses
14 have been withdrawn, but remain it seems in some form of witness purgatory where
15 they may re-emerge if and as when the Prosecution have secured their security issues.
16 Eight of those witnesses remain still redacted, and we've heard of the progress over
17 the next week or so that we may have in respect of those.

18 Five of those witnesses were disclosed only in the past week or so, so coupled with
19 the eight, 13 of those witnesses have been disclosed in this month -- I'm sorry, not this
20 month, five of them this month, eight of them still to come, 13 in all.

21 And of course when we talk about disclosure, we have in addition to that the issue of
22 what is now known as the B2 and the B3 redactions, those were meant to be disclosed
23 I think at the beginning of this week and I don't think that's been effected, or if it has
24 been we're not sure of the entire extent of it, and I stand to be corrected in respect of
25 that.

1 And let me also remind the Chamber, if it needs reminding - I'm sure it doesn't - that
2 there are three expert witnesses who are to be disclosed by today, 14 February, and as
3 of 3 o'clock as far as I know no disclosure has taken place, and we are of course
4 dealing here with issues that were certainly articulated and raised back in July at our
5 status conference then.

6 And so since July it would appear that no sufficient steps were taken - sufficient and
7 efficient steps - either to secure witnesses so that they could be disclosed when they
8 could be disclosed and secondly to secure expert evidence so that it doesn't have to be
9 served at the very last gasp, and that's all of course very important when you
10 consider - and I stress again - the limited resources available to the accused.

11 Now, there's some further issues in relation to disclosure. In respect of Witnesses 25
12 and 28, in reviewing their evidence we noticed that there was reference to effectively
13 previous interviews and references that we know are contained in screening notes.

14 And the Prosecution have agreed that having reviewed those screening notes they are
15 relevant and they are to be disclosed to us, but they haven't been disclosed yet and so
16 we don't have that total picture there.

17 But more than that we would argue that we should be entitled to all screening notes,
18 and if the Prosecution want to not disclose them to us, or to disclose them to us in a
19 redacted manner, then they should come to you, the Chamber, in order to seek your
20 approval of that.

21 And secondly we've, albeit this week I think, asked the Prosecution what the position
22 is in respect of many of the witnesses, particularly those - and there are a sizeable
23 number - who have only provided statements to the Prosecution from June of last
24 year.

25 We would like to know whether there are any audio recordings relating to the

1 extensive interviews that some of those witnesses were party to. We have at the
2 moment statements that run between 20 and 30 or so pages, which are clearly drawn
3 from several days of interviews, and the modus operandi we know of the Prosecution
4 hitherto has been in fact to audio record those -- all interviews and in fact then, if
5 there is a statement, to reduce it into statement form.

6 So if there are in fact audio recordings, and better still and we hope transcripts
7 reflecting those audio recordings, then we would like to see those audio recordings
8 because they're of considerable significance because they demonstrate, for example,
9 whether a witness was in any way led into answers, or had suggestions made to the
10 witness; in fact the kind of thing that we've found time and again in our experience in
11 other interviews in respect of other trials at this Court.

12 So we're awaiting that and that will be bulky material, if it exists. We've had no
13 indication from the Prosecution whether it exists or not and whether, if it exists,
14 they're willing to part with it on a voluntary basis, or whether we have to return to
15 you, the Chamber, in order to effect disclosure.

16 I cannot stress more than I do the effect of redactions on preparing a defence case. I
17 seem to recall this morning Mr Kay, in fact, addressed this issue. I adopt very much
18 his sentiments and what he said on this subject. You can't expect a defence to review
19 in a proper manner, in an effective manner, evidence unless it can see the complete
20 picture.

21 One only has to look at the redactions. I'll take one particular witness, P-28.

22 There's 51 transcripts, 2,031 pages and one in two pages are to some extent redacted
23 to a greater or lesser extent.

24 Having looked at that kind of evidence you then have to revisit it, and not just revisit
25 it once because generally you get R1, R2 and R3 and each time you have to go back,

1 review the evidence and see the context in which redactions have been made. You
2 can't seriously expect a defence to make effective investigations until and unless it has
3 the proper level of disclosure, which is full disclosure.

4 And a final point in respect of that - and one I know that you, the Judges, will be more
5 than mindful about - is that this suggestion of summaries, summaries are worthless
6 for an effective defence investigation or preparation of a case - worthless - and you
7 only have to see the quality of the summaries we've had in this case to appreciate that.

8 And, secondly, the idea that you can change the batting order of the witnesses. Well,
9 you know, it's all very well pushing the redacted players to the end of the list, but you
10 know all these witnesses have an interrelationship as we know in a case and
11 particularly a case like this; a case where the subject matter now extends, or it's the
12 Prosecution's intention to have it extend, from 2005 through 2006, 2007 and into 2008
13 and possibly even into 2009.

14 So the correlation of witnesses both in time and place and events is important. We
15 need that overview, and I know I don't need to over-emphasise that. You, as Judges,
16 will appreciate that problem.

17 And finally, as there are other matters I know Mr Katwa will raise with you as well,
18 and that's the to some extent shifting nature of the case. I know counsel this
19 morning was talking of shifting sands and the like.

20 The basic difficulty -- well, I say "difficulty." The basic problem that's arisen is this:
21 That the emphasis on significant parts, or I say the emphasis on parts of the case has
22 shifted, and the focus that was in fact on the events of December and January and the
23 month or so immediately preceding it of 2007/8 is now in fact taking in events in early
24 2007, 2006 and back into 2005, 2002 and further back still, and that's without of course
25 seeing the extent of whatever the experts might say, particularly those who are

1 attempting to wrestle with the history and a complex history.

2 So that's our burden. It can't be adequately itemised, because it's an overall burden.

3 It's an overall weight. It's one that the Prosecution could and should have eased and
4 they haven't. We're really in no better or effective a position here mid-February than
5 we were in mid-December.

6 Thank you, madam.

7 PRESIDING JUDGE OZAKI: I have one question. When you talk about shifting
8 emphasis of the case, you are talking about shifting from confirmed charges to
9 pre-trial brief, or confirmation decision to -- can you clarify?

10 MR HOOPER: What I mean by that, and particularly in respect of the pre-trial brief,
11 is that there's an increased emphasis on other meetings and on other events and in
12 particular earlier meetings, earlier events. And so that we're as concerned of course
13 with events at the end of 2007 and into 2008, but the Prosecution have rather
14 broadened the material they want to bring, the prejudicial material if I can put it like
15 that, to include statements and events in 2005, when as you may know and recall
16 from what you've seen already there was the referendum on the Constitution in
17 Kenya, and through that through 2006 and through that and then leading up into
18 2007.

19 So there's been a greater emphasis on that and that's going to cause us to necessarily
20 focus more on those preceding events, and again to that extent there's a placing of a
21 greater burden, an evidential burden, and it is a greater one because you're talking of
22 years and not just months.

23 Thank you.

24 PRESIDING JUDGE OZAKI: Judge Eboe-Osuji.

25 JUDGE EBOE-OSUJI: Mr Hooper, I do not know the answer to this question.

1 Maybe you can help me? You say that you would argue that you are entitled to the
2 screening notes. Are those impressed with work product privilege? I just want to
3 know. I haven't got a view yet.

4 MR HOOPER: Well, in the system that exists I think here at the ICC in terms of their
5 investigations, probably the easiest and most helpful way is if I can get to you a
6 screening note and perhaps one would appreciate what it is.

7 But, for example, it seems to me -- let's take one witness, say P-28 or P-25. It would
8 seem with P-28 that there was an interview, if you like, a series of questions and
9 answers as to what he knew by the investigators over the telephone, and he gave
10 various answers and he gave accounts of various meetings that took place. We don't
11 know the extent or the length of that interview if you like, or telephone conversation,
12 or the nature of the screening note, but it's going to be disclosed to us now.

13 And the reason it's going to be disclosed to us now is that we could see from the
14 transcripts - not from a statement in his case, but from transcripts - that when he was
15 being questioned the investigators were saying, "Well, hold on, you didn't tell us
16 about this when we spoke to you in April. You didn't speak about this meeting, or
17 you said something different," and so obviously we want to see what the content of
18 the screening note is.

19 These aren't things that necessarily just deal with his family arrangements, security
20 arrangements or something like that, or when he can turn up at the office for an
21 interview. They're obviously matters -- matters are gone into, and it's -- in his case
22 it's clear that from a Defence perspective these are contradictions and perhaps
23 significant ones to the eventual account that he gives.

24 So we're looking at these screening notes from a Defence point of view for prior
25 inconsistent statements, and of course it's always of considerable interest in that

1 context what a witness may say originally as opposed to what he might say in his
2 later statement.

3 So that's the general context. It's not a fishing expedition. We're saying all these
4 screening notes, because of the nature in which the Prosecution and the investigator
5 works in this Court, are relevant because they will deal with that subject. They will
6 deal with the issues, in other words. They will deal with the evidence.

7 I hope that answers your question? Thank you.

8 PRESIDING JUDGE OZAKI: Thank you very much.

9 Mr Kigen-Katwa?

10 MR KIGEN-KATWA: Madam President and your Honours, I -- on the part of
11 Mr Sang, we seek that the starting date for trial be deferred. I wish to rely on nine
12 grounds in support of that, and with your permission, Madam President, I will start
13 with the issue that my learned friend, Mr Hooper, has raised and which attracted a
14 question from Madam President, being the question of the shift in the case.

15 Madam President, it is our argument that the case that the Prosecution proposes to
16 advance in the full trial has shifted, and I can illustrate on only three items out of the
17 many items we've seen.

18 The first one, Madam President and your Honours, would be for instance that, in the
19 initial case that they presented at the confirmation stage, the Prosecution's argument
20 was that the aggressors took the shape and the vehicle of an outfit called ODM, a
21 political party.

22 However, in the course of studying the disclosure of the witness testimonies and their
23 pre-trial brief, it is clear that the aggressor has shifted into an outfit called the Kalenjin
24 as an entity. The other shift that has obtained in the course of time is that, prior to
25 the confirmation, the limited extent to which the Prosecution was saying they are

1 going to make their case is that the election filings related to the events of the 2007
2 election situation.

3 However, in their testimony, in the testimony they have disclosed, together with the
4 pre-trial brief, it is clear that they intend to make out a case that suggests that the
5 filings that occurred and the subject of this case was in relation to the 2007 elections
6 and the 2012 elections; that comes out from the evidence that they have adduced, that
7 they have presented to us, they have disclosed to us.

8 Lastly, your Ladyship, in terms of an indicator of their shift, is that originally this case,
9 the allegation was that the objects, the targets of these attacks were the Kikuyu tribe.

10 That shifted thereafter to an allegation that it was -- the targets were Kikuyus and
11 Kisiis. Thereafter it moved on to Kikuyus, Kisiis and Kambas. Then thereafter in
12 some of the disclosures they have now brought in another tribe by the name Luos.

13 And Madam President, and your Honours, these are issues that have constrained us
14 to expand the scope of what we need to prepare for towards the hearing, and we
15 submit that the period that has been said, being the start date of 10 April, would not
16 be adequate for us to be adequately prepared to face those charges with the shift that
17 has been introduced into it.

18 We also are saying that the scope of the period, the scope of the case has changed and
19 it has changed in three senses.

20 The first one is that in the confirmation period, in the confirmation course, the period
21 was between the month of December 2007 and February 2008. The material that has
22 been disclosed to us now introduces a period of up to four years, the period of the
23 year 2005 to the period of 2009, and that has completely changed our approach and
24 our calculation towards responding to the case.

25 The second one is that the dates that were confirmed and the dates that had been

1 sought by the Prosecution in respect particularly to Mr Sang were six dates, being
2 dates alleged to have been dates for preparatory meetings, preparatory -- preparing
3 for the violence.

4 The dates have been introduced in the course of the disclosures now are over 20 dates
5 and it is our understanding on our part as the Defence that we need to respond and
6 react and investigate each of those dates as made out.

7 Lastly, in respect to that expanded scope is that we had identified in the course of
8 confirmation stage venues that are alleged to have been the places where the violence
9 occurred as a consequence of the later planning by Mr Sang and Mr Ruto. Those
10 venues have been about tripled in the course of the disclosure and, Madam President,
11 because of all those reasons we pray that we be given more time to prepare ourselves
12 for -- to face the case as made out by the Prosecution.

13 Madam President, we do not agree with what the Prosecution is saying, that it is an
14 adequate remedy and cure for them to hold a witness whose disclosure has been
15 delayed towards the end of the case, and it is our argument that we need to have the
16 complete picture of our case before we start conducting the trial, including
17 cross-examining the first witness. And so your Ladyship, we pray and submit that
18 that argument should be rejected and that we should be entitled to know the full
19 scope and the full details of what the Prosecution allege before we commence trial
20 and that after that disclosure we should be afforded adequate time to respond to the
21 whole case.

22 Madam President and your Honours, the continued scenario where the Prosecution
23 give us very significant disclosures engages in a process of analysing that evidence
24 and investigating and thereafter withdrawing those witnesses, your Ladyship, has
25 put us in a very difficult situation, because we engage our investigators, we engage

1 our times, to analyse that evidence and shortly after we have expended ourselves to
2 that effect, they withdraw the witnesses.

3 That scenario is compounded by the fact that even in the course of the seeming
4 withdrawal they do not make a clear commitment as to whether that witness has been
5 withdrawn or will come back. The indication is that that witness might come back
6 and we are put in such a suspense and we would pray, your Ladyship, that even on
7 that criteria alone a scenario be required of the Prosecution that they should first of all
8 determine how many witnesses they intend to call and avail us that list of the
9 witnesses so that we know exactly in respect to which witnesses to prepare.

10 Your Ladyship, my learned friend Mr Hooper has already highlighted on the fact that
11 we are obliged to study a witness statement up to three or four times because we get
12 an initial statement which has very substantial redactions, thereafter the reduction is a
13 little reduced and that can go on for up to four times and, your Ladyship, that puts a
14 lot of weight and pressure on ourselves and that, your Ladyships, necessitates that we
15 pray that you very kindly accommodate us by deferring the start of the hearing dates.

16 And some the witnesses in the course of our analysis of the evidence refer to
17 documents, the consequence of which is that the material disclosed through those
18 witnesses is not complete in the sense that the witnesses refer to other incidents or
19 other documents they have made and which are not part of the disclosure.

20 Other instances, your Ladyship and your Honours, is that we have a situation where
21 a document is referred to. We enquire from the Prosecution and it occurs that the
22 numbering system was changed in the course of time and on our part as the
23 Defence we are unable to relate one document and one statement, and therefore that
24 also has frustrated our efforts to prepare ourselves.

25 Madam President and your Honours, a question has been posed as to whether we are

1 entitled to screening notes. We submit on our part that we are entitled to screening
2 notes for two purposes: The first purpose is that it is part of our entitlement as
3 Defence to highlight contradictions which compromise the quality of the evidence of
4 a Prosecution witness and so we would pray that we be given access to those
5 screening notes so that we can highlight and demonstrate the weakness of that
6 evidence owing to the contradictions.

7 Secondly, we also rely on the provisions of Article 67(1)(a) that the Prosecution -- that
8 the Defence is entitled to know in detail the case against them, including the source,
9 and we submit that even the screening notes would enable us access the source and
10 the metamorphosis through which the case has gone culminating in the nature of the
11 case that we are confronted with.

12 Madam President, as we speak today, the Prosecution was supposed to have
13 disclosed to us, to have removed redactions in respect to category B2 and B3 of the
14 redactions. That has not happened. We are however aware that today they made a
15 filing, or yesterday evening, they made a filing requesting for extension of time.
16 And we do not want to make a big issue of the fact that the Prosecution have
17 consistently made an application -- have consistently led applications for extension of
18 time when the time has expired. It would be regular but we do not wish to make an
19 issue of it.

20 However, your Ladyship, we pray that the Court takes that aspect on board in
21 considering our grounds justifying the prayer for delayed hearing.

22 Lastly, Madam President and your Honours, it's been ordered by the Chamber that a
23 pre-trial brief must be filed by the Prosecution and obviously by the Defence at their
24 turn. We already have a pre-trial brief, but that pre-trial brief clearly has changed
25 owing to the fact that some the witnesses have been withdrawn, and some of those

1 witnesses were the original -- had originated some grounds either in respect to dates
2 or venues or periods. And, Madam President and your Honours, it would become
3 absolutely necessary that the Prosecution file another pre-trial brief owing to that
4 changed character of their case, and even for that reason that they need to give, and
5 referred to as a pre-trial brief, we pray that the date of commencement be deferred.
6 For all those reasons, Madam President and your Honours, we pray that you do find
7 us to have deserved the exercise of your powers to defer the date from when the trial
8 should commence and that the Prosecution be constrained to make full and complete
9 disclosure in good time for us to be able to prepare ourselves for the defence.

10 Thank you, Madam President and your Honours.

11 PRESIDING JUDGE OZAKI: Thank you, Mr Kigen-Katwa.

12 When you say you need time, more time to prepare, can you suggest approximately
13 how much time you need? I know it is very difficult question but if you can
14 enlighten us.

15 MR KIGEN-KATWA: Not only is it difficult, Madam President, I was glad that you
16 did not ask any of the other counsels.

17 Madam President, I would say on our part that we would request for a period of up
18 to four months from the last date of -- definite disclosure on the part of the
19 Prosecution and my emphasis on the word "definite" is that it should include that
20 they say with clarity as to whether or not they are going to call a given witness
21 because all the witnesses they have put on suspension, in the words used by
22 Mr Hooper, whom they have put in purgatory, they should come out clearly whether
23 they intend to call them or they are abandoning them, so that we can be sure this is
24 the full scope of our case.

25 PRESIDING JUDGE OZAKI: Thank you very much. The same question to

1 Mr Hooper, if he can enlighten us.

2 MR HOOPER: I'd strongly support the suggested time period advanced by

3 Mr Katwa. And can I just touch on one other matter, and that is the pre-trial brief.

4 The Prosecution pre-trial brief is application that they should serve a further and

5 better pre-trial brief and they could also address then the -- I think 60 redacted

6 footnotes that presently exist in the pre-trial brief. And as for the witnesses, I think

7 theologically I put them in purgatory. Perhaps limbo would have been a happier

8 residence for them.

9 PRESIDING JUDGE OZAKI: Thank you. Judge Eboe-Osuji.

10 JUDGE EBOE-OSUJI: Mr Katwa, perhaps Mr Hooper as well, but mostly Mr

11 Kigen-Katwa, on that matter of further and better pre-trial brief, as I understand it,

12 you are saying the Prosecution has withdrawn some witnesses, therefore it is

13 foreseeable that the scope or the shape of their case has changed, therefore a new

14 pre-trial brief. Is that your submission?

15 MR KIGEN-KATWA: Yes. Yes, yes, your Honour.

16 JUDGE EBOE-OSUJI: Maybe then you can tell me why it would be necessary for the

17 Prosecution to submit a new pre-trial brief if they have said they're going to prove X,

18 Y, Z, and they lined up witnesses initially to prove X, Y, Z, but then the witnesses

19 they lined up for X have now been withdrawn, why would it be necessary to file a

20 new pre-trial brief as opposed to you make submissions you need to make if they

21 don't prove their case?

22 MR KIGEN-KATWA: I have three responses, your Honour: The first one is I come

23 from the position that it was a conscious decision on the part of the Chamber that the

24 Prosecution should avail a pre-trial brief. If owing to the initial pre-trial brief the

25 shape of their case has changed, it will only be reasonable and useful if they withdraw

1 the pre-trial brief so that it serves the purpose which the Chamber had intended.

2 The second thing, your Honour, is that the situation that the Prosecution have put us
3 is that it is not a complete statement that we have withdrawn. They say for now we
4 are withdrawing but we may bring him back if we establish a certain set of facts.

5 And the two main issues they have raised from time to time is that -- on some
6 instances they say they want to address security concerns by those witnesses. In
7 some other instances they say that they intend to persuade the witness to cooperate
8 before they commit themselves. And for those various reasons, your Honour, we are
9 put in a situation where we are uncertain as to exactly what will become of that
10 witness and that evidence.

11 The third reason, your Honour, is that some of those witnesses are the only ones who
12 make certain allegations, either in terms of a date of a meeting, or in terms of a venue
13 of crime or in terms of a period. And in the absence of those witnesses, we are left in
14 uncertainty as to whether the Prosecution still intends to make out a case in respect of
15 those items.

16 Lastly, your Honour, the Prosecution -- we have engaged the Prosecution in
17 correspondence, as Madam President had commented in the last status conference, to
18 try to sort out any issues that may be pending before we appear before you, and very
19 thankfully the Prosecution have acknowledged that in fact the circumstances
20 warranted that they file a different pre-trial brief to address the changed
21 circumstances.

22 Thank you, madam.

23 PRESIDING JUDGE OZAKI: Mr Hooper, would you also like to respond or can we
24 proceed?

25 MR HOOPER: You can proceed. Thank you.

1 PRESIDING JUDGE OZAKI: Thank you very much.

2 Before I ask for Prosecution to respond, I would like to ask Defence, as in the other
3 case, to submit a written filing, if they need, on the issue of disclosure and trial start
4 date, if they want to do so, by 20 February and Prosecution to respond by
5 25 February.

6 Having said this, does Prosecution want to respond now?

7 MR GARCIA: Yes, your Honour, if the Chamber permits, just briefly on the points
8 that were raised by both Defence counsel.

9 Now, on this whole question -- and maybe I can just clear up this matter, on the
10 question of the pre-trial brief, the Prosecution doesn't have any objection in
11 submitting for the 25 February, that would be our date, a pre-trial brief that would be
12 adjusted in line with the circumstances with the fact that indeed five witnesses of the
13 Prosecution have been withdrawn from the list of witnesses. So that's not
14 problematic for the Prosecution and we will endeavour -- we're actually -- we've
15 actually started looking at it and we're adjusting it with the circumstances.
16 But even more importantly I think is what Mr Hooper is saying, and Mr Hooper is
17 claiming, and I think we picked up on this, that the circumstances or the case has
18 changed somewhat. I think the term he used is shifting sands. Now, the fact of the
19 matter is, your Honours, there hasn't been shifting sands in this case at all, and
20 Defence counsel know that full well.

21 Prior to the confirmation hearing Defence counsel received redacted versions of some
22 of the most crucial witnesses of the Prosecution, and these witnesses still remain
23 crucial witnesses, they're crux witnesses for the Prosecution, and within these
24 statements, even redacted, this whole question regarding period of time or events that
25 occurred before the post-electoral violence come out repeatedly, and there's one

1 explanation for that, it's because they're intimately related to what happened in 2008.
2 I know this is not the time and place to get into this debate, but Defence counsel know
3 full well that the events that occurred in 2005 during the referendum in Kenya are
4 intimately related to the events that occurred afterwards during the post-electoral
5 violence, and this information comes out in the statements of the witnesses that were
6 disclosed to the Defence at that time in redacted form, so there is no question of
7 shifting sands or broadening the scope, and it seems to me that there's an error that's
8 being made by Defence counsel on this, and it's a very obvious one, that there's a
9 confusion between two elements that are quite important: First of all, the time
10 period that a Chamber can adjudicate on and the fact that the Trial Chamber can take
11 into consideration to arrive at this adjudication.
12 It's correct to say that indeed the time period for which we are concerned today is the
13 post-electoral violence time period, but there are facts that precede that and even facts
14 after the post-electoral violence which could be assimilable to post-offence conduct
15 which are quite relevant to the case. So in a nutshell, the case hasn't been broadened,
16 it hasn't changed at all. Mr Hooper, other Defence counsel know as well, that the
17 case of the Prosecution remains fundamentally the same. So that's why I differ on
18 that argument with Defence counsel.
19 Now, there's also been the question -- and these matters -- and I'm not sure this is the
20 correct forum to decide on these matters, it's questions that are sprung up by
21 Mr Hooper at the last minute. There has been emails - inter party emails - between
22 the parties and we are responding to these emails with the Defence.
23 Now, this whole question regarding screening notes, first of all, it's not correct to say
24 that they have not received yet the excerpts. For Witness 28, the Prosecution has
25 acted diligently and immediately, upon which we received an email indicating that

1 there could be a contradiction, we looked, we analysed and we disclosed that excerpt
2 already to the Defence.

3 For Witness 25, I hear that -- I see that Mr Hooper is nodding, but from what I
4 understand we have confirmation on our side. For Witness 25, the witness -- the
5 Prosecution received this email recently and is looking into it. The Prosecution is
6 well aware of its obligations, your Honour. We will look into it, and if there is an
7 excerpt to disclose to the Defence, we will do so. We are mindful of our obligations
8 and we're respecting them.

9 What I don't like is when we try and stretch this whole issue out to become one where
10 the Defence is requesting all the screening notes. There's no justification for that at
11 all, and Defence counsel know very well that the jurisprudence in this Court, and I'm
12 referring to decision 2585, Lubanga decision, speaks about this whole issue of
13 screening notes and it's clear, the problem with screening notes is that they're
14 unsworn statements. They're a kind of internal work product.

15 The only moment that these screening notes do become relevant for the Defence is
16 when they contain something which is contradictory, which could be termed as Rule
17 77 or PEXO, that's contradictory to the full statement, but normally the statement of
18 the witness covers everything.

19 JUDGE EBOE-OSUJI: Do I take it then that you have disclosed some screening notes,
20 but not others?

21 MR GARCIA: What we have done, your Honour, in keeping with what the practice
22 has been, is disclosed the exact excerpt where there would have been a contradiction
23 or some type of different language used by the witness, and we've disclosed that to
24 the Defence. The screening note in and of itself does not need to be disclosed to the
25 Defence because normally most -- all of it should be already covered in the witness

1 statement, and that's usually the case. Screening is simply to verify if the witness is
2 someone who knows about the events, who has relevant information. It's an internal
3 work product.

4 JUDGE EBOE-OSUJI: I want to understand, to be clear on the record, that you're
5 saying you have or you have not disclosed some screening notes?

6 MR GARCIA: What we've disclosed, your Honour, is an excerpt of a screening note
7 regarding P-0028.

8 PRESIDING JUDGE OZAKI: Well, my understanding of the jurisprudence is if
9 some material, whether it is a screening note or not, if it contains potential
10 exculpatory evidence or Rule 77 materials, it should be disclosed, and that's it.

11 MR GARCIA: That is correct, your Honour. That's our reading as well. What I'm
12 basically saying is that normally what's disclosed to the Defence is the extract, that is
13 either Rule 77 or PEXO, and this is the constant practice that we've had at the Court
14 for the moment. So we are in agreement on the basis of that.

15 Now, I understand that Mr Hooper has also spoken to us about three expert witnesses,
16 and this is just to update the Chamber and Mr Hooper on this because there has been
17 a meeting scheduled between Defence and the Prosecution today after court to
18 disclose this information regarding our three expert witnesses. We have the reports
19 of these witnesses and we will be disclosing them to the Defence today, so if that
20 maybe clears up any questions or issues that Mr Hooper had on the matter.

21 And just on the last point, and most probably the most important point that we've
22 dealt with, this whole question of delayed disclosure, and what the Prosecution
23 wishes to say in this regard is that -- and I'm not going to obviously go into details
24 with the witnesses and what have you and the number of documents that have been
25 disclosed, but when you look at it generally the Defence has been receiving

1 continuously a steady flow of evidence, be it incrim evidence, Rule 77 or PEXO. And
2 even prior to 9 January, the Defence received a lot of this information. Some of it
3 obviously was redacted, but there was information on which the Defence knew
4 exactly what the case was of the Prosecution and had the means to go and investigate
5 these matters already. Now, if the Defence hasn't done so, this is an issue for the
6 Defence themselves.

7 I understand that Mr Hooper is stating that this delayed disclosure is causing
8 problems but the Prosecution is extremely mindful of its obligations by virtue of
9 Article 68 of the Statute, and if we have asked for delayed disclosure, if we have taken
10 a certain amount of time to disclose witnesses, and we've done it obviously
11 complying with the orders of the Chamber at all time, it's to ensure ourselves that the
12 protection of these witnesses is ensured and that security - the appropriate
13 security - measures have been implemented before the identity of these witnesses has
14 been disclosed to the Defence.

15 I understand there's also a question regarding the redactions and I understand that
16 there's a difficulty in re-reading the material, but this is our obligation that the
17 Prosecution -- the moment that we can lift redactions, we do so. It's an arduous task
18 even for us, and obviously I can imagine that for the Defence it is troublesome to
19 return on the same documents over and over and re-read them.

20 So basically, on the question of delayed disclosure, the Prosecution has complied with
21 the dead-lines issued by the Chamber itself and we've disclosed sufficient amount of
22 material before 9 January so that Defence counsel know already what was the crux of
23 our case, and that -- I'm not going to repeat my statements, that even before, prior the
24 confirmation hearing, the crux of the Prosecution's cases, the core of its witness, the
25 Defence knew exactly what they were going to say.

1 So those are essentially my submissions, your Honor. Thank you.

2 PRESIDING JUDGE OZAKI: So long as this is a criminal case, I think Defence has
3 every right to know more than crux, but anyway, this is my personal remarks.

4 Do Defence teams want to respond right now, or they are happy with submitting
5 written filings?

6 MR HOOPER: Yes, on behalf of Mr Ruto, we're happy to file any further comments
7 in writing. Thank you.

8 PRESIDING JUDGE OZAKI: Thank you very much.

9 Now I would like to go to the third agenda item, and at the outset I would like to
10 make a statement as I did in the other case about scheduling of the two Kenya trials.

11 * The Sang Defence team requested the Chamber to provide an indication during this
12 status conference as to how it intends to alternate between hearing this case and the
13 Muthaura and Kenyatta cases. This matter has also been raised by the Defence in
14 the Kenya II case. In particular, an application has been filed for the Judges of this
15 Chamber to consider excusing themselves from one or either of the cases on the
16 grounds that hearing such complex cases concurrently would necessarily delay the
17 trial process in both cases.

18 This Chamber is very mindful of the rights of the accused in both cases to be tried
19 without undue delay. Indeed it considers it to be in the interests of all parties, in the
20 interests of victims and in the interest of justice for the cases to proceed as
21 expeditiously and as efficiently as possible.

22 It is the view of the current Trial Chamber V that the most expeditious way to
23 proceed is to constitute two separate Chambers to hear the cases in parallel. Since
24 June last year this Chamber has been in communication with the Presidency in that
25 regard, recommending in particular that additional Judges be assigned to compose

1 two separate Chambers.

2 As all parties are aware, the Court also faces some logistical constraints including
3 availability of courtrooms. For example, because both of the cases have two accused
4 and because there are other cases going on at the same time, the use of Courtroom
5 1 - this courtroom - for both Kenya trials is the only option.

6 For this reason, even if two Chambers are composed, it will not be possible to conduct
7 simultaneous full day trials in both cases; a full day trial meaning a 4.5-hour trial.

8 The most that could be done is to share this courtroom and to sit for four hours a day
9 on each case, meaning four hours in the morning for one case and four hours in the
10 afternoon for the other, which in the Chamber's view will best serve the purpose of
11 ensuring expeditious trials.

12 The Chamber is still waiting for the decision of the Presidency. The Chamber will
13 notify the parties and participants as soon as it is informed of any decision of the
14 Presidency in this regard.

15 Mr Hooper, if you want to say something, this is the time I think you should?

16 MR HOOPER: I've made my point in respect of a preference for consecutive
17 hearings in terms of weeks of three or four weeks at a time. I won't repeat it, it's on
18 record and you well understand it.

19 Mr Katwa raised the issue of the video link and obviously we will ally ourselves to
20 that as an optional facility, one gratefully received too from time to time, and I
21 understand the Chamber has asked and will join in those observations in respect of its
22 equal basis and the rest, which I well understand.

23 I've no other observations. There's a number of difficulties, what I'd say institutional
24 or structural difficulties, that of course are beyond our reach - and it may appear also
25 to some extent beyond yours - in terms of funding of this Court and the like.

1 Some relate of course to the Chamber and the judicial calendar. We don't know, if
2 there is a second Bench constituted, how long that second Bench might need in order
3 to prepare itself if it's a fresh new Bench for example. We don't know what's
4 happening in the Bemba case and the difficulties that there might be there. We
5 understand and have heard rumours that there are difficulties in terms of witnesses
6 and the like and the effect that that might have.

7 We know, of course, that there's been a very substantial motion in the Kenya II case in
8 respect of referring the issue back to the Pre-Confirmation Chamber. That's a matter
9 to be decided first by this -- by you, the Judges, or successor Bench, I know not.

10 I don't know how long this kind of thing will take, or whether there'll be an appeal
11 one way or the other in respect of any decision, or how long the Pre-Confirmation
12 Chamber if it receives that matter again may take in respect of that case and the effect
13 consequent on this case.

14 We know that there's applications before the Chamber in respect of moving this trial
15 to Arusha and, as the snow gently falls outside this court, I must say my thoughts go
16 to Arusha. But in thinking about that I understand that issues concerning that have
17 been raised in another trial before this Court, and one of the difficulties that has been
18 expressed I understand in respect of the Registry is the lack of an immunities
19 agreement between Tanzania and the ICC.

20 Our understanding is that the Tanzanian government right up to its very highest level
21 will welcome the Kenya case to Arusha, so it's really a question for the Registry to sort
22 that out. There's no, in other words, difficulty that we know about from our various
23 sources in relation to the Tanzanian government.

24 I have no other observations, Madam President, and I'm grateful for the time you've
25 given us this afternoon. Thank you.

1 PRESIDING JUDGE OZAKI: Thank you very much.

2 As I said, many issues - the composition of the Chambers and logistical and financial
3 issues - are still in the hands of the Presidency, so the Chamber cannot give any
4 answer. And of course there are issues relating to other cases before this Court, but
5 as I said the Chamber will notify the parties and participants as soon as we know
6 anything.

7 Is there other submissions from parties and participants? Yes, please.

8 MR SUPRUN: Thank you, your Honour.

9 The Common Legal Representative of Victims instructed the OPCV to make
10 submissions on certain matters in relation to the date of commencement of the trial, to
11 preparation of the trial, as well as to practical arrangements to be put in place in order
12 to allow the Common Legal Representative to attend future hearings. I'm therefore
13 requesting the authorisation of the Trial Chamber to make submissions on behalf of
14 the Common Legal Representative now.

15 PRESIDING JUDGE OZAKI: So oral submissions you are referring to?

16 MR SUPRUN: Oral submissions, exactly.

17 PRESIDING JUDGE OZAKI: Please proceed.

18 MR SUPRUN: Thank you, your Honour.

19 In relation to the date of the commencement of the trial, the victims and the Common
20 Legal Representative fully support an expedited court process and urge the Trial
21 Chamber to schedule an early commencement date for the trial proceedings.
22 However, a number of factors militate against the provision of a reasonable likelihood
23 that the victims' views and concerns will be effectively presented, given the time
24 projected between now and the scheduled date of trial proceedings.

25 These factors include the following circumstances: First, the Common Legal

1 Representative and the members of his team have only been appointed recently and,
2 despite his best efforts, the Common Legal Representative has not yet been able to
3 meet all victim groups he is expected to represent.

4 Second, due to the expanded scope of representation, the Common Legal
5 Representative is required to devote more time for identifying, locating and mapping
6 of persons eligible to participate in the case.

7 Moreover, the Common Legal Representative is also obligated to manage a large
8 number of victims who have been already identified and conduct thorough analysis
9 of a significant amount of documentation relevant to their participation, particularly
10 in view of the diversity of interest involved.

11 And finally, due to the imposition of a new and untested model of legal
12 representation shared between the Common Legal Representative and the OPCV, the
13 Common Legal Representative and his team need more time to streamline and better
14 organise this collaboration.

15 In addition, victims are aware of the position of the Court regarding the
16 independence of its calendar vis-à-vis the calendar of significant events in Kenya,
17 including the general elections and issues incidental to the elections. Nevertheless,
18 without prejudice to the foregoing, the Common Legal Representative wishes to bring
19 to the attention of the Chamber views and concerns of some victims about the conflict
20 between the assigned trial dates and significant events.

21 In this connection, the Common Legal Representative reports that, during his just
22 ended mission, there were victims who were apprehensive about the general security
23 situation in the country and by extension their own security situation by virtue of the
24 coincidence between the hearing process in the Court and the electoral process in
25 Kenya.

1 Whilst some of the concerns as to the security of victims in the foreseeable future may
2 be subjective, the Common Legal Representative respectfully submits that the issues
3 relating to security are sufficiently significant to justify a longer period to trial.

4 Accordingly, while reiterating the need for an expeditious trial, the Common Legal
5 Representative respectfully requests the Chamber to bear in mind the following key
6 dates in Kenya's electoral process and their potential effect on the proceedings:

7 4 March, general elections; 26 March, swearing in of president-elect in case of first
8 round victory; 11 April, run-off; 30 April, swearing in of president-elect in case of
9 run-off; and 18 June, swearing in of president-elect in case of a successful petition
10 against the run-off.

11 The Common Legal Representative also wishes to draw the attention of the Chamber
12 on the following logistical issues: On 30 January, the Common Legal Representative
13 received communication from the Trial Chamber seeking to know whether he would
14 be able to attend the present status conference. On 1 February the Common Legal
15 Representative indicated his intention to attend this status conference, and inquired
16 whether arrangements were put in place for him to attend the hearing via video link
17 as the Common Legal Representative's budget would not support travel to The
18 Hague for the status conference.

19 The Common Legal Representative was, however, informed on the same day that
20 arrangements were not in place for attendance via video link and was requested to
21 liaise with OPCV to ensure representation in court in case he wasn't able to attend in
22 person.

23 The Common Legal Representative appreciates the fact that victims have been
24 allowed to participate in the status conference and this stage through him. The
25 Common Legal Representative, however, respectfully submits that for such

1 participation to be truly meaningful, as opposed to purely symbolic, within the
2 meaning of the decision on victims' representation and participation of 3 October 2012
3 and previous jurisprudence of the Court, the Trial Chamber should order that
4 adequate arrangements be made for representation of victims by the Common Legal
5 Representative via video link in future proceedings.

6 The Common Legal Representative submits in this regard that such participation
7 would enhance trust between the Common Legal Representative and victims,
8 enhance the quality of two-way information communicated and shared between the
9 Common Legal Representative and the victims, provide for better feedback from the
10 victims and better manage expectations of both the Common Legal Representative
11 and the victims.

12 Thank you.

13 PRESIDING JUDGE OZAKI: Thank you very much for your submission.

14 Is there any other speakers? Yes, please.

15 MR KIGEN-KATWA: Madam President, you had invited Mr Hooper in respect to
16 the item number 3, agenda number 3.

17 On my part I have instructions to pray, Madam President and your Honours, that the
18 proceedings be conducted in terms of Kenya I and Kenya II on alternate periods of
19 blocks of between three and four weeks.

20 I also have instructions to pray that the proceedings, if possible, be conducted for a
21 period of up to eight hours a day. I am also instructed, Madam President and your
22 Honours, to clarify that Mr Sang would be very happy if an option were to obtain to
23 conduct the proceedings in Arusha, Tanzania.

24 Thank you, Madam President and your Honours.

25 PRESIDING JUDGE OZAKI: Thank you very much.

1 This concludes our status conference today. Thank you very much, parties and
2 participants, and thank you very much, Mr Ruto and Mr Sang, for joining us.

3 THE COURT USHER: All rise.

4 (The hearing ends in open session at 4.00 p.m.)

5 CORRECTION REPORT

6 The Chamber has brought the following correction in the transcript:

7 * Page 29 line 11

8 "Some Defence team" is corrected by "The Sang Defence team"

9