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No.: ICC-01/09-02/11
Date: 28 October 2013

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR V. UHURU MUIGAI KENYATTA***

Public

**Prosecution's amended order of witnesses following the Chamber's decision
of 23 October 2013**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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1. On 23 October 2013, the Chamber granted the Prosecution's request to add Witnesses 548 and 66 to its witness list.¹
2. The Chamber directed that these witnesses be "among the last witnesses" to be called by the Prosecution, so as to allow time for Defence preparation.²
3. Further, in order to afford the Defence adequate time to investigate the allegations made by Witness 548, the Chamber directed the Prosecution not to call any of its "Mungiki insider witnesses" before the end of January 2014.³
4. The Chamber, those representing the Accused and those representing the victims will be aware (following the circulation of the Prosecution's 12 September 2013 "notification of the order of its first 10 witnesses"⁴) that the Prosecution's plans for the initial stages of the trial involved the calling of the first 10 witnesses as follows: P-0002, P-0217, P-0464, P-0003, P-0011, P-0232, P-0429, P-0430, P-0505 and P-0493.⁵
5. Six of these 10 witnesses (P-0217, P-0011, P-0429, P-0430, P-0505 and P-0493) are Mungiki insiders. The Prosecution is left with just four of its proposed first 10 witnesses (P-0002, P-0464, P-0003 and P-0232) who can be called before 1 February 2014.
6. The Chamber will be aware that the alteration of travel arrangements in respect of these witnesses, many of whom have been relocated within witness protection programmes and/or have limited access to travel documents, is a complicated and time consuming process. Witnesses (some of whom have been victims of the offences with which this trial is

¹ ICC-01/09-02/11-832.

² ICC-01/09-02/11-832, p. 9.

³ ICC-01/09-02/11-832, para. 14, p. 9.

⁴ ICC-01/09-02/11-803.

⁵ ICC-01/09-02/11-803-Conf-AnxA.

concerned) are often fearful and, once they have been led to have certain expectations, can be unsettled by changes at a late stage. Those charged with the responsibility of liaising with victims and witnesses find that carefully arranged long term plans can be thrown into confusion by late changes.

7. The Prosecution is anxious to ensure that each witness, irrespective of their former or current circumstances, gives the best quality evidence possible.
8. In the circumstances, the Prosecution is not immediately able to identify 10 witnesses (as originally required by the Chamber in its decision of 3 July 2013⁶) to be called in the 10 weeks following the commencement of the trial. The Prosecution now intends to call up to 7 witnesses between 12 November 2013 and 1 February 2014 (depending on the amount of time available). This schedule is subject to the efforts which are currently being made to arrange travel and preparation at short notice being successful. The schedule is set out in tabular form below.

Witness Order	Witness Number	Subject matter	Prospective total time in the witness box
1	P-0002	Overview and Naivasha crimebase	16 hours
2	P-0003	CIPEV	6 hours
3	P-0247	CIPEV	6 hours
4	P-0464	Expert : Sociologist and Anthropologist	12 hours
5	P-0390	Nakuru crimebase	10 hours
6	P-0232	Nakuru crimebase	10 hours
7	P-0414	Naivasha crimebase	10 hours
		Total time for questioning by all	70 hours

⁶ ICC-01/09-02/11-769, paras 2(ii), 3.

		the parties	
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9. The Prosecution notes that there is a pending request before the Chamber to vacate the start date of the trial.⁷ If this is not granted, the Prosecution would be greatly helped in organising its amended witness schedule, following the decision of 23 October 2013, by knowing how long the Chamber will sit in December 2013 and whether (and if so on what days) the Chamber will be sitting in this case in January 2014.



Fatou Bensouda,
Prosecutor

Dated this 28th day of October, 2013
At The Hague, The Netherlands

⁷ ICC-01/09-02/11-835-Red.