

Status Conference

(Open Session)

ICC-02/04-01/15

1 International Criminal Court

2 Trial Chamber IX - Courtroom 1

3 Situation: Republic of Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raúl Pangalangan

6 Status Conference

7 Monday, 23 May 2016

8 (The status conference starts in open session at 10.18 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 PRESIDING JUDGE SCHMITT: Good morning.

12 I would like to welcome everyone in the courtroom at this, so to speak, a little bit late

13 hour, but nobody is responsible for the delay, it was circumstances that nobody

14 personally of us could influence. So we are all happy that the technical problems

15 could be solved.

16 Would the court officer please call the case.

17 THE COURT OFFICER: Good morning. Yes, Mr President.

18 The situation in the Republic of Uganda, in the case of The Prosecutor versus

19 Dominic Ongwen, case reference ICC-02/04-01/15.

20 And for the record, we are in open session.

21 PRESIDING JUDGE SCHMITT: Thank you very much.

22 Now as usual I would like that counsel introduces themselves and the client for the

23 record.

24 We would start with the Prosecution, please.

25 MR GUMPERT: Your Honour, my name is Ben Gumpert, I'm lead counsel for the

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1 Prosecution in the case of Dominic Ongwen. With me today, Pubudu

2 Sachithanandan; Ramu Bittaye; and [REDACTED].

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 And now to the Defence. I see familiar faces.

5 MR TAKU: May it please your Honours. My name is Chief Charles Achaleke Taku,

6 I'm associate counsel. My lead counsel, Honourable Krispus Ayena Odongo, is

7 invariably absent. He made every attempt to be here today, but it wasn't possible, so

8 he said I should bring this to your attention and to seek your permission for him to be

9 absent. He'll be here next time. With us today is Mr Thomas Obhof, counsel, an

10 associate -- an assistant to counsel in this case. And Mr Roy Titus Ayena. Our

11 client, Mr Ongwen, is here today, your Honours.

12 PRESIDING JUDGE SCHMITT: No, that's no problem since the Defence is

13 represented by you and your colleagues.

14 Now we come to Legal Representatives of Victims, please.

15 MS MASSIDDA: Good morning, your Honour. For the Common Legal

16 Representative team, Ms Jane Adong, field counsel, is able to follow these

17 proceedings in Kampala. In courtroom today, to my right, Mr Orchlón Narantsetseg,

18 legal officer; behind me, Ms Caroline Walter, legal officer; Ms Tamara Margitic, case

19 manager; and I am Paolina Massidda, principal counsel.

20 PRESIDING JUDGE SCHMITT: Thank you very much.

21 And now we have more Legal Representatives of Victims.

22 MR MANOBA: Mr President, your Honours, my name is Joseph Akwenyu Manoba,

23 together with me is Ms Sepideh Tabatabaei for the victims.

24 PRESIDING JUDGE SCHMITT: Thank you very much.

25 And I think we have also the Registry present.

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1 MR VANAVERBEKE: Good morning, Mr President, Your Honours. Today to the  
2 Registry is represented by Alex Tomic, chief of the Language Support Section;  
3 Ms Soraya Brikci, legal coordinator with the VPRS; Madam Isabelle Oseredczuk,  
4 legal officer with the Victims and Witnesses Section; and my right, Rufina  
5 Khusniyarova, of the Immediate Office of the Director of Judicial Support; and myself  
6 Pieter Vanaverbeke, Counsel Support Section.

7 PRESIDING JUDGE SCHMITT: Thank you very much. Now that everybody in the  
8 courtroom has introduced him or herself we come to the Bench because not  
9 everybody of the parties and participants may know us, may know the Bench yet.  
10 My name is Bertram Schmitt, I'm the Presiding Judge of this case. To my right is  
11 Judge Péter Kovács and to my left Judge Raúl Pangalangan.

12 Short housekeeping matter for everybody. Because of the delay, well, we thought it  
13 might make sense that we have a two hour session until the lunch break and then  
14 decide when to continue after the lunch.

15 So welcome to this status conference of the Chamber. We are here to discuss are the  
16 arrangements for the preparation of the trial.

17 As requested by the Chamber, the parties and participants have provided their  
18 submissions on several topics in advance of this status conference. These  
19 submissions are very helpful to inform the Chamber about the way things stand at the  
20 moment and to identify potential problems. We appreciate your efforts.

21 At the outset, I want to share with the participants some preliminary remarks.  
22 First, the parties and participants are expected to cooperate with each other in this  
23 case wherever possible; for example, when requesting disclosure, the Chamber  
24 expects the parties to first engage inter partes consultations before seizing the  
25 Chamber for relief. If this is not done, the Chamber may dismiss the relief sought

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1 in limine.

2 Second, the Chamber only expects to receive submissions requesting concrete relief.

3 The Chamber does not wish to receive notifications which anticipate future requests

4 that, in the end, may or may not come to fruition.

5 Third, the Chamber expects the participants to give due emphasis to the principle of

6 publicity. Whenever confidential submissions are filed, the Chamber expects public

7 redacted versions of these submissions to be filed simultaneously whenever possible,

8 of course. The participants may also reference the contents of confidential filings in

9 public submissions, so long as these references do not reveal the information

10 protected by the confidential classification.

11 On this last point, the Chamber wishes to recall that, on 23 March 2016, the Pre-Trial

12 Chamber Single Judge directed the parties to file new public redacted versions of

13 certain documents. This was decision 420. To date, this does not appear to have

14 been completed. The parties are directed to immediately comply with the terms of

15 the Pre-Trial Chamber direction and by no later than 1 June 2016.

16 Before we get now to the topics of this status conference, allow me a few comments

17 on the scope of the case.

18 The Defence correctly points out its complexity and volume. Especially referring to

19 the 70 charges that the accused faces, the most charges ever for an accused before any

20 international court or tribunal.

21 But the number of charges does not only, and in this case not even predominantly,

22 determine the magnitude of the case. More important are the factual allegations that

23 lie behind the charges so to speak. And insofar, we will have to deal with six sets of

24 factual issues, four alleged attacks on camps, charges concerning sexual and gender

25 based crimes and charges concerning child soldiers. That still makes this case a

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1 considerable case, but nobody in this courtroom needs to be overwhelmed or  
2 intimidated by its scope. In any event, the Chamber is not.  
3 Now we're coming to the topics for this status conference. And due to the limited  
4 time available it is not possible to exhaustively discuss everything that was raised in  
5 the submissions.  
6 For instance, all parties and participants have raised the topic of in situ proceedings in  
7 their submissions. The Chamber will not address this issue during the status  
8 conference, but will render a written decision at a later point.  
9 Further, the Chamber notes submissions on a variety of protocols, such as dual status  
10 witness protocol, a vulnerable witness protocol and witness familiarisation and/or  
11 preparation protocol.  
12 The Chamber will issue the necessary protocol in the month before the start of the  
13 trial and will request the observations of the parties if necessary.  
14 With regards to agreements as to evidence, the Chamber notes that the Prosecution  
15 and the Defence are discussing the matter and will inform the Chamber of the  
16 outcome. The Chamber notes the attempts undertaken by the parties and  
17 encourages them to concentrate their efforts on what are the disputed issues and  
18 allegations against the accused in this case. The Chamber observes, from the  
19 submission of the pre-trial stage, that not every issue appears to be materially in  
20 dispute.  
21 When deciding if it consideration such as agreed facts as being proven, the Chamber  
22 will take into account the views of the representatives for victims, if appropriate, in  
23 accordance with Rule 69 of Rules.  
24 However, allow me the following remark on such agreements: I think it is fair to say  
25 that Rule 69 negotiations between the parties have not been very efficient in the past

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1 but the Chamber hopes to be positively surprised in that respect, to formulate it this  
2 way. Unattached from the outcome of Rule 69 negotiations, the Chamber strongly  
3 encourages the parties to concentrate their presentation of evidence on the relevant  
4 and really materially disputed matters.

5 The first issue that we now we want to discuss orally in this courtroom and address is  
6 the detention of the accused. Pursuant to Article 60(3) of the Statute and Rule 118(2)  
7 of the Rules, Mr Ongwen's pre-trial detention shall be reviewed at least every  
8 120 days. The participants will accordingly be given an opportunity to make any  
9 observation on his continued detention or release, with or without conditions,  
10 including the existence of any changed circumstances.

11 To that end, the Chamber instructs the Defence to submit its observations, if any,  
12 on Mr Ongwen's continued detention or release with or without conditions, including  
13 the existence of any changed circumstances pursuant to Article 60(3) of the Statute by  
14 13 June 2016. The Prosecution, the Legal Representatives of Victims are to file any  
15 observations on Mr Ongwen's continued detention or release, with or without  
16 conditions, including the existence of any changed circumstances by 27 June 2016.

17 Finally, the Defence is to file its response to these observations, if any, by 4 July 2016.  
18 This concludes the order of the Chamber.

19 Further, the Chamber would like, for the purposes of Rule 118(3) of the Rules, enquire  
20 whether the parties have already any preliminary comments on the matter of  
21 detention at this point in time.

22 First, if you want to, give the Defence the floor.

23 MR OBHOF: Thank you, your Honour. My name is Thomas Obhof, assistant  
24 counsel for Dominic Ongwen.

25 At this time, we are still working on our submissions. And as you sent the email, we

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1 had already started to do the research and started drafting. One thing we would ask,  
2 we don't know how long it would be right now, but we are requesting a 10 page limit  
3 increase to 30 pages, instead of the normal 20.

4 PRESIDING JUDGE SCHMITT: Thank you very much for that. We will have to  
5 consider that of course. We cannot decide it on the spot, this one, yes.

6 Do the Prosecution want to make any comment at that point of time?

7 MR GUMPERT: Your Honour, in essence, the Prosecution will say that the position  
8 remains, as it was, at the time of filing 349. It's a confidential filing, so I shan't  
9 rehearse its contents, which would waste time anyhow, but the Prosecution say things  
10 haven't changed.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 And anyone else, especially of course the Legal Representatives of Victims?

13 MS MASSIDDA: Thank you, your Honour. We don't have any submission at this  
14 point in time. Thank you.

15 MR MANOBA: Your Honour, we share the same position.

16 PRESIDING JUDGE SCHMITT: Thank you very much.

17 We come now to the topic disclosure by the Prosecution.

18 The Chamber notes that the Prosecution indicated that it will have finished its  
19 disclosure by 5 September 2016. It specifies that it will disclose any material which is  
20 exculpatory, which might aid the Defence in its investigations and which might  
21 mitigate the charges against the accused.

22 In this regard the Defence has requested disclosure, not only related to Mr Ongwen  
23 but also from investigations into other suspects or possible suspects, the Uganda  
24 People's Defence Force and the government of Uganda.

25 Does the Defence at this point in time have any further observations on the matter to

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1 make orally?

2 MR TAKU: Yes, your Honours. I rise, your Honours, to state, underscore the  
3 importance of these disclosures.

4 We've received considerable disclosure from the Prosecutor, but we think, your  
5 Honour, that, looking at the nature of the crimes, war crimes and other crimes, the  
6 parties to the war that gave rise to these crimes, the Ugandan People's Defence Forces,  
7 some group of militia, in fact, the confirmation of charges decision clearly makes  
8 mention of these participants, and we believe, your Honours, that, look, considering  
9 the forms of criminal responsibility within that, it would be the important for the  
10 disclosures in this regard to be made. So far I haven't seen any disclosures, maybe  
11 because I'm new to the case, but I haven't seen.

12 I have also listened, your Honours, to the -- to the communication intercepts and  
13 found that there were a number of people, a number of voices of individuals which  
14 probably through the Prosecution investigation they may have identified whom those  
15 individuals are.

16 Mr Ongwen is charged as if the structure in which he operated was a conventional  
17 military force, but we all know, your Honours, that from the standpoint of military  
18 communication that those individuals whose voices are heard on these  
19 communication intercepts we need to know whom they are, we need to know the  
20 position they occupied, and indeed it would be very, very material in also prepare  
21 our defence to the command responsibility having regard to a command -- the  
22 command structure that seems to have been laid out in the charges against  
23 Mr Ongwen.

24 And above all, your Honours, Mr Ongwen gave himself up in Central African  
25 Republic. We know, we received a few notes, the handing over notes, we are also



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1 aware that in that context we do not know whether the authorities to whom he  
2 surrendered made statements or they kept records about him, which will be material  
3 to investigations about the forms of criminal liability for which he stands charged.  
4 Although their investigation may not be about the crime basis, but looking at the  
5 institutional framework under which he has been charged for these crimes, we  
6 believe very strongly that that material will be material -- will be -- will be helpful.  
7 And, of course, the request for assistance -- yes, the request for assistance, your  
8 Honours, I agree that there have been some discussion between Mr Thomas and the  
9 late Prosecutor. He invited us to have further discussion on this, but we very -- feel  
10 very strongly that this request for assistance, they open the door to know exactly who  
11 provided what material. In particular, we see that elements of the Ugandan People's  
12 Defence Forces supplied some material and probably some of them have been listed  
13 as witnesses, but if they were participants in the war, in Uganda itself, and then the  
14 request for assistance that were given to this -- this country, this State become  
15 extremely important for us, not only to assist in the legality of the process, but to  
16 ascertain the degree of involvement of those participants in the conflict. That's what  
17 we can say for now, your Honours.

18 PRESIDING JUDGE SCHMITT: Thank you very much, Mr Taku.

19 And now I give the Prosecution the floor.

20 MR GUMPERT: Three points, as I understand it, being made orally by my learned  
21 friend. Let me answer them one by one.

22 So far as the Prosecution is concerned, the body of material generated by all of its  
23 investigations in the Uganda situation is one body and we are looking at the totality  
24 of that material -- investigations began over a decade ago -- when we assess what  
25 needs to be reviewed for disclosure.

1 So we don't distinguish between particular suspects. Indeed, there were no suspects  
2 initially, suspects arose out of the investigations. And I faithfully promise that we  
3 will look at all of that material and review it for disclosure.  
4 But lying behind the request appears to be a suggestion, and I tackled it in paragraph  
5 4 of the submissions I made in writing, that where material reveals or may reveal the  
6 commission of offences by other persons apart from Dominic Ongwen, that should be  
7 disclosed, that appears to be the submission of the Defence. And the Prosecution's  
8 position is to the contrary, that that tu quoque material, as it might be described using  
9 the Latin term, is not automatically disclosable, its subjected to precisely the same test  
10 as any other material in respect of these offences, these crimes with which Dominic  
11 Ongwen is now charged.  
12 Does it amount to exculpatory material? Might it aid the Defence's investigations or  
13 might it mitigate the charges against him? Those are the Defence's own words and  
14 we accept them as being a fair description of our statutory disclosure obligations.  
15 We will stick to that test and disclose accordingly.  
16 The second point I was finding slightly hard to understand. It seemed to be  
17 concerned with the intercepted radio material, which your Honours will know plays  
18 a very considerable role in the way the Prosecution puts its case. It might be said  
19 there is a triangle of evidence here. There is evidence from former LRA fighters  
20 themselves. There is evidence from the victims, I don't use the word in the technical  
21 sense, but people living at the places where attacks were mounted, or victims of child  
22 soldiering or sexual crimes; and then there are the radio intercepts whereby the  
23 Prosecution seeks to confirm facts otherwise established by using the words as  
24 recorded of LRA commanders including the accused.  
25 As my learned friend suggests, these radio intercepts reveal speech attributed to a

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1 large number of people and different names abound in the material. We will  
2 disclose all of that material, that's our disclosure obligation. This is incriminating  
3 evidence. This isn't something which we give in order to satisfy the tripartite test the  
4 Defence have outlined. On the contrary, this is part of our case.  
5 But establishing with certainty who is said to be speaking at one time or another is a  
6 task that we undertake as best we can, but it appears to me that it's not a matter of  
7 disclosure. Disclosure is making sure the Defence are fully apprised of and in  
8 possession of material that we have. Our guesses about to whom a particular voice  
9 might belong or the fact that we don't know the answer to that question, in my  
10 respectful submission, that's got nothing to do with disclosure. I question the true  
11 relevance of that matter in the context in which my learned friend raises it.  
12 Lastly, on the subject of requests for assistance by the Office of the Prosecutor to  
13 national authorities. The material which results from such requests being exercised  
14 comes into the Prosecution, is registered in the database in the normal way and is  
15 automatically therefore subject to the normal disclosure review process. My learned  
16 friends need have no fears on that score.  
17 The requests themselves the Prosecution views at least in the first instance as not  
18 being disclosable. They are the Prosecution's lines of inquiry. It is informing a  
19 national authority we're thinking of moving down this or that investigative line, and  
20 we'd like you to help us by providing assistance, whether it material assistance,  
21 documentary assistance or whatever kind, so that we can investigate in that way.  
22 That I would respectfully submit is the classic definition of material which is internal  
23 work product.  
24 But the Prosecution doesn't set its face unilaterally and at this stage against the  
25 disclosure of its request for assistance. Our position is that if the Defence make any

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1 specific targeted requests, not a blanket request for all such material, demonstrating  
2 how receipt by them of particular material would assist their preparation of their  
3 Defence or possibly provide exculpatory or mitigatory evidence, we will consider that  
4 very carefully, and if we think that it is remotely justified, we will make disclosure  
5 accordingly. And of course ultimately as your Honour has said, if the parties can't  
6 agree, then the Chamber can rule upon the matter.

7 Those are all my submissions.

8 PRESIDING JUDGE SCHMITT: And as you said, only the parties do not agree, the  
9 Chamber will be -- will decide on the matter, only then.

10 Do you want to respond to that, Mr Taku?

11 MR TAKU: Yes, your Honours. My submissions are informed by a very careful  
12 reading of the charges of the confirmation decision, and I believe very, very strongly  
13 that if the request for assistance were made to a State whose agents, whose members  
14 of the armed forces of the participants in the conflict, and their role is laid out in the  
15 charges as participants in the conflict, and there was a request for assistance for them,  
16 not for the person investigation -- investigating these forces, but to investigate  
17 Mr Ongwen alone in that context, that that matters.

18 And when a battle occurred in the crime base and where there were more than a  
19 number of participants, including militia, we want to know exactly who are these  
20 militias? Who financed them? What were the logistics? What were they doing  
21 there? We want also to know exactly the position required, where was the locations  
22 of the military, different forces indeed.

23 Maybe from the request for assistance we may conduct further inquiry if the  
24 Prosecutor did not, but if the Prosecutor certify that they do not have, they do not  
25 have.

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1 With regard to the interest of your Honours, as we say, the voice on the intercept are  
2 material to proving the forms of criminal responsibility. He is charged as if the  
3 structure with which operated was a conventional force. Yes, we have voices in the  
4 intercept. In a conventional force that does not occur from one commander to  
5 another that you have so many voices. It is unusual for those who have litigated  
6 military cases, military cases and the military command that this is an unusual  
7 situation. But if they cannot identify the voices, they cannot produce what they do  
8 not have.

9 If they did not investigate or attempt to investigate, fair and good. It's enough for  
10 them to say, "Fine, we didn't investigate. We didn't inquire into this. We've given  
11 you all we have" and that would be it. But giving us clear answer will help us to  
12 attempt to conduct our inquiry including, your Honours, calling expert evidence and  
13 other forms of evidence in order to look at this material.

14 The material, as your Honours know, that the most is that do they have it? That is  
15 the question. If they don't have, they will say they don't have.

16 I will also intend to show under the scope of the potential investigation we may  
17 conduct and the difficulty we might have. So we think, as my learned colleagues say,  
18 we will continue to dialogue with them if they can, but if they cannot, I think very,  
19 very strong the request for assistance is extremely important. They did not just  
20 move into the territory of Uganda, Central Africa and elsewhere and started  
21 requesting material. They asked the measure of someone.

22 Now, who are these individuals? Were they participants in the war? Had they an  
23 interest in giving material and withholding others that might actually help  
24 Mr Ongwen. That is the question here, your Honours. And I think the request for  
25 assistance is extremely material in a just and prophetic examination of the issues

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1 before Your Lordships.

2 PRESIDING JUDGE SCHMITT: Thank you very much.

3 Thank you very much for these oral submissions. The Chamber will issue a written  
4 decision on this matter -- in these matters I have to say in due course.

5 Another disclosure request raised by the Defence regards the request for assistance  
6 made by the -- we have talked about that. But in the absence, I want to enforce this,  
7 of inter partes consultations, the Chamber will not rule on such request. This is in  
8 line with what I said initially.

9 The Defence has further requested that the Chamber revokes an order issued by the  
10 Single Judge of the Pre-Trial Chamber regarding the translation, translation of Rule  
11 76(3) statements into Acholi. The Chambers notes that in its submission the  
12 Prosecution seems to already have committed itself to translate all statements falling  
13 under Rule 76(3) into Acholi. So I think we can say that this is a positive  
14 development.

15 However, the Prosecutor indicates that might not be able to provide all translations  
16 by 5 September and proposes that, if this is the case, it will provide the translation at  
17 least three months before it calls the specific witness in question. So the Chamber  
18 has understood it like that.

19 The Defence has also announced that it will update the Chamber on discussions  
20 between the parties on how to expedite translations of these statements. If the  
21 Defence wants, it can provide its observations including on the Prosecution's proposal  
22 on how to deal with later or the late translations of witness statements.

23 If you want from the Defence.

24 MR OBHOF: Thank you, your Honour.

25 Mr Gumpert and I had a phone conversation last week. I also had a similar

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1 conversation with one of his disclosure personnel. And for it we are continuing our  
2 current practices as before to where the introductory paragraphs of statements no  
3 longer -- will not translated. They're anywhere between 6 to 11 paragraphs of  
4 formalities for introductions of who they are and what their purpose is there and  
5 explaining what the Court does.

6 All written statements also contain, if the person needed an interpretation done for  
7 the statement, it has an interpreter certification, which we informed the Prosecutor we  
8 do not mind if those are not translated, along with the last few, every statement ends  
9 with maybe for five or six sentences. But these do add up, because you can't just  
10 send a blanket format and have somebody verify it. Every interpretation has to be  
11 done there in front of them. This way it at least cuts out about two pages for every  
12 single statement that needs to be translated. And from my knowledge of talking to  
13 people at the Court, that's roughly about a third of a day because they try to translate  
14 approximately four to five pages per day.

15 As for the three months rule proposed by the Prosecutor, we would ask for, and I  
16 know one extra month might be splitting hairs, but the difference is that we might be  
17 in court for an entire month, whereas we have been able to talk to Dominic and  
18 explain to him some of the statements, it's best if Mr Ongwen could read them himself.  
19 That way it will give us enough time to where he can read through when we're not at  
20 trial, when he's not every day advising us on the witnesses at hand.

21 So if we are one month off and one month on, it still gives him time during that  
22 month off for the maybe three or four witnesses they have for him to review it, to  
23 analyse it and instruct us accordingly.

24 Like I said, I know it might be splitting hairs, but it's the general nature of the trial  
25 process with there being usually one month on, one month off. This way if we get a

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1 transcript right at the beginning of the on month, it gives us that time for him to read  
2 over it properly and then to talk to our investigators in Uganda to act accordingly.

3 PRESIDING JUDGE SCHMITT: Thank you very much.

4 Any comments on that by the Prosecution?

5 MR GUMPERT: Well, every lengthening of that period makes the trial itself more  
6 unwieldy. It limits which witnesses can be called flexibly as and when they may  
7 naturally fall to be called in the course of the trial.

8 The Prosecution has conceded the principle that there must be a period between  
9 receipt of translation and calling the witness. We remain of the submission that  
10 three months is a fair and adequate amount of time. All I can say is I hear what the  
11 learned friend says, the Judges will decide.

12 PRESIDING JUDGE SCHMITT: That of course is true. But the Judges want to have  
13 a broad factual basis for that and because of that I would like to have perhaps  
14 comments by the Registry. We have also the language section here and I would be  
15 interested how things are going and could be perhaps expedited.

16 MR GUMPERT: Your Honour, can I intervene? I apologise for cutting across my  
17 learned friend. There may be a misunderstanding there. And indeed I see my  
18 learned friend is nodding her head.

19 These translations are being done by our, the Prosecution's LSU, Language Services  
20 Unit, I think I'm right in saying, and not by STIC. And I'm not even going to have an  
21 attempt at what that's an acronym for. So I don't think my learned friend is going to  
22 be able to help you on that score.

23 What I can say on behalf of our LSU is what I have said in the filing. We're  
24 conscious this is a bottleneck. It's a suboptimal position. On the other hand, the  
25 number of people who are qualified to do this work is relatively small and there's a



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1 genuine bottleneck.

2 We've been making efforts for a year now to try and improve the facilities that we  
3 have. But we thought it was only honest to warn the Chamber that making our very  
4 best efforts, translations might not be ready by September, and that remains the  
5 position.

6 PRESIDING JUDGE SCHMITT: First of all, of course, thank you very much for the  
7 intervention that prevents us from a submission by the Registry who cannot say  
8 anything about the matter.

9 But nevertheless since we are talking about translations, you could perhaps update us  
10 a little bit on the matter.

11 MS TOMIC: Thank you, your Honours. The main thing about translation is that  
12 we are currently still translating the Confirmation of Charges document, which as far  
13 as we are aware is going according to plan.

14 The further matter actually concerns interpretation at trial, which is one of the topics  
15 for today's status conference. The working languages of this trial will be English,  
16 French and Acholi. We plan to have simultaneous interpretation into Acholi and  
17 from Acholi, and because there are no trained interpreters in this language, we have  
18 to train them. This takes anywhere between six and eight months, and we were  
19 planning to have the trainees ready by the end of the year.

20 Now, everything depends on when the trial commences. Certainly November  
21 would be possible for, as far as we are concerned, I'm only speaking logistically, for  
22 interpretation to be done into Acholi as well of the open statements, for instance. I  
23 make a distinction for witness testimonies in Acholi because a booth normally works  
24 in one direction. However, an Acholi booth would have to work both from and into  
25 Acholi. That would require greater complexity, and I would -- my concern would be

1 whether our trainees would be ready by then. However, if it is necessary, we will do  
2 our very best.

3 Now, there is a matter of other languages. We understand we have been sent a list  
4 of languages by the parties and participants as to which languages will also or may  
5 also be used. One of them is Ateso. Now, we do have a number of accredited  
6 interpreters for Ateso. However, we do not have any simultaneous interpreters. So  
7 if there is a witness speaking in Ateso, this means that the interpretation will have to  
8 be done in consecutive fashion. That is important to remember would add about  
9 30 per cent to the length of the proceedings.

10 Other languages that we have also been mentioned, two of them we do not have  
11 accredited interpreters for, that's for Madi, M-A-D-I, also spelled as M-A-'-D-I, and  
12 Lugbara, L-U-G-B-A-R-A. We have some -- we are questioning whether these, there  
13 will be really witnesses speaking these languages because we have -- there is a high  
14 level of mutual intelligibility between Madi and Acholi as well as between Lugbara  
15 and Acholi.

16 Now, we are seeking clarification and making inquiries to see, because it would be  
17 possible to find interpreters, accredit them, but that would require time.

18 One other mention of Lango, Lango is another language that has been mentioned, we  
19 do have a number, a limited number of interpreters. Again, the same would apply  
20 as for Ateso.

21 Now, there is one language that is mentioned and there is some I think  
22 misunderstanding about it. That's Luo. Luo is a group of languages, and often  
23 Acholi speakers refer to their languages, they say they're Luo speakers. So Lango  
24 also belongs to the Luo group of languages. So it would be important for us to know,  
25 to clarify if a witness or a victim says they speak Luo, to actually clarify which

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1 language they speak.

2 There was one other language, Swahili. For that we do have an in-house team of  
3 Swahili interpreters for working in simultaneous fashion. The only restriction  
4 I would put on it is that the team very regularly has to work in another trial, in the  
5 Ntaganda trial, so it would be important to make sure that the witnesses do not  
6 appear at the same time. Thank you.

7 PRESIDING JUDGE SCHMITT: Thank you very much for this logistical translation  
8 and interpretation update.

9 We have to discuss a further disclosure matter. The Prosecution has submitted that  
10 it plans electronic visual presentation of the four attack locations. It requests to be  
11 allowed to disclose this material 10 working days before the commencement of the  
12 trial.

13 Does the Defence have any comments on this point?

14 MR OBHOF: Your Honours, it's our understanding that they're just visual aids as  
15 they're not actually going to be evidence in and of itself. Now, if it is going to be  
16 used as actual evidence, we would like to have it as soon as possible, but if they're just  
17 being used as visual aids, it's a lot different.

18 PRESIDING JUDGE SCHMITT: That makes sense what you are saying.

19 Now the Prosecution please, do you want to confirm this or contradict it?

20 MR GUMPERT: The Prosecution would like this material to be in evidence at the  
21 trial. In itself it's unlikely to prove anything at all, and as it starts out in its naked  
22 form, if I can call it that, it will simply be a visual aid. But it's, I respectfully submit,  
23 bound to become evidence. It will be shown to witnesses. The photograph taken  
24 by the drone aerial photograph or the 360 degree laser scanning will be shown to  
25 witnesses so that they can describe to the Bench where the attackers came from,

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1 where a particular event occurred. And their comments on it, markings on it if it be,  
2 if that be done, will then become part of their evidence. So it's a slightly complex  
3 position. And the simplest thing would be for it to be in evidence from the start.  
4 The reasons why it would be served late I've explained in the written filing. This is  
5 expensive equipment. It's much in demand. There are climatic issues, weather  
6 issues to do with its use.

7 We would certainly do what my learned friend asked us to do, that is to say to serve it  
8 as soon as we can, and if that was earlier than 10 days before the trial, we'd do that.

9 But I think to say now once and for all this is not evidence will be asking for trouble in  
10 the future, and I think it should be treated as material which is likely to become  
11 evidence in the course of the proceedings.

12 PRESIDING JUDGE SCHMITT: Thank you very much for these open words.

13 I think there will be no further comments by the Defence at this point in time.

14 What I want to ask the parties now is if there are any other issues concerning  
15 disclosure that you want to mention?

16 Please.

17 MR GUMPERT: I refer to -- forgive me -- paragraph 4 of the Defence written  
18 submissions which under the heading, "Disclosure of Materials" concludes thus, "The  
19 Defence requests that the above materials ..." I break off from the quotation, that  
20 means all the stuff we're going to disclosure, and I resume, "... be disclosed no later  
21 than 180 days before the start of the trial."

22 That's a matter of timing rather than the material, but it plainly attaches to the issue of  
23 disclosure. It may be that your Honours want this to be discussed at some other  
24 time in the hearing, in which case I'll sit down, but now may be a good time.

25 The Prosecution has tried to come before the Chamber and be honest and be realistic

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1 rather than making aspirational predictions which are difficult to fulfil.  
2 The Prosecution with the best will in the world cannot reasonably expect to conclude  
3 its disclosure before the date that we've been given. I have some underlying  
4 calculations which go as far as how many pages each member of the team can manage  
5 within human bounds within a day without it being an abuse of their rights, and that  
6 is realistically the best we can do. There is clash there therefore.  
7 The Chamber is resolved, and to quote the Chamber's words "to start the trial before  
8 the end of the year," and six months from the 5th of September is March of 2017.  
9 The Prosecution would observe that the -- it's of course entirely a matter for the  
10 Chamber and for a determination to be made on a case-by-case basis rather than some  
11 one-size-fits-all idea of time scales, but the Prosecution would submit that a  
12 three-month period between the end of disclosure and the beginning the trial is one  
13 which has been judged to be just in the other cases which the Defence quote in public  
14 annex A of their filing, the table with which your Honours will be familiar.  
15 It's true to say that one thing or another has very frequently delayed the actual start of  
16 the trial, and who knows what obstacles we may face, but the determination as to the  
17 fair period between the end of disclosure and the commencement of the trial is  
18 unaffected by what actually happened in each case.  
19 So when Judges have previously applied their minds to the issue of how long should  
20 the Defence have to digest -- forgive me, I'm being handed a note which suggests I've  
21 misspoken.  
22 The Judges have concluded in those cases in general terms that three months, a  
23 quarter of a year, is an appropriate period. We join with the Chamber in expressing  
24 our desire to have this trial start as quickly as possible.  
25 Having myself recently visited Uganda and the sites where the attacks occurred,

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1 almost the very first question, not unreasonably, which is asked by the people who  
2 live there is: How soon can you start? So it's something that we are very conscious  
3 of. And we would submit that taking matters in the round, a disclosure deadline in  
4 September and a trial start date in December as foreshadowed in our written  
5 pleadings would be a fair disposition of this matter.

6 The note that's passed to me suggests that I have misread paragraph 4 of the Defence  
7 filing. I'm not going to take your Honours. So that I think what I have said is clear  
8 and I hope it's reasonably accurate.

9 PRESIDING JUDGE SCHMITT: I agree insofar as it is clear enough what you said,  
10 and of course it's also always better to have a realistic prospect and not to make  
11 promises that cannot be kept in the end.

12 Does the Defence want to answer?

13 MR TAKU: Yes. May it please your Honours. I will say a few things, and  
14 Mr Thomas will respond on behalf the Defence. But I want just to say, your  
15 Honours, that in order to make a determination about this issue, you look at the  
16 complexity of the case. Other cases referred to were not 70 counts -- or 70 charges.  
17 And as he will point out, if we look at each form of criminal responsibility and you  
18 multiply them with this, it goes to -- the charges go in hundreds because each of them,  
19 each of them will require an investigation by the Defence.

20 These months, your Honours, considering the manner in which the disclosure is  
21 occurring and the difficulties which the Prosecutor himself has informed the Court  
22 that he is encountering, three months is inadequate for the Defence to investigate.  
23 It's not about digesting, it's about also the capacity to investigate.

24 Well, of course, I do not want to venture to other issues which you've -- the Court has  
25 said that the Court will rule on, you've kept that matter for the -- the Court will advise

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1 and rule on it. I don't want to venture there. But those issues that the Court has a  
2 role on are also -- and some of the submissions made by some of the parties,  
3 regarding to these issues, clearly play into -- into a determination of this issue, which  
4 we are discussing now, and the ability of Mr Ongwen to be able to exercise his right  
5 to be present at all stages of his trial.

6 It is the true right that cannot be taken away from anyone, and if there is any  
7 impediment you will show your other investigation to know what it's about, but for  
8 now we think that three months is inadequate, as Mr Thomas will demonstrate to you,  
9 your Honours.

10 PRESIDING JUDGE SCHMITT: You have the floor.

11 MR OBHOF: Thank you, your Honour. Mr Gumpert and his team quite nicely  
12 provided us with a rough estimate of how many pages they still have to review and  
13 how many pages of transcripts they still -- approximate pages of transcripts they still  
14 have to make. The number given by Mr Gumpert was 49,000 for the pages of review  
15 and 4,500 for the transcripts.

16 Using the figure given by the Prosecution on, I believe, 30 January 2015, in filing 191  
17 in the annex on page 5, it would take one reviewer approximately -- one reviewer can  
18 work about 50 pages per day in reviewing.

19 Now, say if the Defence was -- disclosed half of what the Prosecution is reviewing, so  
20 if we received approximately 25,000 pages, it would take one person four years and  
21 five months to review that, working on the 21.75 days per month, at the 37.5 hours  
22 work per week.

23 We're not asking for -- what we intended to point out with our public annex is that  
24 every Trial Chamber looks at the same issue and it always is delayed because of -- the  
25 Prosecution reviews so much evidence and there being disclosure.

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1 I've worked on some of these cases and I've seen the final disclosures, and they are  
2 massive, and that's a big reason of why these Defence eventually ask for them and  
3 why the Chamber eventually grants an additional three months at least.  
4 And I believe in the chart I put 184 days was the shortest period in the Ntaganda trial.  
5 We're only asking to be realistic, we're not asking for miracles. We want to, as we  
6 wrote, get rid of some of the litigious filings later saying that we would disclose  
7 20,686 pages of documents within the last two weeks, which is what happened for  
8 confirmation.  
9 It's a way to cut out the -- cut the fat.

10 PRESIDING JUDGE SCHMITT: Thank you very much. But one short remark:  
11 I think we all know, experienced counsel here in the courtroom, that review of  
12 material is not only a mathematical operation that can be exercised by counting how  
13 many pages a person per day can review, it's also about experience and content.  
14 And the case has started not a long time ago, but quite a long time ago, and there  
15 have been confirmation of charges proceedings, so every reviewer has in mind what  
16 could potentially be important, so this is, reviewing of material, also a matter of  
17 understanding, to put it a little bit in the abstract.  
18 We are coming now to the Prosecution witnesses.

19 The Chamber notes the Prosecution's submissions on the estimated number of  
20 witnesses. The Prosecution states that it expects to rely on -- I'm just on my  
21 preliminary remarks and then you get the floor of course. The Prosecution states  
22 that it expects to rely on 100 witness -- 120 witnesses overall. It intends to call up to  
23 70 witnesses to give live testimony and will file a Rule 68 request for the remaining  
24 ones by Monday, 13 June 2016, which is quite early. Further, the Prosecution  
25 indicated that it is able to provide a pre-trial brief by 5 September 2016. The



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1 Chamber considers such a pre-trial brief to be a useful tool, so to speak, for the  
2 preparation of the trial of everybody.

3 The Chamber wishes to ask the Prosecution now by what date it will be able to  
4 provide a provisional list of its witnesses, a list of evidence and summaries of the  
5 anticipated testimony of the witnesses because this is, of course, very important, again  
6 in addition to such a pre-trial brief to prepare the case and to prepare especially the  
7 hearings. This is, of course, important for the Defence, Legal Representatives of  
8 Victims, but also especially for the Chamber.

9 MR GUMPERT: Your Honour, I would expect that a provisional list of witnesses  
10 could be provided in very short order. We have such a list, but it is provisional and  
11 it's changing almost every day, in some minor respect or other, and occasionally a  
12 major respect. I'm not sure how useful it would be to have for the parties and the  
13 Chamber to have a document which is so provisional and where an updated version  
14 would be provided every two or three days, but that in itself, if the Court makes an  
15 order it's done tomorrow we could do it tomorrow. I --

16 PRESIDING JUDGE SCHMITT: (Microphone not activated)

17 MR GUMPERT: Yes.

18 PRESIDING JUDGE SCHMITT: Perhaps it -- I think it makes sense to answer  
19 immediately. Of course if provisional means that it is, sort of, arbitrarily choice of  
20 witnesses at a certain point in time, that is to be expected to change every two or three  
21 days, this would not make much sense.

22 What we understand when we speak of provisional list of evidence means that it is, of  
23 course, the understanding that it is not the fixed and final list of evidence but a list of  
24 evidence that enables everybody to prepare the case, which would mean that, of  
25 course, minor changes can be possible and if major changes are justified it is also

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1 possible. But we have those -- we have a mutual understanding what we could  
2 potentially mean by provisional list of evidence.

3 MR GUMPERT: Then I would ask that we be permitted to file that at the same time  
4 as the pre-trial brief because it will be a natural complement to that document. The  
5 pre-trial brief will in fact identify all of the witnesses upon whom we rely and set out  
6 the factual propositions and give page references within the witness statements for  
7 where those witnesses, we say, provide substantiation of those propositions. And  
8 the list of witnesses will be a more summary document which will identify the  
9 witnesses upon whom the Prosecution intends to rely one way or another.  
10 Of course very much sooner than that your Honours will see a document which sets  
11 out the witnesses that the Prosecution intends to rely upon, if the Court permits it, by  
12 virtue of Rule 68(2)(b). Detailed summaries of the passages that we intend rely upon,  
13 in respect of those witnesses, will be included within that filing which we promised  
14 before 13 June as I recall. So the Court will be getting some much more concrete  
15 information in that respect.

16 I'm straying however. Your Honour asked for a -- proposed dates for a number of  
17 different things. So proposed date for provisional list of witnesses, which is possibly  
18 to the subject of minor amendments, perhaps without too much negotiation and  
19 reasoned changes of more substance, if they can be justified, 5 September is what we  
20 propose.

21 And summaries of the intended testimony of the witnesses I would ask, it seems  
22 logical enough, by the same date.

23 I think those are the two matters which your Honour had asked me about.

24 PRESIDING JUDGE SCHMITT: Thank you very much.

25 Comments by the Defence?

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1 MR OBHOF: Thank you, your Honour. Only brief comments.

2 The issue for a provisional list of witnesses is to see how the case is developing, so we  
3 know a more target and focused area, as was decided in -- a provisional list was  
4 issued in the Ntaganda trial. A similar one, if I'm not mistaken, was issued in the  
5 Gbagbo and Blé Goudé.

6 We understand that it's not set in stone, but if the Prosecution again can say we are  
7 going to call around 70 witnesses live, we are going to apply to 45 witnesses via Rule  
8 68(2)(b), they should have an idea, especially considering they say that their main  
9 investigative actions will end at the end of June. I don't see why that their list for  
10 the -- for the small part can't go on to Ringtail or CaseMap and print out a quick list of  
11 who they're thinking in the middle of July or late July and have it to us then. I mean,  
12 we do understand that it would -- that there would definitely be one in September, as  
13 they state, but that's no longer a provisional list, that is the list of witnesses and that is  
14 their list of evidence that would be required before trial. Thank you, your Honour.

15 MR TAKU: Your Honours, with your permission, there is also a notice problem here.  
16 I think the Prosecutor in laying out these materials also consider indicating which  
17 forms of criminal responsibility the witnesses are going to testify about. It is not  
18 enough to call witnesses just to throw -- to testify just about everything. At the end,  
19 they say what's in respect of this, to have notice, so notice it's a fair trial issue and  
20 I think it should contain that information so we know which form of criminal  
21 responsibility the testimony -- the witness will be testifying about in addition to the  
22 crime base.

23 PRESIDING JUDGE SCHMITT: Thank you very much. But of course witnesses  
24 testify on factual -- on circumstances on facts, no, firstly, so yes.

25 Does the Prosecution want to respond to that? I would not assume, but then I would

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1 give the Legal Representatives of the victims and the Registry the floor.

2 MS MASSIDDA: Thank you, your Honour. We do not have specific submission on  
3 the issue 5 September, as suggested by the Prosecution, seems to us very reasonable  
4 timing for the pre-trial brief, the list of witnesses and the summaries of witnesses, also  
5 considering that in this case practically we have received disclosure since the  
6 beginning, which is just a happy note for the record and the first time that Legal  
7 Representatives have access to the entire record of a case, including the confidential  
8 items in the record.

9 So for us 5 September is a very reasonable date, thank you.

10 I'm sorry, your Honour. Of course I will not address the other issue which are  
11 addressed in writing in our submission in relation to possible victims appearing as  
12 witnesses or victims appearing to present their story before the Chamber, it's already  
13 in my written submission. I don't think that there is, at this point in time, any  
14 further submission to be made. Thank you.

15 MR MANOBA: Your Honours, we do not have any reason to depart from what our  
16 colleagues are saying, except to add that we would be interested in an expeditious  
17 commencement of the trial. Thank you.

18 PRESIDING JUDGE SCHMITT: Thank you very much.

19 Does the Registry want to make any comments?

20 MR VANAVERBEKE: Your Honour, we don't have any observations to make.

21 PRESIDING JUDGE SCHMITT: Thank you very much.

22 The Chamber will issue a decision on the schedule leading up to trial in due course,  
23 but allow me to make a short remark on a comment that the Defence made in their  
24 submissions:

25 The Defence has noted that not a single Article 5 Trial Chamber started on the original

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1 date as planned. This of course is true. But the Chamber is of the opinion that this  
2 is not an approach to be used as an example. Moreover, it recalls that at least one  
3 case, the Trial Chamber VII case, started on time.

4 Now we come to victims' related issues.

5 Next, first point that I want to address, the Chamber wants to address, is the legal  
6 representation for victims and the victims' application procedure. The Chamber  
7 notes that both the victims' Legal Representatives make submissions on the current  
8 system of common legal representation.

9 The Legal Representatives for Victims notes that the current system, and I quote, "Is  
10 neither the most efficient nor the most effective," unquote. However, the Legal  
11 Representative does not provide any suggestions on how to improve the current  
12 scheme. The Chamber hereby instructs the Legal Representatives to file  
13 observations on how the legal representation during these proceedings should be  
14 organised. Both should endeavour to file joint observations, but in case this is not  
15 feasible, may also provide them separately.

16 These observations are to be submitted to the Chamber by 6 June 2016. Any  
17 responses to these observations are to be filed by 13 June 2016.

18 This concludes the order of the Chamber.

19 In respect of the accepting further victim applications, the Chamber announces that  
20 there will be a cutoff date by which all applications have to be submitted. Therefore,  
21 the Chamber urges the VPRS to immediately commence the collection of further  
22 victim applications.

23 As already stated in the order scheduling the status conference, the procedure  
24 adopted by the Pre-Trial Chamber regarding the victim applications remains in place.

25 A further matter related to victims is the disclosure of their identities to the Defence.

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1 The Legal Representative has requested that these identities remain undisclosed  
2 vis-à-vis the Defence. In its submissions the Defence already opposed this request  
3 and seeks the disclosure of the identities of all victims.  
4 Since the Legal Representative has offered to provide more detailed submissions, the  
5 Chamber instructs the Legal Representatives for Victims to file submissions on the  
6 disclosure of the victims' identity to the Defence by 31 May 2016. Again, the Legal  
7 Representatives should endeavour to file joint submissions, but also again, in case this  
8 is not feasible, may also provide them separately. Any response to these  
9 submissions is to be filed by 7 June 2016. This concludes the order of the Chamber.  
10 The modalities of victims' participation during the proceedings and their presentation  
11 of evidence will be part of an upcoming Rule 140 decision.  
12 The Chamber wishes now to address a couple of specific issues raised in submissions.  
13 With regard to the Prosecution's request for clarification, if the Single Judge of the  
14 Pre-Trial Chamber's order on the deadlines for filing responses continues to apply,  
15 the Chamber informs the parties that it does not. However, this - I'm inclined to say  
16 of course - does not mean that the Chamber intends to let the normal 21-day deadline  
17 apply for all responses. Rather, the Chamber is of the view that it is more efficient to  
18 decide on the length of the response deadline individually and according to the  
19 specific situation. Matters may have different complexity and urgency.  
20 In respect of the Defence request, another issue now, in respect of the Defence request  
21 to order the Prosecution to file an evidence based chart, the Chamber first notes that,  
22 unlike stated by the Defence, no such chart is currently being provided in the Bemba  
23 Article 70 case. Further, it does not consider that such chart is necessary and will  
24 therefore not order the Prosecution to produce one.  
25 With regard to the issue of legal aid provided to the Defence, the Chamber notes that

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1 there is no decision by the Registry yet on this issue and therefore considers any  
2 decision by the Chamber to be premature.

3 Yes, please.

4 MR OBHOF: Thank you, your Honour. There was a decision on Friday night or  
5 Friday evening. We received our decision and we are currently talking with the  
6 Registry this week and next week. We wanted to apprise you of that.

7 MR VANAVERBEKE: I can confirm.

8 PRESIDING JUDGE SCHMITT: Yes, that is of course -- I hope this is a positive  
9 surprise for the Presiding Judge, that I did not know that the result was positive for  
10 everybody.

11 MR TAKU: Well, your Honours, we are still discussing. We are glad that the  
12 Prosecutor has made a move, but we are still disclose -- we are still discussing a  
13 number of the issues that they asked for clarification and we're also still discussing  
14 with the -- the scope of the remedies they have granted. So will we apprise the  
15 Chamber when a final decision is reached.

16 PRESIDING JUDGE SCHMITT: Of course the Chamber always appreciates when  
17 matters are solved without the involvement of the Chamber.

18 The Chamber also notes that the Defence requested a confidential ex parte hearing to  
19 discuss several topics. The Chamber does not consider that such hearing is  
20 necessary at this point in time. It instructs the Defence to file confidential ex parte  
21 requests justifying this classification and seizing the Chamber with specific requests  
22 for relief.

23 This, I'm also happy to say now, already concludes the topics the Chamber wanted to  
24 address.

25 Is there anything the parties or participants wish to raise?

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1 Mr Taku has already raised and I give him the floor.

2 MR TAKU: Yes, your Honours. As a longstanding media practitioner, I make  
3 these -- I bring these observations very reluctantly, but I wish your Honours that you  
4 should remind the parties and perhaps the public and the NGO communities that this  
5 trial should not be turned into a media circus. It is a trial, the parties and the NGO  
6 communities and special interests and others because I've read concerning about  
7 things, I know that people were out there willing to make movies, to say all sorts of  
8 things, but they can do that, nobody stops the press or anyone from exercising their  
9 right, but when it comes to commenting on matters that are before the Court which  
10 may likely inflame or disrupt the -- of the -- of the proceedings, I think the Court can  
11 rightly remind everyone that this trial should not be turned into a media circus.

12 That's the observation I wanted to make, your Honour.

13 PRESIDING JUDGE SCHMITT: A short comment by the Presiding Judge, and I'm  
14 sure that my colleagues would join me, the Chamber will of course do everything that  
15 this does not happen.

16 Any further topics? Any further comments?

17 MR OBHOF: Yes, your Honour. The Defence was also hoping to discuss the topic  
18 raised by the Registry in their confidential ex parte filing on Friday in an ex parte  
19 session as well. But we can have filings prepared for you by -- should be by COB  
20 tomorrow if -- but maybe on Wednesday just because the nature of everything.

21 PRESIDING JUDGE SCHMITT: Just bear with me one moment.

22 (Pause in proceedings)

23 PRESIDING JUDGE SCHMITT: Thank you very much. We accept what you  
24 proposed.

25 MR OBHOF: We'll try to have -- just because of how -- the readiness, we'll try to



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1 have them ready for tomorrow. If not, at the latest COB on Wednesday.

2 PRESIDING JUDGE SCHMITT: Thank you very much.

3 Again, for everybody in the courtroom, every party present, every participant, any  
4 further issues, comments?

5 MS MASSIDDA: Thank you, your Honour. I'm sorry. I was just consulting with  
6 my colleague on one specific issue. We would like to address the issue of a cutoff  
7 date for the submission of application by victims, simply noting the following, both  
8 teams were in the field very often and the field counsel and also my learned colleague  
9 Mr Manoba were both in the field last week. So it's a live issue for everybody in the  
10 field to be able to fill in application for participation.

11 At this point in time we are unaware of any effort by the Registry to already provide  
12 victims with application forms to be filled in. So we are still waiting for this.

13 Secondly, it comes to our knowledge that quite a high number of victims is willing  
14 now to participate because they have understood that a trial will be brought before  
15 the International Criminal Court. So the interest in the proceedings is now growing  
16 up in the different communities.

17 We fear that a cutoff date will impede quite a high number of victims to be able to fill  
18 in applications for two reasons. First of all, because -- I'm of course limiting the  
19 comments to a cutoff date before the start of the trial.

20 Two reasons: One, because the collection of application forms in the field has not yet  
21 started; and second, because a lot of victims are at this point in time displaced in  
22 different areas of the country for different reasons, for security reasons because they  
23 have to displace themselves to find a job, for family reasons, for a lot of reasons. So  
24 it's at present quite difficult to reach all the communities in a short period of time,  
25 communities in which victims are residing and therefore to reach victims who will be

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1 willing to file an application. Thank you.

2 PRESIDING JUDGE SCHMITT: Mr Manoba, do you want to add something?

3 MR MANOBA: Your Honours, I think my colleague has stated the position. We  
4 would actually invite the Chamber to consider a process where the applications are  
5 ongoing so that I mean the Registry can allow for more victims to apply. Thank you.

6 PRESIDING JUDGE SCHMITT: Thank you very much. This is a very -- just please  
7 wait a moment, Mr Taku.

8 This is a very important issue, of course, and I appreciate very much that you again  
9 raised it, to put it this way. You have addressed to the Registry and I would like to  
10 give the Registry first the floor and then I will hear your comments, Mr Taku.

11 MS BRIKCI: Thank you, your Honours. I would like to make two comments in  
12 relation to the observations made by the Common Legal Representative. First  
13 comment is on the collection of the additional applications we might receive. The  
14 Registry's policy that we have also implemented in this case is to encourage victims  
15 every time we change phase of proceedings to wait until the approach has been  
16 decided by the Chamber. So in this case this is what we have done. We have not  
17 collected additional applications until it was clear for us what was the approach you  
18 decided. Now it's clear for us so we are going to implement your order and start  
19 collecting applications.

20 The second point on which I wanted to make a comment is the issue of the difficulty  
21 to reach victims. We have in the past during the pre-trial stage of the proceedings  
22 have reached only victims in the Lukodi area and in relation to the Lukodi charges.  
23 Now we would have to reach other victims, and this would require to first have  
24 intermediaries to train them and to be able to reach these victims, which will take  
25 some time.

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1 The other -- the third point, sorry, I wanted also to make a third comment. We  
2 would like to make it also known that we have a third difficulty in the Registry is that  
3 when we have the capacity in the field to reach victims, then we have -- the capacity  
4 in HQ is not the same. We could recruit additional staff to collect thousands of  
5 applications in a very limited period of time in the field, but then our capacity to  
6 process them in HQ is extremely limited in the moment. So we would also have to  
7 recruit additional staff and train them, which also might take some time. Thank you,  
8 your Honours.

9 PRESIDING JUDGE SCHMITT: Just one short comment. You of course have  
10 already mentioned it, that the position of the Chamber is of course clear at the  
11 moment.

12 Now, Mr Taku.

13 MR TAKU: Yes, your Honours. I think a cutoff, the addition of a cutoff is entirely  
14 appropriate, I'm very -- in the circumstances.

15 Looking at the submissions of our colleagues about the participation of these victims  
16 and the submissions, the evidence they intend to call, if we are to leave it open it will  
17 mean that at some point in time some of the victims' views would not entirely be  
18 reflected in the submissions they will make and the evidence they will be calling. So  
19 if there is a cutoff period and there was a need that that cutoff period be changed,  
20 they can come to the Court and justify. But to leave them the blank check to come  
21 whenever they want and whatever they want, your Honours, will entirely -- will  
22 disrupt the proceedings.

23 PRESIDING JUDGE SCHMITT: Thank you very much.

24 Does the Prosecution want to make any comment on this topic?

25 No, this is not the case. And if nobody else rises at this point in time to bring up

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1 another issue, then this would conclude -- no, it would not conclude.

2 MR SACHITHANANDAN: My apologies, your Honour.

3 PRESIDING JUDGE SCHMITT: So then I give you the floor, of course.

4 MR SACHITHANANDAN: Your Honour, a minor request in the context of the

5 Rule 68(2)(b) application. As your Honour understands, we have approximately

6 45 witnesses, which makes for a very complex filing, and we will be arguing for why

7 each of those witnesses fits the requirements of 68(2)(b). And since individualised

8 treatment of each witness is required, we will need about one to one and a half pages

9 per witness, which makes for an approximately 60-page filing. We will be grateful if

10 the Chamber will approve the extension.

11 PRESIDING JUDGE SCHMITT: This is of course noted and it is of course also clear

12 that you have to demonstrate to the Chamber that the procedural preconditions for

13 Rule 68(2)(b) are fulfilled, to put it this way, at this point in time. Thank you.

14 MR SACHITHANANDAN: Thank you, your Honour.

15 PRESIDING JUDGE SCHMITT: Mr Gumpert.

16 MR GUMPERT: One last matter for the Prosecution and rather more substantive.

17 Your Honours will have noted that in our response to the order of the Chamber to

18 provide matters which might be suitable for the agenda for this hearing, under the

19 heading "Other matters," we invited the Chamber to hear submissions about the

20 application of Rule 79. We've submitted a written filing on that matter.

21 The reason why I submit that it's of significance is because, if I understand it correctly,

22 the purpose of this hearing is for the Chamber to get a feel of the likely contours of

23 this case. And one of the most significant contours will be how long will it take once

24 it actually starts. And the Prosecution's position as your Honours will have read is

25 that that is enormously dependent upon how much is really in dispute.

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1 Now, your Honour has already made some more general remarks about the need for  
2 the parties to ensure as best they can that only matters which are really in dispute are  
3 litigated. But the nature of the pretrial proceedings tends to suggest that this may be  
4 a most unusual case. I'm not aware of the grounds for excluding criminal  
5 responsibility as set out in Article 31 ever having been the subject of argument or  
6 adjudication, not just at this Court, but in any of the international or internationalised  
7 tribunals. I may speak too widely, but certainly if there has been any such litigation,  
8 it's not well known.

9 And the Prosecution's submission is that if in truth this is a case where the Defence is  
10 essentially -- and I hope I will be forgiven for using another slang  
11 expression -- confess and avoid, where the real issue is not were certain acts and  
12 conduct committed or perpetrated, but is there a reason for excluding any  
13 responsibility for them, that will have an enormous impact or should have upon the  
14 length of the trial because those primary facts should only need much more cursory  
15 investigation.

16 And that is why I sought to alert your Honours to the desirability of there being some  
17 discussion of that at this hearing.

18 PRESIDING JUDGE SCHMITT: Yes, just one moment and I give you floor, of course,  
19 Mr Taku. But you are also aware of the fact that we are in a, so to speak, written  
20 submission phase in that respect that also makes sense, and I think there is a deadline  
21 on Friday for the Defence. What is clear is that the Chamber is very well aware of  
22 the facts and what is more important of the implications that this could have for the  
23 case. So you can be sure that the Chamber will rule on that in due course if we have  
24 everything on the table, so to speak. But if, of course, the Defence wants to make a  
25 clear statement today, I will not prevent them from it.

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1 Yes, Mr Taku.

2 MR TAKU: Your Honours, I will submit that what my colleague is saying  
3 completely undercuts his submissions today about disclosure. We want to know the  
4 case, the case that the client Mr Ongwen is facing. We need to get more disclosures.  
5 We have the Confirmation of the Charges, we know about that already, but the result  
6 of disclosure, some of the disclosure for the client faces another issue. We need to  
7 know, your Honours, and then we will be able to take instructions from the client.  
8 As soon as, as soon as we take instructions from the client, we will fulfil our  
9 obligations, your Honours.

10 But for the Prosecutor at this point in time to suggest that the Defence can disclose  
11 any defences or special defences even before we know exactly the case, are laying out  
12 the pre-trial brief, and I mean all what they have undertaken to submit to the Defence  
13 today before we know, your Honours, I think it is, it is entirely unfair.

14 I think Mr Thomas, who has been longer in the case, will surely make more  
15 suggestions about this. As long as it comes to the right of an accused, the right  
16 confirmed by the Statute, your Honours, I think he will exercise them, but he has to  
17 have notice. It's about notice. One of the issues about this case is about notice,  
18 notice, notice, notice, notice.

19 PRESIDING JUDGE SCHMITT: No, but it's of course that we have also a request by  
20 the Prosecution that has to be dealt with.

21 And let me, before I give you floor, Mr Thomas, let me put it this way: The Chamber  
22 would appreciate very much if the response by the Defence would be a meaningful  
23 one that everybody can work with, to put it this way.

24 Mr Thomas.

25 MR OBHOF: Your Honour, the only thing I would like to finish adding is what my

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1 learned colleague Pubudu said earlier about the filing on 13 June that they are  
2 preparing about the 45 statements. Considering the Prosecution has said their  
3 investigation won't end until the end of the month, might I suggest that the Chamber  
4 consider that the Prosecution not do it until the 13 July or 15 July or sometime there so  
5 we can make sure that they're actually submitting a list that isn't going to be changing  
6 of why this person should testify via 68(2)(b) and that they should make it a full  
7 comprehensive one.

8 PRESIDING JUDGE SCHMITT: Thank you very much.

9 Any further responses now by the Prosecution?

10 That is not the case, but this discussion shows a little bit I think that it might not have  
11 been completely without sense to say that we have here a written procedure in that  
12 respect at the moment. (Microphone not activated)

13 Excuse me, I have not been heard. But it was not very substantial what I had to say  
14 because I only said that this concludes today's hearing.

15 And thank you everybody in the courtroom for your attendance.

16 THE COURT USHER: All rise.

17 (The hearing ends in open session at 11.46 a.m.)