

Status Conference

(Open Session)

ICC-01/09-02/11

1 International Criminal Court
2 Trial Chamber V(b) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. Uhuru Muigai Kenyatta - ICC-01/09-02/11
5 Presiding Judge Kuniko Ozaki, Judge Robert Fremr and Judge Geoffrey Henderson
6 Status Conference
7 Tuesday, 7 October 2014
8 (The status conference starts in open session at 10.00 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE OZAKI: Good morning.
13 Could the court officer please call the case.
14 THE COURT OFFICER: Thank you, Madam President.
15 The situation in the Republic of Kenya, in the case of The Prosecutor against Uhuru
16 Muigai Kenyatta, ICC-01/09-02/11.
17 We are in open session.
18 PRESIDING JUDGE OZAKI: Thank you very much.
19 Yes, as usual, counsel please introduce yourselves for the record, starting with
20 Prosecution.
21 MR GUMPERT: Your Honours, my name is Ben Gumpert. With me today in court
22 are Adesola Adeboyejo, Sam Lowery, Shamiso Mbizvo, Phakiso Mochochoko and
23 Hai Do Duc. There is a constraint of space. Out of court, but still very much active
24 on the team: Sylvie Wakchom, Ekaterine Kikalishvili and Doug Grieve.
25 Thank you.

1 PRESIDING JUDGE OZAKI: Thank you.

2 Defence team, please?

3 MR KAY: Thank you, Madam President. I'm Steven Kay of Queen's Counsel. My
4 co-counsel is Ms Gillian Higgins. I'm with Mr Desterio Oyatsi, who is my
5 instructing solicitor, and then in Court today we have Mr Ben Joyes, Mr Ken Ogeto,
6 Miss Kirsty Sutherland, Ms Katy Hovington and Mr Tom Obhof, many of whom are
7 making their first appearances at the International Criminal Court but have been on
8 the team for a long while.

9 PRESIDING JUDGE OZAKI: Thank you very much and welcome.

10 Legal representative of victims?

11 MR GAYNOR: Good morning, Madam President. To my right is Caroline Walter
12 of the OPCV. Behind me is Anushka Sehmi, our case manager. And my name is
13 Fergal Gaynor. Thank you.

14 PRESIDING JUDGE OZAKI: Thank you.

15 And representatives of the Government of the Republic of Kenya?

16 MR MUIGAI: May it please you, Madam President. My name is Githu Muigai, I'm
17 Attorney-General of the Republic of Kenya. I appear with Mr Njee Mututri, who is
18 Solicitor-General of the Republic of Kenya, and we are assisted by
19 Ms Caroline Gichuri, who is working with us on this case.

20 PRESIDING JUDGE OZAKI: Thank you very much.

21 As usual in order to assist translation and transcription, I would like to remind
22 everyone to speak slowly and to pause for several seconds in between speakers.

23 This status conference was ordered on 19 September this year, filing 954. The subject
24 matter of the hearing is the status of the co-operation between the Prosecution and the
25 Kenyan government which was ordered by this Chamber in its decision of 31 March

1 this year, filing 908. This is why representatives of the Kenyan government have
2 again joined us today.

3 And, Mr Attorney-General, you and your team are most welcome.

4 In terms of the schedule of this status conference, we will be sitting now until
5 12 o'clock sharp. The courtroom has also been reserved between 2 o'clock and

6 4 o'clock in case an afternoon session is required. I hope not. The Chamber

7 requests all counsel to please be concise and focus their responses directly towards
8 the questions posed.

9 At the outset, I wish to indicate that we do not intend to hear general submissions
10 from anyone today since we have already received detailed written submissions on

11 the issue. The purpose of the hearing today is for the Chamber to receive further
12 specific information on some very specific points in order to facilitate our

13 decision-making. We will be addressing direct questions to certain counsel and will
14 not be opening the floor for everyone to comment on each matter.

15 Additionally, you should not repeat submissions you have made previously and you
16 should also not make submissions on matters which have already been adjudicated
17 by this Chamber.

18 You are also reminded to confine your submissions to the substance of the matters at
19 hand and to be professional and courteous towards each other at all times. For the

20 smooth running of the proceedings, I would like to remind all counsel that if you
21 wish to speak, you may indicate it -- you may indicate that by standing; however,

22 please wait for me to give you the floor. Under no circumstances will interjections or
23 interruptions of other speakers be tolerated.

24 As a final preliminary matter, in its order of -- in our order of 19 September 2014, the
25 Kenyan government was directed to propose public redacted versions of filings 941

1 and 951 by 3 October. This was not done, neither was the Chamber seized of a
2 request for extension of the deadline.

3 It is recalled that the proposals need to be reviewed by the Chamber and that it is for
4 this Chamber to take a decision on reclassification. Therefore, the failure to provide
5 the proposed redactions by the specified deadline means that it has not been possible
6 to reclassify the filings ahead of this status conference.

7 The Chamber may refer in its questions today to certain information contained in
8 those filings. Where we do so, we have determined that the matter may be referred
9 to in this manner. However, you are reminded that we are in public session and if at
10 any stage you consider it necessary to go into private session in order to respond
11 accurately or wholly to a question, you may request that we go into private session.

12 With this guidance in mind, we will now turn to the subject matter of this hearing.

13 As you are aware, on 29 November 2013, the Prosecution made an application for a
14 finding of non-compliance pursuant to Article 87(7) of the Statute against the Kenyan
15 government on the basis of a request for co-operation outstanding since April 2012.

16 In our decision on 31 March this year, the Chamber deferred the making of any
17 formal finding of non-compliance until the expiration of a six-month adjournment
18 period granted in the main proceedings in this case. As that adjournment period has
19 now come to an end, it is necessary for this Chamber to re-evaluate the status of
20 co-operation.

21 During the course of the adjournment period, the Chamber has received reports from
22 the Prosecution and the Kenyan government on the progress of co-operation, and
23 most recently in filings 940 and 941, on 29 August, and the respective responses to
24 those filings or observations thereto.

25 First, Prosecution and representative of Kenyan government, can you please advise

1 whether the status of co-operation remains as indicated in those most recent filings or
2 whether there have been further developments since that time? Have there been any
3 further consultations, for example, or production of materials or information?
4 And, again, the Chamber reminds the participants to be concise and confine answers
5 to the questions asked.
6 Prosecution, please.
7 MR GUMPERT: Madam President, the best guide to the current status of
8 co-operation, in my submission, is to be found in the document to which
9 your Honour has recently referred, our filing of 5 September; namely, "Observations
10 on the Government of Kenya's update." And your Honours will have found in that
11 document a table which sets out - it's at paragraph 15 - the eight topics on which we
12 have asked for the Government of Kenya's help and co-operation and the current
13 status of the co-operation provided.
14 Your Honours have seen that, it's a public document, so anybody else who wishes to
15 see it can also have had access to it, and I won't rehearse its content here unless
16 your Honour requires it of me. In short, there is a considerable body of material
17 which the Prosecution say should have been provided, could have been provided and
18 hasn't been provided. That's a matter which the Government of Kenya disputes.
19 There is one update which I must make: Subsequent to that filing the Prosecution
20 has received from the Government of Kenya, and is grateful for it, a letter of the
21 Communications Authority of Kenya, and that is, of course, in reference to the
22 seventh head, our request for telephone records. If your Honour goes to the table I
23 referred to, it's on the last page of the filing telephone records request to identify
24 numbers ascribed to, used by or associated with Mr Kenyatta and to provide call data
25 records.

1 And in this letter there is no substantive provision of any information, but if I may, I
2 will just read from the first paragraph because it crystallises in the Prosecution's
3 submission one of the problems which the Court itself has identified in its recent
4 decision, the July decision, resolving the disputes between the Prosecution and the
5 Government of Kenya.

6 PRESIDING JUDGE OZAKI: Prosecution, can you -- can you just answer to the
7 question posed, if there is the -- you are saying that the only update is provision of
8 this material?

9 MR GUMPERT: It is and I'm trying to briefly describe to your Honours what the
10 material is. If you only want me to --

11 PRESIDING JUDGE OZAKI: Very briefly, please.

12 MR GUMPERT: Well, I shall be brief. The Communications Authority says that
13 the release of the information required needs court orders compelling the licensees to
14 do so and that the authority is unable to compel the telephone licensees in the absence
15 of such orders. And that absence of compulsion, the use of compulsion on the part
16 of the Kenya government as opposed to the deployment of material which the
17 accused has consented to providing is one of the issues about which I see -- need say
18 no more because the Chamber has already made observations about it.

19 PRESIDING JUDGE OZAKI: Thank you very much.

20 Mr Attorney-General?

21 MR MUIGAI: Thank you, Madam President. First I want to start with an apology
22 to you and to the Chamber regarding our failure to file timeously the redacted -- the
23 proposals for the redacted filing.

24 My assistant was in contact with the Registry as late as yesterday and the impression
25 we were given was that this would be cured by a formal application to you today for

1 an extension of time post -- ex post facto. We have it with us, our proposal for the
2 redacted, it is signed and ready for filing, and we beg your indulgence that we should
3 be able to file it this morning and apologise if it has caused any inconvenience.
4 Secondly, Madam President, it is true, as my learned colleague has pointed out, that
5 post the filings that are currently before Court there has been no further development
6 except the letter that I directed to him, which came to me from the Communications
7 Authority of Kenya and that is dated 1 September 2014.
8 My colleague has mentioned, Madam President, that this letter is evidence of how
9 this process is not yielding the outcome that he would wish for, and maybe with your
10 permission I can comment on that because what he has said is actually far from the
11 truth. The Communication Authority of Kenya --
12 PRESIDING JUDGE OZAKI: Mr Attorney-General, Prosecution just explained what
13 was written in this communication from Communication Authority. Do you
14 disagree with what the Prosecution said?
15 MR MUIGAI: Absolutely.
16 PRESIDING JUDGE OZAKI: I mean, the factual -- factual --
17 MR MUIGAI: Absolutely.
18 PRESIDING JUDGE OZAKI: -- description of this (overlapping speakers).
19 MR MUIGAI: What he has failed to tell you, Madam President, is that the
20 communication from the Communication Authority of Kenya must be read hand in
21 hand with the communication from the two service providers which was provided to
22 him earlier - that was Safaricom and Airtel - and they explained what I had explained
23 here before that prior to 2009 --
24 PRESIDING JUDGE OZAKI: Mr Attorney-General, I think the Chamber already
25 knows about all those details about --

- 1 MR MUIGAI: That's right.
- 2 PRESIDING JUDGE OZAKI: -- the communication from Safaricom and other --
- 3 MR MUIGAI: And Airtel. Very good then.
- 4 PRESIDING JUDGE OZAKI: So if just you can confirm that the only development
- 5 since your most recent filing are these provision of this communication from
- 6 Communication --
- 7 MR MUIGAI: The Communication Authority --
- 8 PRESIDING JUDGE OZAKI: -- Authority.
- 9 MR MUIGAI: -- of Kenya.
- 10 PRESIDING JUDGE OZAKI: That's fine.
- 11 MR MUIGAI: That is correct.
- 12 PRESIDING JUDGE OZAKI: Thank you.
- 13 Now we will turn to the specific matters which the Chamber would like addressed
- 14 further.
- 15 Prosecution, we note that in a letter to -- in your letter to the Kenyan government
- 16 dated 20 August this year you gave notice requiring either provision of the
- 17 outstanding materials or entering into good-faith consultations by the Kenyan
- 18 government, failing which you would seize the Chamber of the matter. Do you
- 19 consider the terms of that letter to have been met? And I recognize that you have
- 20 already answered partially to this question, but you have the floor, Prosecution.
- 21 MR GUMPERT: I'm grateful for that and I have the letter in front of me; the letter of
- 22 20 August addressed to the Attorney-General.
- 23 Could your Honours just direct me to the passage which it is which is concerning
- 24 your Honours?
- 25 Have I made myself plain? It may be that I have not spoken very clearly. When

1 your Honour began speaking, I didn't have the letter open in front of me.

2 PRESIDING JUDGE OZAKI: Okay.

3 MR GUMPERT: I do now and I wondered if the Court could help me by drawing
4 my attention to the passage in the letter which it is which is concerning
5 your Honours?

6 I note that it's in the first paragraph that --

7 PRESIDING JUDGE OZAKI: This is the public annex D to your filing 940.

8 MR GUMPERT: Yes, I have the letter.

9 PRESIDING JUDGE OZAKI: Yes. And you said in this letter --

10 MR GUMPERT: I think it --

11 PRESIDING JUDGE OZAKI: It is the first paragraph --

12 MR GUMPERT: Yes.

13 PRESIDING JUDGE OZAKI: -- that you said that, "The purpose of this letter is to
14 give notice that unless Government of Kenya provides ..."

15 MR GUMPERT: Yes, I did, or the Office of the Prosecutor wrote in those terms.

16 PRESIDING JUDGE OZAKI: Yes.

17 MR GUMPERT: Your Honours will recall that at this time the Prosecution contends
18 that there had been a two-month gap since anything at all had been received from the
19 Kenyan government despite, we contend, our writing regularly to them asking for the
20 promised help.

21 The purpose of this letter was to say, "Well ...", to put it bluntly, "... if you've cut off
22 communications with us altogether, which is what we fear from your recent silence,
23 we're giving you notice that the OTP considers the consultations to have been
24 exhausted because you're not responding any more."

25 This letter was followed within two days by a quantity of material; material which is

1 outlined in the table to which I have drawn your Honours' attention. So this letter
2 does not represent the last word and there has been further partial co-operation
3 subsequent to this.

4 The position is that certainly there has not been, we say, complete compliance, and
5 therefore the deadline which we set has passed without there being complete
6 co-operation in accordance with the Chamber's order.

7 I think that is the best answer I can give.

8 PRESIDING JUDGE OZAKI: Thank you very much.

9 Does that mean that you intend to continue consultations with the government
10 indefinitely until the co-operation request is fully executed, or do you consider there
11 is or will be a stage at which they are exhausted?

12 MR GUMPERT: That's a hard question. When one party to co-operation
13 proceedings is simply silent, does not respond to the other party, then after a
14 reasonable period of time the party to whom no response is being made is entitled, I
15 submit, to say, "Right. Well, this process is exhausted."

16 It would be wrong to say that there has been no provision of information and wrong
17 to say that we have no expectations or hopes of any further material at all.

18 What we have concluded is that the position of the Kenyan government, despite this
19 Chamber's ruling, is such that the information which we truly require -- let me give
20 two examples, the best two examples perhaps: The full three years' worth of bank
21 statements and the tax returns. I'm speaking in very precise terms here. Exactly
22 those things. The tax returns. I can actually show your Honours such a document
23 in blank if it would help?

24 They have not been provided, there is no sign of them being provided and the
25 lengthy explanation given by the Government of Kenya in its observations, which

1 your Honours have referred to on 15 September, say nothing about these documents
2 being provided.

3 I think it would be reasonable for us to conclude - and effectively we have so
4 concluded - that the Kenyan government does not intend to provide us with either of
5 those two sets of documents and, if that conclusion is correct, then at least in that
6 respect co-operation has been exhausted.

7 There may be further such letters as the one I referred your Honours to today, but in
8 terms of really moving forward this process it would appear that we are at a
9 deadlock.

10 PRESIDING JUDGE OZAKI: Prosecution, when you say "... we are at a deadlock",
11 do you think --

12 MR GUMPERT: I mean --

13 PRESIDING JUDGE OZAKI: Yes?

14 MR GUMPERT: By that I mean that the Kenyan government is not going to give us
15 what we are asking for and what the Chamber has approved our asking for.

16 PRESIDING JUDGE OZAKI: Do you mean that, in Prosecution's view, the
17 consultation be exhausted and you will go back to your original application under
18 Article 87(7)?

19 MR GUMPERT: We do, yes. Our position is that, if the definition of the term "is
20 exhausted" is to be understood to be effectively at an end, that's where we stand.
21 And the logical conclusion to be drawn from that - indeed, I would say the only
22 conclusion to be drawn from that - is that we revert to the position we first occupied;
23 namely that if the Court is satisfied that our arguments are right, it should make a
24 finding of non-compliance on the part of the Government of Kenya.

25 PRESIDING JUDGE OZAKI: Thank you very much.

1 A related question, Prosecution: During the status conference on 5 February this
2 year, you indicated that the possibility of obtaining sufficient evidence for trial as a
3 result of record request is highly speculative.

4 Has your assessment changed through the consultation with the Kenyan government
5 during the six months' adjournment period? For example, are you more sure that if
6 you can have tax returns and full three-year bank records your possibility of
7 obtaining sufficient evidence will be less speculative?

8 MR GUMPERT: It is difficult to measure degrees of speculation. We say, frankly,
9 that we don't know what is contained within these records. There is a body of
10 evidence - some nine separate witnesses - who would be prepared to come forward
11 and say that they were told by people who approached them to organise violence,
12 that the person who was financing or ultimately coordinating that violence was
13 Mr Kenyatta and that they would be paid for their work and that they would be
14 protected from the consequences of what they did.

15 It is on the basis of that evidence that the Prosecution has made the inquiries which
16 are designed to reveal communications, in terms of the telephone evidence we've
17 asked for, and transfers of money or land or other benefits which we hope will be
18 revealed by the other requests that we have made.

19 As to what the records will actually show, we still remain in a position of speculation.
20 It is fair to say - and I say it openly - that nothing in the 75 pages of material which we
21 have received from the Kenyan government makes the case against Mr Kenyatta any
22 stronger.

23 On the other hand, we have not received material which might be regarded as the
24 truly critical material. I don't want to rehearse submissions I've made before about
25 the likelihood of somebody who is involved in offences wanting to cover their tracks,

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1 but the requests we have made are those which we could best design to uncover

2 Mr Kenyatta's involvement if there are records which would reveal it.

3 We haven't seen the large majority of those records and, therefore, we can still only
4 speculate what they say.

5 PRESIDING JUDGE OZAKI: Thank you very much.

6 Now I would like to turn to Mr Attorney-General. From the exchange of

7 correspondence which the Chamber has carefully reviewed, there appears to be a

8 period of over a month this summer, following the status conference on 9 July, during

9 which the Prosecution sent three letters relating to the revised request without

10 receiving any response.

11 Can you please comment on the reasons for that period of non-communication from

12 the side of Kenyan government?

13 MR MUIGAI: I'd very -- I'd be very happy to do so.

14 First, Madam President, you appreciate - this Chamber will appreciate - that a

15 government, even that of a small country like Kenya, is a fairly huge bureaucracy.

16 The filings we have made demonstrate that, when I received the letter on 31 July 2014

17 proposing that the Prosecution and I should get together to push forward the matters

18 raised in your decision of 29 January 2014, I immediately commenced consultations

19 within government.

20 It is on record, for example, that on 6 August -- which is not a month after your ruling.

21 On 6 August I sent off communication to the Registrar of Companies, I sent out

22 communication to the Communication Authority of Kenya, to Airtel, to Safaricom, to

23 the Central Bank of Kenya, to the Kenya Revenue Authority, to the Ministry of Lands,

24 to the National Intelligence Service, to the National Transport and Safety Authority.

25 If we desired to delay or obstruct, there would have been no reason for me to

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1 commence these consultations and these consultations were not commenced under
2 any compulsion. It is because, whatever our views were as to what the Court meant
3 in its order of 29th, we wanted to be able in good faith to demonstrate that we were
4 doing something about it.

5 There has been a misconception that by some -- by some bureaucratic feat, it is
6 possible for the Attorney-General sitting in his office --

7 PRESIDING JUDGE OZAKI: Mr Attorney-General, please be more focused on my
8 question.

9 MR MUIGAI: Yes.

10 PRESIDING JUDGE OZAKI: So the reason of this noncommunication being that
11 you took time to communicate with other internal organisations within Kenya?

12 MR MUIGAI: Absolutely.

13 PRESIDING JUDGE OZAKI: Is that what you're saying -- you are saying?

14 MR MUIGAI: And not only that, Madam Chair, very soon thereafter, in the very
15 same month, two weeks after I communicated with other agencies of government, the
16 information started flowing back, and as soon as the information came back I sent it
17 directly to the Prosecutor.

18 And one of the difficulties I think we have here is I have personal charge of the
19 response of the Kenya government to this matter.

20 The Prosecutor who files documents in this Court does not appear to have day-to-day
21 charge. So I'm talking of things that I have done. The Prosecutor has filed

22 documents about things she was told by her staff, who were told by her other staff.

23 So the choice really must be yours who you are to believe. But if you look at the
24 record, Madam President, it speaks for itself.

25 On 25 August, the Minister for Lands wrote back to me with an extensive report

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1 about whether or not she was in a position to assist the Court.

2 PRESIDING JUDGE OZAKI: Mr Attorney-General, the Chamber has already
3 examined all those materials which you submitted.

4 MR MUIGAI: But allow me to say this, Madam President: It is not for one lawyer
5 to determine whether there has been cooperation. It is for the Court.

6 In the manner that the Prosecution addresses this matter, the Prosecutor is saying
7 "Until I am personally satisfied, there has been no" --

8 PRESIDING JUDGE OZAKI: Mr Attorney-General, I'm sorry to interrupt.

9 MR MUIGAI: Yes.

10 PRESIDING JUDGE OZAKI: But I think you have already answered our question.

11 MR MUIGAI: Yes. But I need to -- may I also finalize by saying that you will notice
12 that by the end of August all the responses had been made. They were not made
13 because we were being prompted by the Prosecutor. They were made because it
14 was our obligation to the Court which we had undertaken to come back with these
15 responses. And, therefore, Madam President, you must allow me to answer the
16 same question you have asked the Prosecutor: Has the cooperation process ended?

17 PRESIDING JUDGE OZAKI: No, Mr Attorney-General. As I said at the outset, we
18 are not opening the floor for every counsel on every point. This is -- this status
19 conference -- the purpose of this status conference is for the Chamber to ask very
20 specific questions to very specific counsel.

21 MR MUIGAI: Well, would it not then, Madam President, be very unfair for us that
22 he should be able to say whether in his view the cooperation has ended, but we have
23 no right to state in our view what is the status of that cooperation?

24 PRESIDING JUDGE OZAKI: Mr Attorney-General, this is a status conference --

25 MR MUIGAI: Yeah.

- 1 PRESIDING JUDGE OZAKI: -- in order for us to gather information, and that's it.
- 2 Another question, Mr Attorney-General: We note that in the June submission of the
- 3 Prosecution and the Kenyan government, which was filed on 8 July, it has indicated
- 4 that there has been an agreement in principle for the provision of supplementary
- 5 information and for meetings to be facilitated by certain deadlines. Those deadlines
- 6 expired during the period of noncommunication just mentioned without any
- 7 explanation having been provided. And the Kenyan government stressed in its most
- 8 recent submission that it was an agreement in principle, that without again
- 9 mentioning any explanation, what exceptional circumstances had prevented it from
- 10 executing this agreement? Can you please explain why that occurred?
- 11 MR MUIGAI: The reason no meeting was held is explained in both my filing and
- 12 the Prosecutor's filing, and it is clear from the Prosecutor's filing and my own filing
- 13 that we were completely at cross purposes. And, again, this is where, if I may say
- 14 this again, I spoke to one of the Prosecutor's assistants, Mr Mochochoko, who is in
- 15 Court, on the telephone. We mooted the idea that he would be in Nairobi. He was
- 16 in Arusha. I mooted the idea of hosting him in my office. We discussed it at some
- 17 length. He came back to me and said the period of lay-over, because it was a Friday
- 18 to Monday, was too long to be justified, and he was unable to come in. That's part of
- 19 my record. My assistant --
- 20 PRESIDING JUDGE OZAKI: So --
- 21 MR MUIGAI: Sorry. Sorry, madam.
- 22 PRESIDING JUDGE OZAKI: So your submission is that actually you suggested
- 23 certain timing for this meeting and the Prosecution was not able to come on the
- 24 suggested date?
- 25 MR MUIGAI: Yes, and it is in the filing. And then we wrote an email. There was

1 an email from my assistant again saying, "When will the Prosecutor be available for a
2 discussion about these outstanding matters?" That email was not responded to.

3 PRESIDING JUDGE OZAKI: Thank you very much, Mr Attorney-General, but my
4 understanding is that Prosecution's submission is that this meeting has nothing to do
5 with this case. Am I correct, Prosecution?

6 MR GUMPERT: Your Honour is correct.

7 MR MUIGAI: That is the heart of the problem. The person claiming that the
8 meeting we were to have was about something else is a person with whom I didn't
9 have that conversation as to what we were meeting. I am here to speak for myself,
10 that I called a certain person, who I have named by name, who I then told, "Let us
11 meet and advance the discussion."

12 That person is not saying that that conversation didn't happen. Some other third
13 party is saying that that conversation didn't take place.

14 I wrote an email -- my assistant wrote an email asking for a meeting to discuss this
15 matter. That email wasn't responded to, and I have -- I don't hear it being said now
16 that the email was never written.

17 Be that as it may, be that as it may, what then followed was a process through which
18 we were communicating in writing almost on a daily basis, or every two days, and
19 I was saying: "Now find here enclosed what I have received from the National
20 Security Service," et cetera, et cetera. I considered that to be a continuing
21 consultation.

22 PRESIDING JUDGE OZAKI: Thank you very much.

23 Another question, Mr Attorney-General, about the current status of the cooperation
24 and the way forward. In your most recent filing, Mr Attorney-General, and that is
25 the observation you provided on the Prosecution's update, you indicated that the

1 reason why some of the materials sought in the revised cooperation request remains
2 outstanding is because the Prosecution has not provided certain information. Is it
3 your position, Mr Attorney-General, that you have taken all steps available to you
4 and that you cannot progress the cooperation any further unless the Prosecution
5 provides this further information?

6 MR MUIGAI: That is our case, Madam President. It is not a new case, it is the case
7 we informed the Court the first day we came here. It was the case we informed the
8 Court the second day we came here. It is the case we are informing the Court again
9 today. We have now documented it at great length.

10 Allow me, Madam President, very briefly to talk about the land records. We have
11 set out -- we have given my learned colleague all the laws of Kenya relating to land
12 and all the forms that anybody - anybody including the Kenya government - must file
13 in order to get a report relating to titles. We have begged this Court before and we
14 do so again to appreciate our --

15 PRESIDING JUDGE OZAKI: I think the Chamber has all the information about
16 those conditions.

17 MR MUIGAI: But may I make this point please, madam, because I need to answer
18 you? It is true, unless the Prosecution is able to tell us, "We are interested in land
19 reference number 100, please get us a search on that title," and I have promised you if
20 that happens we will bring the search within 72 hours.

21 We have also said if you know of a motor vehicle by its registration and you give me
22 the number, I will bring the logbook who tells us who owns that number and I will do
23 it in 72 hours.

24 If you have a telephone number, a telephone number, we will be able post-2009 to ask
25 the providers to give us the name and the logs of the telephone.

1 If you want to know who owns which trust, you have to give us the name of the trust,
2 and within 72 hours we will bring you all the particulars.

3 Unless the Prosecution, Madam President, takes itself more seriously on this matter,
4 we are -- we are put in a most embarrassing and difficult and impossible situation
5 because we are being asked use the entire machinery of State to find out something
6 that the law has created a procedure for.

7 PRESIDING JUDGE OZAKI: Mr Attorney-General, but as you said, for example,
8 that you say in order to get -- in order to provide the Prosecution with necessary
9 information about telephone communication your government needs, for example, a
10 personal identification number issued by the Kenyan Revenue Authority. Do you
11 really reconsider that to be a reasonable -- reasonable position --

12 MR MUIGAI: Absolutely.

13 PRESIDING JUDGE OZAKI: -- for the government to take that the Prosecution must
14 provide a PIN issued by your own domestic revenue authority?

15 MR MUIGAI: Because, Madam President, this is the requirement of the law to be
16 able to conduct a land registry search or a company registry search. You must have
17 the name of the company, the names of the --

18 PRESIDING JUDGE OZAKI: Mr Attorney-General, my example is personal
19 identification number issued by Kenyan Revenue Authority.

20 MR MUIGAI: It is not the personal identification number that facilitates the entire
21 search. The personal identification number is a number that you provide the
22 Registrar with alongside other documentation, including the names of the directors,
23 the shareholders, the name of the company's -- the name of the company's secretary,
24 et cetera, et cetera, et cetera. So that I have no way of knowing the personal
25 identification number of Mr Uhuru Kenyatta.

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1 This is something to be supplied to me to supply to the Registrar, unless an argument
2 is being made that the government has a surveillance system where every person's
3 personal identification number, the equivalent of a social security number, is available
4 willy-nilly. It is not. This is information. And I want, Madam President, that you
5 should allow me to make this point one more time.

6 PRESIDING JUDGE OZAKI: I don't think you need to repeat.

7 MR MUIGAI: This is a cooperation request.

8 PRESIDING JUDGE OZAKI: Mr Attorney-General --

9 MR MUIGAI: The request is not for me to investigate.

10 PRESIDING JUDGE OZAKI: Mr Attorney General --

11 MR MUIGAI: Madam President --

12 PRESIDING JUDGE OZAKI: I think I don't want you to repeat anything. And just
13 my apology, I get confused, this PIN is something you ask --

14 MR MUIGAI: It's like a social security number.

15 PRESIDING JUDGE OZAKI: -- for the -- yes.

16 MR MUIGAI: Yes.

17 PRESIDING JUDGE OZAKI: Something for land records rather than telephone
18 records?

19 MR MUIGAI: No, no, no. It is a number. May I explain that, please?

20 PRESIDING JUDGE OZAKI: No, I don't think you need to explain.

21 MR MUIGAI: Very well.

22 PRESIDING JUDGE OZAKI: I now fully understand.

23 MR MUIGAI: Very well.

24 PRESIDING JUDGE OZAKI: Prosecution, I would now like to return to you on this
25 point. Could you please comment on the Kenyan government's submission about

1 this further information, the necessity of further information from you in order to
2 execute the cooperation request?

3 MR GUMPERT: I can. And I think I can best do it by giving an example, and the
4 example is the telephone request.

5 In the course of gathering information, two Prosecution witnesses and a number of
6 other people to whom the Prosecution has spoken, or from whom we have been
7 provided with statements, have suggested that at relevant times Mr Kenyatta had a
8 particular telephone number which ended in the numbers 891.

9 In co-operation with the Defence, we have caused inquiries to be made into the
10 records relating to that number and we have received some. Sadly those records are
11 very partial. Relating to the relevant period, we only have records of telephone calls
12 which were made to that number, not records of telephone calls which were made by
13 that number. So we've got incoming, not outgoing.

14 Furthermore, over the period of December 2007 and January 2008, that telephone
15 number, if it was Mr Kenyatta's, as we're informed it was, was only in contact with
16 five other numbers. Thus, we confidently assume that the records we have do not
17 represent the entirety of Mr Kenyatta's telephone contacts at that time.

18 We don't have access to any other number which is said to have been Mr Kenyatta's at
19 the time, and, therefore, we are not in a position to give the Attorney-General what he
20 says he wants because we don't have that information. It is, indeed, the information
21 which we are seeking from the Kenyan government. We suggest that the idea that
22 the Kenyan government doesn't have records of telephones being used by cabinet
23 ministers, as Mr Kenyatta was at the relevant time, is an unrealistic one, and that if
24 they were to do a diligent and proper search in their own records, they would come
25 up with the numbers which were being used. And if they did that diligent and

1 proper search, they would then be able to provide those numbers to us and to the
2 telephone service providers and there would be at least the hope that we would
3 receive the same kind of records as those which we have received in respect of the 891
4 number to which I have referred.

5 But it is simply a circular argument for the Attorney-General to say, "I can only give
6 you the records if you give me the telephone numbers," because it's the telephone
7 numbers which we are asking for. He knows that that is material which we say the
8 Kenyan government must have and which we're asking them to provide to us as a
9 springboard for other material.

10 That is an answer in respect to just one of the eight heads of inquiries that we have
11 made, but I hope that it illuminates all eight.

12 MR MUIGAI: Madam President, may I --

13 PRESIDING JUDGE OZAKI: Thank you very much.

14 MR MUIGAI: -- have your permission --

15 PRESIDING JUDGE OZAKI: Mr Attorney-General?

16 MR MUIGAI: May I have your permission very briefly to respond to that because
17 this is in fact the heart of the problem before this Court.

18 We have an investigation that has taken place for five years, we have an investigation
19 team and a Prosecutor who has come to you repeatedly and said, "We are ready to
20 proceed with the case because we have evidence." What Kenya is supposed to do is
21 to co-operate and to facilitate in confirmation of the availability of material. What
22 the Prosecutor has just admitted to is that they have never known, have never heard,
23 have never had access to what they said in their speech here before you.

24 In his speech before you he said "We have critical information, critical information."

25 He now says they've never had it and they would like the Kenya government to help

1 them to find it because the Kenya government must be assumed to keep a register of
2 phones used by cabinet ministers. There is no offer of evidence that Mr Kenyatta's
3 phone was a phone assigned to him as a cabinet minister. This is the sort of
4 circumlocutious argumentation that we have done, we have heard, that what we are
5 saying to you is not useful.

6 And I want to repeat this, Madam President: The only reason the Prosecutor
7 admitted to the Court that he knew of telephone numbers belonging to Mr Kenyatta
8 is because we raised it. We came and told you, Madam President, that Mr Kay, as
9 the Defence lawyer, and the Prosecutor, behind our back, and they were not
10 supposed to tell us, had gone to Court --

11 PRESIDING JUDGE OZAKI: Mr Attorney-General, I'm sorry to say that you are
12 again start repeating.

13 MR MUIGAI: Okay, I'm sorry. Let me wind up then by saying our position
14 remains the same. All these witnesses that are referred to by the Prosecutor, to
15 whom phone calls were made, surely must have received phone calls from specific
16 numbers. Give me those specific numbers, give me 72 hours and I'll bring you the
17 phone logs.

18 PRESIDING JUDGE OZAKI: Thank you.

19 Prosecution, in the -- in your correspondence with Kenyan government certain
20 explanations have been provided as to why the request for company records and land
21 transfer records cannot, as a practical or administrative matter, be executed directly,
22 and the Chamber understands that two records are quite important for the
23 Prosecution.

24 Leaving aside for the moment the possibility of obtaining the information through
25 alternative means, such as tax returns, are you satisfied with the explanations that

1 have been provided about the practical and administrative difficulties, that is, do you
2 consider that it is in fact necessary to resort to alternative means for obtaining that
3 material?

4 MR GUMPERT: Madam President, the Prosecution isn't really in a position to judge.
5 The Kenyan government has the advantage that it speaks directly to the people who
6 are responsible for the organisation of the company records and the land registry.
7 They have, indeed, provided quite lengthy explanations as to why it is quite
8 impossible to do what I, myself, would have thought would be a primary purpose of
9 keeping these records in the first place, that is to say, to be able to consult them to
10 establish what landholdings or what interests in companies a particular individual
11 has.

12 It certainly doesn't lie in my mouth to call the keepers of those records untruthful in
13 the letters that they have written. I am in the position that I have effectively to
14 accept what they say because I have no means of challenging it.

15 If, indeed, it is the position that the Kenyan records of its company -- sorry, the
16 Kenyan register of limited companies and the Kenyan register of land is such that it
17 can't be consulted for the purposes that we have asked for it to be consulted, that
18 seems to me to be an unhappy state of affairs, but I can't say that I'm either satisfied or
19 dissatisfied. I have no means of challenging the explanations offered.

20 There are alternative methods. Your Honour hasn't asked me this, but you touched
21 upon alternative methods. It is certainly time for the Kenyan government to
22 consider -- indeed beyond time for it to consider -- it is time for the Kenyan
23 government -- past time for the Kenyan government to move to those alternative
24 methods; for example, to consult the Registry of interests which must, I imagine, be
25 kept in respect of public officeholders in Kenya, as it is in other States, which would

1 be likely to reveal significant information which would enable these kind of checks to
2 go forward.

3 PRESIDING JUDGE OZAKI: Thank you very much.

4 As for those alternative means for obtaining the material, Mr Attorney-General,
5 what's your comment? Has the Government of Kenya already pursued any kind of
6 alternative means suggested by the Prosecution?

7 MR MUIGAI: First, Madam President, allow me to remind the Chamber that this
8 issue of financial records started off as an application to freeze assets in 2012. That's
9 an application that was long abandoned.

10 PRESIDING JUDGE OZAKI: Mr Attorney-General, that issue has nothing to do
11 with this co-operation request from the Prosecution.

12 MR MUIGAI: Well, in our view it does, but maybe if you have ruled on that, we
13 have no problem. Let me go to the second answer.

14 The second answer is this: A request was made, we came before you, we argued at
15 great length, you gave a ruling as to relevance, materiality, specificity. You directed
16 that the Prosecutor should again redefine and resubmit to us. We responded to the
17 redefined and resubmitted request.

18 Now, if you're asking me whether we can respond to something else, my answer
19 would be we have no something else that has been put to us, we have only what was
20 the revised request, and to the revised request we have responded in great detail in
21 each situation demonstrating why it is impractical, impossible, irregular and
22 procedural to do -- to use the method.

23 And, again, allow me to say this, Madam President, the Prosecutor makes a case
24 suggesting that we have said, "We will not do at all costs." No, we have said there is
25 no method, no procedure that allows us to bypass the regulatory framework. We

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1 need the names --

2 PRESIDING JUDGE OZAKI: Mr Attorney-General, that's why Prosecution and this
3 Chamber as well mentioned alternative measures. And in this connection, the
4 Chamber would like to remind you that the Chamber in its July 29 decision noted that
5 the Kenyan government may be best placed to advise on alternative possibilities
6 under the Kenyan domestic framework for obtaining requested material. And
7 I understand from your submission so far that the Kenyan government did not advise
8 any alternative measures for obtaining any of the information sought.

9 MR MUIGAI: No, we have advised the Prosecutor and have advised the Court on
10 the legal and administrative methods that are available in Kenya for obtaining the
11 information he requests. We have no --

12 PRESIDING JUDGE OZAKI: But no -- no alternative measures --

13 MR MUIGAI: We have no --

14 PRESIDING JUDGE OZAKI: -- to overcome those difficulties?

15 MR MUIGAI: We have no extralegal or extrajudicial measures. Except the legal
16 measures we have given, we are unable to use extralegal, extrajudicial measures.

17 PRESIDING JUDGE OZAKI: Judge Fremr?

18 JUDGE FREMR: Mr Attorney-General, maybe I will have two questions concerning
19 the last, last issue. Does it mean, or is it my understanding, that in case in Kenya you
20 have an accused who is prosecuted for serious crime and there is a need to investigate
21 his assets? Why in this case? And does it mean that the only chance to get the
22 details necessary for making further investigation on his cars, on his -- on land owned
23 by him, is to ask him for further details?

24 MR MUIGAI: Judge, I want to confirm that the request we have received from this
25 Court and from -- by the Prosecutor is not any different from a request we receive

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1 daily for mutual legal assistance, and a request for mutual legal assistance requires
2 the requesting State to provide the information the basis upon which evidence can be
3 assembled in the receiving State.

4 The difficulty we have in what is proposed before this Court is that we are required to
5 assume responsibility for identifying the evidence itself.

6 I have explained before, Judge, the difficulty we have with that: (a) because the
7 Republic of Kenya is not a party.

8 JUDGE FREMR: Thank you, that's clear to me, but take a case of your domestic
9 investigation.

10 MR MUIGAI: Yes.

11 JUDGE FREMR: So it is just your responsibility probably to be initiative. So in
12 such a case again you would just have to rely on consent and I can even imagine that
13 such an accused could be even missing, but you have a need to investigate he's
14 missing and so in such a case you have in fact no practical chance to make an further
15 investigation on his cars, on his lands and so on?

16 MR MUIGAI: If even in a Kenyan court a prosecutor or an investigator was to
17 acquire evidence illegally - illegally obtained evidence - it is inadmissible in court and
18 even if it were admitted it would be of no probative value. It is not a method we
19 have used before.

20 JUDGE FREMR: Okay.

21 MR MUIGAI: I would hope that I'm not being invited by the Prosecutor to consider
22 extra legal --

23 JUDGE FREMR: No, no, no. No, no, it's clear.

24 And the last question, excuse me Mr Prosecutor -- Mr State Attorney, from my part:

25 We also discussed the possibility of asking for approval from the accused. Have you

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1 also considered this possibility, because hypothetically you could also ask

2 Mr Kenyatta whether he is willing to co-operate with you?

3 Because, okay, I fully respect there is a right not to self-incriminate himself, if he

4 would say, "Okay, I don't want," it's clear, but I also can imagine the possibility that

5 he would say, "Okay, I want to prove that I am innocent and I will provide you with

6 those details."

7 Have you considered this possibility?

8 MR MUIGAI: Not only have I considered that, but in some respect we already acted

9 on the bank statements on that principle and, if I remember correctly, the Prosecutor

10 made heavy weather of it when we were last here. If you recall, Judge, the

11 Prosecutor was very, very unhappy. He said that the Kenya government was only

12 willing to bring information which the accused had consented to, and the argument

13 we were making at the time was it is much easier -- it is much easier and Mr Kay

14 I think will speak to this. When Mr Kay and the Prosecution wanted telephone

15 records, both of them got together. They went to Safaricom. They went to Airtel.

16 They got the records. They both have them. I don't.

17 When we wanted to have the bank records, and we were confronted with the

18 difficulties with Central Bank, with the individual banks, Mr Kay himself, having had

19 the discussion we had here, wrote to me a letter saying - and I think copied to the

20 Prosecutor - "We have no objection to bank records being obtained." That is how we

21 obtained the bank records.

22 I hope I make myself clear, Judge.

23 JUDGE FREMR: Okay, perfectly clear. And adds to the other details because it's

24 nice, but also there is some request for further details concerning cars and land. Is it

25 not possible to go this way as well?

1 MR MUIGAI: Yes, but that would not be a -- that would not be a duty of
2 co-operation on the State on the whole. It would be a duty of disclosure. And the
3 record of this trial that is public shows that, when in 2012 the Prosecutor said they
4 were ready to proceed, the Prosecutor was reprimanded on four different occasions
5 for failure to disclose. These are the disclosures.

6 What is now being prosecuted through the back door as an application for
7 co-operation is a breakdown in the ability of the Prosecution to conduct: (a) proper
8 investigations and (b) to disclose mutually to the Defence. We are being made
9 sacrificial lambs about a matter that has nothing to do with the Republic and has
10 something to do with the professional conduct of the case.

11 JUDGE FREMR: Thank you very much, Mr Attorney-General.

12 PRESIDING JUDGE OZAKI: Now turning to another record which is tax returns,
13 the -- Mr Attorney-General, the Prosecution has been requesting the provision of
14 Mr Kenyatta's tax returns during the relevant time period.

15 While the Kenyan government has provided certain tax-related materials, it has not
16 provided these requested tax returns, nor provided an explanation for not doing so,
17 like legal or administrative difficulties.

18 Can you please comment specifically on why those tax returns have not been
19 provided?

20 MR MUIGAI: Give me a moment, madam. These are not foreign exchange
21 transactions.

22 PRESIDING JUDGE OZAKI: Tax returns.

23 MR MUIGAI: Yes. On 26 August, Madam President, I received a letter which I
24 have appended from the Kenya Revenue Authority in response to my letter of 6
25 August, which I mentioned earlier, and I think that the

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1 supplement -- Madam President, I don't know whether you've seen it, the letter of 26
2 August 2014?

3 PRESIDING JUDGE OZAKI: Is it annexed to your submission?

4 MR MUIGAI: Yes, it is.

5 PRESIDING JUDGE OZAKI: Can you --

6 MR MUIGAI: Can I read it for you? It's very short.

7 PRESIDING JUDGE OZAKI: No. If you can just tell me the annex number, that
8 will be okay.

9 MR MUIGAI: It is annexed to our submissions of 29 August.

10 PRESIDING JUDGE OZAKI: Yes, and which annex?

11 MR MUIGAI: Annex 47 -- no, not that one. Sorry, annex 5.

12 PRESIDING JUDGE OZAKI: Annex 5 to your submission dated 12 September? Is
13 that the one you are referring to?

14 MR MUIGAI: Is it dated 26 August 2014?

15 PRESIDING JUDGE OZAKI: No, it is dated 19 July.

16 MR MUIGAI: KEN-OTP-0140-0073. It's 13, I believe -- 15 -- 30. 30, I believe. Sorry
17 for that, Madam President. I think we got it. It's 30.

18 PRESIDING JUDGE OZAKI: Okay, annex 30.

19 MR MUIGAI: Thirty-one -- 30 and 31. They're two joint letters.

20 PRESIDING JUDGE OZAKI: Yes, 31 is the letter from Kenya Revenue Authority.

21 MR MUIGAI: Correct, Madam President. That is the letter.

22 Aailed to me, which I aailed to the Prosecutor, were hard and soft copy of the
23 income tax declaration form for 2009/2010 and the confirmation that the person in
24 question was not registered for VAT.

25 There is -- sorry, madam.

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1 PRESIDING JUDGE OZAKI: Yes, but what Prosecution is asking for is tax return for
2 Mr -- of the accused, not only the information about VAT.

3 MR MUIGAI: Yes, but that's exactly what I have given, madam. May I read that
4 for you, please?

5 The writer says, "We have attached both in hard and soft copies the income tax
6 declaration information for 2009/2010." He explains there earlier, "The information
7 we have provided represents what our records contained based on returns submitted
8 by the taxpayer. For the two years in question, the taxpayer filed income tax returns
9 and paid the self-declared taxes."

10 So that has been provided.

11 PRESIDING JUDGE OZAKI: Yes, but the letter also said -- mentions, "... the
12 taxpayer filed income tax returns," and I think that's exactly the material Prosecution
13 is seeking.

14 Am I right, Prosecution?

15 MR MUIGAI: I think there is a slight -- okay, maybe my colleague --

16 MR GUMPERT: I have in my hand a blank Kenya Revenue Authority tax return. It
17 is unfortunately familiar to many of us probably in its general form full of boxes
18 which have to be filled in, including for example space for details of directorships
19 held by the person making the return.

20 It's the kind of information which has to be included in all these boxes which we're
21 interested in. We don't want to know how much tax Mr Kenyatta has paid, or how
22 that's been calculated, which is the essence of the document we've been given. We
23 want to know what he says about things like his directorships of companies and other
24 financial details which this form will require him to provide.

25 With the greatest respect to my learned friend, we couldn't possibly have been clearer

1 that it is the completed versions of this document that we want and we haven't got it.

2 PRESIDING JUDGE OZAKI: Thank you, Prosecution.

3 Mr Attorney-General?

4 MR MUIGAI: My understanding of how this authority works, Madam President,
5 they have explained in that letter: (1) They say, "We operate a self-assessment tax
6 regime where taxpayers make own declarations which we may interrogate based on
7 risk profile."

8 What I understand that they do, Madam President, is that a tax form return is filled,
9 they extract information that they consider to be relevant, they retain that information
10 which they have extracted in a format that they use for -- for their other purposes, but
11 they do not retain the forms. That is my understanding. So that what we have
12 been given in hard and soft copy is the income tax declaration information that is
13 retained routinely by the authority.

14 PRESIDING JUDGE OZAKI: So, Mr Attorney-General, what you're saying is that
15 the -- Mr Kenyatta filed income tax --

16 MR MUIGAI: Returns.

17 PRESIDING JUDGE OZAKI: -- returns --

18 MR MUIGAI: Yes.

19 PRESIDING JUDGE OZAKI: -- in that kind of format which Prosecution showed,
20 but the revenue authority does not retain those documents?

21 MR MUIGAI: It doesn't retain the form. It extracts from the form. The letter is
22 self-explanatory.

23 "The information we have provided represents what our records contain based on
24 returns submitted by the taxpayer. For the two years in question, the taxpayer filed
25 income tax return and paid self-declared taxes."

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1 That is how they work. It may not be the most efficient system in the world, but that
2 is the system that we have.

3 PRESIDING JUDGE OZAKI: Thank you very much.

4 Now I would like to --

5 MR GUMPERT: I'm very sorry to interrupt, your Honour --

6 PRESIDING JUDGE OZAKI: Yes, Prosecution.

7 MR GUMPERT: -- but that's a piece of information which I don't believe we've had
8 before.

9 PRESIDING JUDGE OZAKI: I'm sorry, could you repeat? I didn't catch that.

10 MR GUMPERT: Yes. I'm sorry, I interrupted my fault. But this is a piece of
11 information which I believe is new. It is in fact further purported cooperation, but I
12 just want to be clear: The position of the Kenyan government is that Mr Kenyatta
13 filed tax returns like this one, but they have subsequently been destroyed, so they are
14 not available to be given to us.

15 Have I understood correctly?

16 MR MUIGAI: I don't know whether my learned colleague wishes the Court to
17 believe that he never received the -- he never received the letter that I communicated
18 to him of 26 August and that he's seen it for the first time this morning, or having
19 received it that he didn't read it, or having read it he didn't understand it because it
20 says exactly what I am saying. It says we have extracted --

21 PRESIDING JUDGE OZAKI: Mr Attorney-General, I have to confess that this letter
22 is not so clear about whether the revenue authority retains all those documents or not.
23 I think that's why the Prosecution is saying --

24 MR MUIGAI: We'll take your assurance, madam.

25 PRESIDING JUDGE OZAKI: I don't think -- I don't think Prosecution has -- I don't

1 think Prosecution is saying that he hasn't read the document.

2 MR MUIGAI: Okay, very well. I take your assurance.

3 Then let me, therefore, explain to my colleague, Mr Gumpert, that what I understand
4 the letter to be saying myself is that we have provided information from our records
5 based on returns submitted by -- the Kenya Revenue Authority is not saying that
6 what we are giving you is the document that was sent. They're saying we have a
7 storage system and we have gathered from that storage system this information
8 which we are sharing with you. I think that is clear, Madam President.

9 PRESIDING JUDGE OZAKI: Thank you.

10 I would now like to turn to the other subject matter which has already briefly -- which
11 has already been briefly discussed when Judge Fremr posed questions to Mr Attorney
12 General, but I would first like ask to Prosecution whether there are particular
13 materials for which you consider that compulsory measures should have been or
14 should be pursued by the Kenyan government in order to obtain the relevant records?

15 MR GUMPERT: Well, the obvious example is the bank statements. We managed to
16 come to a partial agreement with the Government of Kenya that we should receive
17 bank statements of accounts in Mr Kenyatta's own name for a period of three months,
18 but, of course, we had originally asked for those statements for a longer period, and
19 we have explained that the reason why is so that we could make comparisons
20 between the period of time during the PEV and similar months in other years, and the
21 Court has approved that request and the three-year period for which we have asked
22 for bank statements.

23 We have not received three years' worth of bank statements. Indeed, we have
24 received no further bank statements following the decision of the Chamber
25 confirming the validity of our request which was issued on 29 July, so that's now over

1 two months ago.

2 Yes, certainly, we would submit, that if the -- if those records could not be obtained
3 by consent, then they should have been obtained compulsorily. The Kenyan
4 government has, I am quite confident, powers to obtain bank records from financial
5 institutions relating to people who are the suspects in criminal investigations. That
6 must be the case domestically and, therefore, it must apply to this case as well.

7 There are, I dare say, other examples, but of course we are, if I can put it this way,
8 somewhat stuck in the thickets of the argument between ourselves and the Kenyan
9 government about matters like practicality of consulting the land registry or the
10 companies' registry.

11 If your Honours are persuaded by what the Kenyan government says, as to the
12 absolute impracticality of framing the request made by way of cooperation in a way
13 which will yield useful information, then your Honours will come to the conclusion
14 that compulsion would be of no use because one cannot compel the impossible.

15 If on the other hand, your Honours came to the conclusion that in fact there are
16 alternative methods, let me stress not unlawful methods or extrajudicial methods.

17 I'm not talking about a Watergate break in here, I'm talking about consulting
18 government lists of telephone numbers. I'm talking about consulting registers of
19 public office holders' interests, the sort of alternative approaches which have been
20 widely canvassed both by the Bench and by the Prosecution.

21 If your Honours were to come to the conclusion that the Kenyan government has
22 shown no desire and cannot explain its lack of desire to explore those alternatives,
23 then compulsion would be appropriate.

24 PRESIDING JUDGE OZAKI: Mr Attorney-General, has the Kenyan government
25 taken any steps to compel the production of relevant records?

1 MR MUIGAI: You know, where it has been possible within the law to carry out an
2 independent interrogation of the requested subject, we have done so, and nothing
3 better explains this than the letter from the Governor of the Central Bank, which is
4 contained in the filing we made on 29 August. It is very, very clear that the
5 Governor of the Central Bank has certain powers, which the Minister of Lands doesn't
6 have, which the Communication Authority doesn't have, and the governor has been
7 able to use those powers, and he gave us information.

8 So it is not true to say that in all situations where we received a request that we were
9 unable to progress without consent. No. Where we were able to do so, like with
10 the Governor of the Central Bank, we did so. Where we were unable to do so like
11 with the Commissioner of Lands we were not able to do so and we requested further
12 information.

13 PRESIDING JUDGE OZAKI: So, Mr Attorney General, you are saying that in this
14 case the Kenyan government as so far as the bank records are concerned has taken
15 steps to compel the production of records, or not, because my understanding from
16 your submission is that the provision of bank records is basically on the basis of
17 consent.

18 MR MUIGAI: Yes.

19 PRESIDING JUDGE OZAKI: So the Kenyan government hasn't taken any steps to
20 compel the production of bank records; am I right?

21 MR MUIGAI: There has been no need to. The records relating to Mr Kenyatta's
22 bank accounts are available. They -- they are before the Court. There has been no
23 need to take any other step in respect of that. In fact, the Prosecution,
24 Madam President, is not making such a case. The Prosecution is making an entirely
25 different one, that we would have wanted for a longer period. They are not saying

1 we have not received.

2 PRESIDING JUDGE OZAKI: Yes, Mr Attorney-General, the Prosecution wanted
3 bank records for a certain period, which by this Chamber's decision have been
4 justified.

5 MR MUIGAI: Then we negotiated with them for a period that we agreed on, and we
6 provided that. You told us go and negotiate in good faith to agree on a time frame
7 that is reasonable. We did exactly that, and they got that material for that period.
8 If they are reopening the request and saying, "Now give us for three years," that
9 would be a different matter.

10 PRESIDING JUDGE OZAKI: Well, I think Prosecution has been quite clear for its
11 request for the bank records for three years, which this Chamber already adjudicated
12 that it's -- it's a proper request.

13 MR GUMPERT: Well, I share that view, Madam President. We asked for three
14 years. At the Chamber's behest we entered into negotiations. It was quite clear that
15 the three months which were provided were not satisfactory to us, but that we would
16 take them as being better than nothing, and that we would bring our disagreement
17 about the other 33 months' worth to the Chamber.

18 We did that, we argued it out, the Chamber issued a decision on 29 July, and the
19 decision was in our favour; namely that the full three years should be provided.

20 In the two-and-nearly-a-half months since that time, those records have not been
21 provided.

22 PRESIDING JUDGE OZAKI: Mr Attorney General, do you have any further
23 comments on this?

24 MR MUIGAI: No, because our position remains as I have explained it.

25 PRESIDING JUDGE OZAKI: Now I would like to turn, Defence, on this specific

1 point of consent. As we noted in our decision of -- I think it is 29 July this year, the
2 provision of consent is of course a very helpful means of expediting execution of
3 certain of the requests, although it may not be an adequate alternative in all
4 circumstances. And, moreover, the Chamber stresses at this point that the accused is
5 not under any obligation to provide such consent. However, we understand that
6 certain consents have already been voluntarily provided in this case and, therefore, I
7 have a couple of questions for our better understanding.

8 First, is it correct that the Defence was only approached to provide information or
9 consent in relation to the requests for vehicle records, bank records and telephone
10 records?

11 MR KAY: Madam President, first of all, on bank records, vehicle records, telephone
12 records, those were matters with which we gave our consent, and in terms of
13 relevance to this case that was what I deemed to be relevant.

14 If you would like me to go further into the issue of us giving consent and the way the
15 Court has dealt with our voluntary disclosure, I would like to because that has been a
16 very sore point for the Defence throughout this case, and I'm quite prepared to
17 elaborate further on that, but I'm not sure it would be welcomed by the Court at this
18 status conference.

19 PRESIDING JUDGE OZAKI: Well, to the extent possible to the Defence, I'd like to
20 have some information about the consent given by the accused; for example, if the
21 consent -- where the consent were provided they were unqualified consents
22 authorising the provision of all relevant records, or it's under certain limited
23 conditions? If you don't want to answer that's fine, but if you can answer please
24 answer.

25 MR KAY: I'm quite happy to answer because we have engaged in a regime of

1 voluntary consent that started right at the confirmation of charges hearing, and
2 continued with that approach to this case, and we also entered into the regime of
3 finding evidence that went to the truth of the case by going through a process of
4 voluntary disclosure with the Prosecution.

5 It came to the stage of the case where the Prosecutor admitted she had no evidence,
6 and we came to that famous hearing where the Prosecutor admitted his highly
7 speculative lines of inquiry and -- about his case.

8 In relation to that, we expected these charges to be dismissed, they weren't --

9 PRESIDING JUDGE OZAKI: Mr Kay, sorry to interrupt, but can you -- can you
10 answer more directly to my question?

11 MR KAY: Yes. I gave unqualified consent to three months of bank records for the
12 months of December, January and February that were relevant to the case brought
13 against us, that was relevant to the evidence that was relied upon and not some other
14 case. We --

15 PRESIDING JUDGE OZAKI: And --

16 MR KAY: We disclosed that. They provided absolutely no support for the
17 Prosecution case, and I told the Court that, but the Court --

18 PRESIDING JUDGE OZAKI: Mr Kay, how about vehicle records and telephone
19 records?

20 MR KAY: Absolutely. We gave --

21 PRESIDING JUDGE OZAKI: It is the same?

22 MR KAY: Yes. Our telephone records was a telephone number that the
23 Prosecution already had. That evidence, as this Court has been reminded in filing
24 after filing by us, was provided to the Prosecution by the authorities in Kenya who
25 run the mobile telephone networks and they provided them with the evidence.

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1 As to providing any other telephone numbers, I haven't. I took the view that the
2 approach to our co-operation in this case had been less than satisfactory, less credit
3 was given to us for what we had done and what we had tried to achieve than we
4 deserved, and so as a result of that, having looked at the relevant evidence as we
5 knew this case to be, I decided no more evidence would be voluntarily disclosed by
6 me.

7 And that was a matter that I made as a decision because I felt the Court was moving
8 in the direction of a defendant having to prove his innocence. And that was
9 certainly something raised this morning. And I know you have countered that by
10 saying, of course a defendant doesn't have to, but that seemed to be the way that we
11 were turning, and our view was that whatever evidence we produced, further
12 inquiries were suddenly being requested, "We need to make comparisons." I have
13 never heard such a spurious --

14 PRESIDING JUDGE OZAKI: Mr Kay, please -- please confine your submission to
15 my very specific question. How about vehicle records? Have you already -- have
16 you also given some consent --

17 MR KAY: Yes, we disclosed --

18 PRESIDING JUDGE OZAKI: -- to disclose vehicle records?

19 MR KAY: Yes, we disclosed the vehicle records and then the request became
20 vehicles used by Mr Kenyatta, but how on earth are we going to --

21 PRESIDING JUDGE OZAKI: Thank you very much, Mr Kay.

22 MR KAY: -- document every vehicle he had a lift in? And that's what that request
23 amounts --

24 PRESIDING JUDGE OZAKI: Mr Kay, is it possible for you, just for the completeness,
25 to file copies of each of the consents?

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1 MR KAY: I think you may have had those, but you've certainly had those in filings
2 because you were appraised of various matters. I think they have --

3 PRESIDING JUDGE OZAKI: Well --

4 MR KAY: -- already been disclosed.

5 PRESIDING JUDGE OZAKI: Well, the Chamber hopes, if possible, we can have a
6 filing from the Defence. That would help us --

7 MR KAY: Yes, you've already had it.

8 PRESIDING JUDGE OZAKI: -- for the completeness of the record.

9 MR KAY: Yeah, you've already had those letters, but we will certainly go back to
10 that and provide you with the information.

11 PRESIDING JUDGE OZAKI: Thank you very much.

12 MR KAY: In fact, there was a spreadsheet which the Court was given which had
13 vehicle numbers, yes, so all this has been given.

14 PRESIDING JUDGE OZAKI: Judge Henderson has some additional questions.

15 JUDGE HENDERSON: Okay. Actually, Mr Kay, it's actually not directed to you,
16 so thank you very much, but, no, the accused does not have to prove his case and so
17 you can rest assured.

18 It's actually to Honourable Attorney-General. I would like to ask you a few
19 questions, please. The Attorney-General, yes.

20 The Office of the Prosecutor complains that the Government of Kenya has not
21 co-operated. That's the nub of this -- what we're hearing. And they have asked the
22 Chamber to make a finding that that is in fact so and to refer the matter to the ASP.
23 Quite a serious allegation. And I agree with you that it is not for the OTP to make
24 the finding, it is really for you to persuade the Bench individually, collectively, by
25 majority, that this is, in fact, the case.

1 This is an unusual case in the sense that the subject of the complaint is actually a
2 person who holds high constitutional authority and it -- the complaint perhaps is
3 against the backdrop of the -- against this backdrop and the -- certainly I have noted
4 the constitutional provisions, in particular Article 131(d) and 132. 131(d), which is
5 under the rubric president and deputy president, and which has its side note
6 "Authority of the President," it provides that the president is the chairperson of the
7 security council, so that's against that backdrop. Article 132(5), which has as its side
8 note "Functions of the President," it provides that "The President shall ensure that the
9 international obligations of the Republic are fulfilled through the actions of the
10 relevant Cabinet Secretaries."
11 So putting that on one side, you have a situation where the -- and it's quite an unusual
12 case, the person who forms the subject of the request to the State -- the request from
13 the State -- the State party, the request to the Government of Kenya, is himself
14 perhaps in a constitutional position. Is that a fair reading of the constitutional
15 provisions?
16 MR MUIGAI: First, thank you -- thank you, Judge. I am happy to know that you
17 agree with me that it is not the individual opinion of any lawyer before this Court, no
18 matter how learned, that will determine whether there has been co-operation or not.
19 That will be a judicial determination by the Court itself. I thank you for that.
20 Secondly -- and I'm coming to your question very shortly -- I think I need to remind
21 the Chamber with respect that the co-operation of the Kenya government with the
22 ICC predates the election of Uhuru Kenyatta.
23 JUDGE HENDERSON: Yes.
24 MR MUIGAI: Because sometimes that is forgotten. It is very sometimes --
25 JUDGE HENDERSON: Mr Attorney, I have a keen eye on the clock, so that

1 I'm -- we're mindful of your submissions which we have heard in length on a
2 previous occasion and I recollect them quite clearly.

3 MR MUIGAI: Yes.

4 JUDGE HENDERSON: So I understand that. So perhaps if you could --

5 MR MUIGAI: Yeah, so then let me come to the second point, so that an argument
6 that says the Kenyan government doesn't -- is not working with the ICC because
7 Mr Kenyatta is in the office of head of state is fallacious. It is totally fallacious and
8 baseless because I personally was in contact with the Prosecutor, with the Registry
9 long before we held the election that brought the current administration to office. So
10 let me leave that behind and come to the next point.

11 Is it -- there is an argument that there is a constitutional responsibility for the
12 president to facilitate the enforcement of law, generally constitutional law --

13 JUDGE HENDERSON: Well, we're dealing specifically with the compliance with
14 international obligations of which --

15 MR MUIGAI: With international obligations.

16 JUDGE HENDERSON: -- of which this is the complaint. And what I would like to
17 come specifically to is, is it something that perhaps has the -- is there on the face of it
18 any conflict of interest?

19 MR MUIGAI: No, there isn't, Judge. There isn't. All I have said before, and
20 I think it bears repeating, is that the International Crimes Act of Kenya is the law that
21 domesticates the ICC Statute.

22 The president and every other person in Kenya who looks to understand what our
23 treaty obligation is looks to the International Crimes Act. That act identifies three
24 focal points for co-operation with the Court: The minister for foreign affairs, the
25 minister for internal security, and the Attorney-General.

1 If, therefore, there is any failure, any misreading of the law, any administrative -- or
2 any administration failure in co-operating with the Court, then you must ask the
3 foreign minister, you must ask the interior minister, you must ask the
4 Attorney-General. That's one argument.

5 The second argument, which is more fundamental and you have alluded to it, Judge,
6 is this: This is an unusual case. Uhuru Kenyatta was charged before this Court as a
7 suspect before he took over the management of the Republic of Kenya. After he took
8 over the management of the Republic, by deemed of the same constitution, the
9 president could not place himself in any circumstances where he would be deemed to
10 have in any way impeded the impartial processing of this case.

11 JUDGE HENDERSON: All right. I want to -- I don't want to cherry-pick any of the
12 specific requests, but what has come up from time to time this morning is the
13 telephone records. So perhaps that might be a good one. So I'm not cherry-picking,
14 but that's one I will perhaps use.

15 Now, the Court has not had the benefit of seeing the correspondence dated 1
16 September as it came in, I think, after the last filing, but from what I understand, this
17 is -- it contains material in which the Telecommunications Authority indicates that
18 they cannot act unless they are provoked by some court order; is that correct?

19 MR MUIGAI: Correct.

20 JUDGE HENDERSON: Now, the learned presiding -- my sister, had indicated
21 that -- she had asked a very specific question about formal steps being taken. Now,
22 my recollection in an earlier hearing was that, essentially, your complaint was that the
23 Prosecution could not just simply come to you and say, "Give me the keys for the barn
24 and give me what you have," that they needed to come with a court order, and once
25 you had -- and that that was unacceptable, but once it had basically the stamp of the

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1 Court, then you could be moved on that basis to make such a request. Is that a fair
2 recollection?

3 MR MUIGAI: That is not actually accurate. And let me use the example of the
4 other Kenya case, if I may, because it will explain this point very clearly.

5 In the second Kenya case we came to the Trial Chamber, the Trial Chamber said,
6 "There are witnesses who have refused to testify, go and arrest them and bring them
7 to the ICC." And I said to that Chamber, "I have no authority to do that, we cannot
8 do that because we must do everything in accordance with Kenyan law as well."

9 However, when the Chamber finally said that these witnesses are compellable, I said
10 to the Chamber, "The other parties are appealing. That is their right to do so. Give
11 me the names and give me the summons." The Prosecutor will tell you I am the one
12 who provoked the request to the Prosecutor. I said, "Give me the summons. I will
13 ask the police to serve all the eight people you say. They will make an election.
14 Those who want to come will come, then we will have no problem. You will have
15 no problem. I'll have no problem. Those who refuse, we will now go into a legal
16 process." That's exactly what has happened.

17 So let's come back to telephones and the point is this.

18 JUDGE HENDERSON: Yes, and when you -- when you answer -- because I don't
19 want to take up too much time, but what is --

20 MR MUIGAI: I'll be very brief on telephones.

21 JUDGE HENDERSON: Yes, but what, you know, has me some anxiety here --

22 MR MUIGAI: Because they have already --

23 JUDGE HENDERSON: Just a moment, Attorney, is that here it is you have the
24 Telecoms Authority -- here it is that a person that the Prosecutor says is not somebody
25 who you would have any difficulty in acquiring telephone numbers. It is where you

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1 have the Telecommunication Authority --

2 MR MUIGAI: Actually, Judge, I must respectfully disagree.

3 JUDGE HENDERSON: Yes?

4 MR MUIGAI: Because the letter from the Communication Authority says -- and we
5 have made this point before several times. Before 2009 --

6 MR GUMPERT: I interrupt my learned friend. I've got a copy of the letter here.

7 The Bench hasn't. It's crazy that you're relying upon my summary. Let me pass the
8 letter up.

9 JUDGE HENDERSON: Yes, Mr Attorney-General?

10 MR MUIGAI: Judge, the letter from the Communication Authority makes it very
11 clear that there was no regime for the capture of the information regarding
12 subscribers during the period in question.

13 Even if I had by some way or other an order that told me, "Go to -- go to Airtel and
14 Safaricom and get this record," they themselves have already -- we have filed their
15 letters saying, "We did not have compulsory data capture prior to 2009."

16 So it's not about a court order. It is not about co-operation. It is not about
17 disclosure. It is about evidence that is either available or not available.

18 Let me give you another example. The Prosecution has said, "Give us secure
19 intelligence reports." We have come back on two occasions and said, "These are the
20 reports and this is what they say." There is no court order that can compel the
21 intelligence service to issue a different report, so that is the end of that matter as far as
22 I can see.

23 The Cabinet Secretary for Lands has said, "Give me these particulars and I'll conduct a
24 search yesterday." Without these particulars I can't -- even if there was a court order,
25 what would the court order say? "Conduct a search"?

1 JUDGE HENDERSON: Well, have you attempted to get a court order with respect
2 to the telecommunications post-1 September?

3 MR MUIGAI: I beg your pardon?

4 JUDGE HENDERSON: Post-1 September, based on the letter, the letter says -- I
5 haven't seen the letter yet, but essentially the letter it says that there is -- okay,
6 paragraph 2 says there's no regime for capturing the information. Paragraph 1
7 requests an order.

8 So the question is: Have you taken any steps, first of all, to inquire subsequent to
9 receipt of this letter? It's a direct question.

10 MR MUIGAI: I think I need -- yes, I need to I think refer you, Judge, to the two
11 letters from the service providers because I think that they --

12 JUDGE HENDERSON: We have those letters. Those letters indicated that they --

13 MR MUIGAI: Yes, because they are -- they are responding to me.

14 JUDGE HENDERSON: Okay. From the Court's recollection, those two letters
15 indicated that they would require certain -- the term of art I think is the MSISDN, or
16 the mobile numbers; is that correct?

17 MR MUIGAI: Yes.

18 JUDGE HENDERSON: Right.

19 MR MUIGAI: And that is why this is an -- this is -- we keep going round and round
20 and round because I am told, "Can you get a court order to compel?" And I am
21 saying, even if hypothetically that were possible, what would the Court be invited to
22 compel Safaricom to do? Because Safaricom's answer would still be the same, "Give
23 me the mobile number you have in question, then I will search it."

24 JUDGE HENDERSON: So what you're saying is --

25 MR MUIGAI: And the Prosecutor says, "I don't have the mobile number and have

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1 never had it." So --

2 JUDGE HENDERSON: Yes, that -- thank you, Mr Attorney.

3 PRESIDING JUDGE OZAKI: Thank you.

4 Before giving the floor to Judge Fremr, Mr Kay, about this consent, actually I confirm
5 that we have already certain materials which you disclosed, but we don't have your
6 consent letters given to the authorities themselves. Is it possible for you to provide
7 us with those letters of consent?

8 MR KAY: I'll make steps to trace the chain of documents.

9 PRESIDING JUDGE OZAKI: Thank you very much.

10 MR KAY: Yes.

11 PRESIDING JUDGE OZAKI: Judge Fremr?

12 JUDGE FREMR: Thank you for the floor.

13 I have just a last question for Mr Gumpert. Mr Gumpert, at the beginning of this
14 status conference you called the situation before us from your point of view as a
15 deadlock, so now after status conference I would like to know whether you retain
16 your position, or you see any way out?

17 MR GUMPERT: No, it's still the Prosecution's position that throughout the two
18 hours of this status conference there has been no indication from the representative of
19 the Government of Kenya that they intend to adopt any of the measures which the
20 Prosecution has urged upon them, and which in some cases the Chamber has
21 suggested they should adopt, to overcome what they say is the impossibility of
22 providing any more material, and as long as that remains the case then we are,
23 I would respectfully submit, deadlocked.

24 May I make one, I hope, helpful remark? Your Honours have seen one of Mr Kay's
25 consent letters. It is confidential annex C to his filing 945. I can't speak to the others,

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1 but I was flipping through my papers and that occurred to me and I thought that

2 I could usefully say that in a non-partisan way.

3 PRESIDING JUDGE OZAKI: Thank you.

4 MR MUIGAI: May I have half-a-second?

5 JUDGE FREMR: That was just my concern. Maybe you should do it in the interest

6 of fairness to the -- (Overlapping speakers)

7 MR MUIGAI: Yes, thank you. Thank you, Judge.

8 I would like to respond to that by saying that it is totally untrue to suggest that we are

9 deadlocked because the Government of the Republic of Kenya is failing to do

10 something. We have come here today offering many alternatives,

11 including -- including requesting, like we have done before, for the Prosecution to

12 give us actionable information; material that can help us to access.

13 It is not true to suggest that these registries are inoperative, that they are

14 non-functional. They are functioning registries. They require information. Please

15 give us that information. We will supply it -- the -- whatever you need within 72

16 hours.

17 PRESIDING JUDGE OZAKI: Thank you very much.

18 That brings us to the end of the matters to be addressed today.

19 We have noted the submissions made and we will take them into consideration in our

20 decision-making.

21 We thank very much the parties and participants and the -- Mr Attorney-General in

22 particular for their contributions.

23 MR MUIGAI: May I make a very short request, Madam President? Very short, in

24 half-a-minute?

25 PRESIDING JUDGE OZAKI: Yes.

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1 MR MUIGAI: At tomorrow's status conference, the representatives of the Kenya
2 government have not been permitted entry. In our very humble view, we are
3 amicus in the case. We may be denied a right to speak, or to make submissions, but
4 I would request very -- I would very much request, Madam President, that we be
5 permitted to be present.

6 PRESIDING JUDGE OZAKI: Thank you, Mr Attorney-General, for the submission,
7 but we have already made a decision. We have already made a decision and that is
8 that at today's (sic) status conference only parties and legal representative will be
9 invited. No amicus.

10 MR GUMPERT: I think your Honour may have misspoken. Tomorrow's status
11 conference.

12 PRESIDING JUDGE OZAKI: Yes, tomorrow's status conference.

13 MR GUMPERT: Thank you.

14 PRESIDING JUDGE OZAKI: So, yes, that's the end of this status conference today,
15 and I would also thank, before I forget, the court officers, interpreters, court reporters
16 and all courtroom staff for their assistance today.

17 The status conference is now closed and the Bench will rise.

18 THE COURT USHER: All rise.

19 (The status conference ends in open session at 12.00 p.m.)

20 RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber V(b) 's Order, ICC-01/09-02/11-967, dated 21 October 2014,
22 this transcript is reclassified as Public.