

Status Conference

(Open Session)

ICC-02/05-03/09

1 International Criminal Court
2 Trial Chamber IV - Courtroom 1
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh
5 Mohammed Jerbo Jamus - ICC-02/05-03/09
6 Presiding Judge Joyce Aluoch, Judge Fatoumata Dembele Diarra
7 and Judge Fernández de Gurmendi
8 Status Conference
9 Tuesday, 12 July 2011
10 (The hearing starts in open session at 3.02 p.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 Please be seated.
13 THE COURT OFFICER: Good afternoon, Madam President, your Honours. This is
14 the situation in Darfur, Sudan, in the case of The Prosecutor versus Abdallah Banda
15 Abakaer Nourain and Saleh Mohammed Jerbo Jamus, case reference ICC-02/05-03/09.
16 Thank you, your Honours.
17 PRESIDING JUDGE ALUOCH: Thank you. May I welcome the Prosecution team,
18 the Defence team, legal representatives of victims, the Registry, court reporters and
19 court interpreters. Looking around, I see new faces from last time. So, Prosecution,
20 would you -- for the record, would you introduce your team, please.
21 MR OMOFADE: Indeed, Madam President. Madam President, today the
22 Prosecution is represented by Ms Alice Zago, trial lawyer - she sits behind me; Mr
23 Victor Baiesu, associate trial lawyer; Mr Pubudu Sachithanandan, associate trial
24 lawyer, sitting directly behind me; and Ms Biljana Popova, case manager for the
25 Office of the Prosecutor. My name is Ade Omofade, trial lawyer.

1 PRESIDING JUDGE ALUOCH: Thank you very much. Looking at the
2 Defence team, Mr Khan, I see new faces. Please would you introduce your team.

3 MR KHAN: Good afternoon, Madam President, your Honours, with pleasure. I
4 have the great pleasure to introduce Mr Nicholas Koumjian, to my left, he is working
5 as the co-lead counsel in this case; and also with us for the first time is
6 Ms Leigh Lawrie, who sits behind and to the left, from the Scottish Bar; Anand Shah,
7 case manager and a member of the Texas Bar; and Anna Katulu, also a legal officer in
8 this case.

9 PRESIDING JUDGE ALUOCH: Thank you very much. Some of the legal
10 representatives of victims were not here last time. May I ask you to introduce
11 yourselves, please, for the record, or all of you, please, if you don't mind, so that we
12 have your names on the record.

13 MR. KONÉ: (Interpretation) Good afternoon, your Honour. Good afternoon,
14 your Honours. I am Brahim Koné from the Bar, representative of victims 170 and
15 172.

16 MS CISSÉ: (Interpretation) Good afternoon. I am Maître Héléne Cissé, I'm a
17 member of the Senegalese Bar and I represent a number of victims from Botswana,
18 Gambia and Senegal: numbers 434, 435, 456 to 453, 599, 605, 606, 736 to 741 and 751.
19 I thank you.

20 MR AKINBOTE: May it please the tribunal, my name is Akin Akinbote from
21 Nigeria and I do appear for the following victims: 535, 537 to 542, 544 to 551, 557
22 and 562. And I do apologise on behalf of Adaka Frank. He has asked me to act on
23 his behalf for the following victims.

24 PRESIDING JUDGE ALUOCH: Thank you, Mr Akinbote. This is actually the
25 International Criminal Court, the permanent court, not the tribunal.

1 MR AKINBOTE: I'm so sorry. I'm so sorry. Yes, I was saying, with respect, that
2 Mr Adaka has asked me to appear for his clients as well.

3 PRESIDING JUDGE ALUOCH: Thank you. The record will bear that, yes.

4 MR AKINBOTE: Very good. I'm so sorry.

5 MR DIXON: Thank you, your Honours. Rodney Dixon on behalf of the Darfuri
6 victims 1646 and 1647. I'm assisted today by Mohamed Ansari.

7 PRESIDING JUDGE ALUOCH: Thank you. Registry, again, I see new faces from
8 the Registry. Please, would you introduce yourselves.

9 MR LAUCCI: Thank you, Madam President. The Registry is represented today by
10 Mr Jacobus Joubert, field witness officer in the VWU; Madam Natacha Schauder,
11 associate legal officer in the VWU; Madam Vera Wang, associate legal officer in the
12 immediate office of the Director of Court Services; and myself, Cyril Laucci, legal
13 officer in the immediate Office of the Registrar.

14 PRESIDING JUDGE ALUOCH: Thank you very much. The Bench is the same, so
15 I don't think I will introduce my colleagues. We are the same as we were last time.
16 Now, this status conference is scheduled to last a maximum of one hour 30 minutes.
17 Therefore, the parties and participants need to be focussed and as concise as possible
18 in order for the Chamber to have sufficient time to address all the points on the
19 agenda as circulated to you on 8 July this year.

20 The main purpose of this status conference is to receive relevant submissions to
21 enable the Chamber to fix a trial date and related deadline, for example, final
22 disclosure deadline, as it is only the duty of the Chamber to ensure that preparatory
23 for this trial proceeds expeditiously and efficiently.

24 The Chamber has not yet decided on the joint filing by the parties on agreed facts, as
25 the submissions of the non-anonymous victims are pending, and that filing is due on

1 8 August. However, without prejudice to the decision to be taken by the
2 Chamber and in the interest of a speedy and efficient preparation of the trial, the
3 parties are invited to make their submissions today based on the assumption that the
4 trial will be organised on that basis.

5 I'll go directly to the agenda now. If you can turn to your agendas that were
6 circulated, or distributed, to you on 8 July. We'll go through that agenda now.
7 And starting with agenda -- point 1 of the agenda, Prosecution evidence. Point 1A,
8 final Prosecution list of witnesses and evidence.

9 Upon the Chamber's order of 30 May this year, the Prosecution has filed its revised
10 list of evidence. This was done on 13 June this year. That is filing 162.

11 At paragraphs 7 and 9 of this filing 162, the Prosecution indicated (1) that it may
12 remove four more witnesses if the Chamber accepts the agreement and (2) that it will
13 reassess the witness list after re-interviewing the six witnesses since the Chamber's
14 decision 158 of 6 June 2011.

15 Now we'll specifically address the Prosecution. Prosecution, the Chamber would
16 like to know when will you re-interview the six witnesses, because our decision was
17 quite some time ago. Prosecution, please.

18 MR OMOFADE: Madam President, I'm grateful. Can I say from the onset that
19 even since your Honours' decision and since we made the submissions regarding
20 re-interviewing six witnesses, we have continued, as we promised to do, to evaluate
21 the number of witnesses we need to call and indeed the number of witnesses we need
22 to re-interview.

23 On that basis, I'm able to inform the Chamber that the number of re-interviews that
24 we intend to conduct has actually reduced to two, as opposed to six. The schedule
25 regarding those re-interviews, can I just say that it's been adjudged based on the

1 actual fresh interviews we intend to conduct and we've given priority to the fresh
2 interviews because we think, for disclosure purposes, interviews that have not come
3 to the notice of your Honours or, indeed, the Defence ought to take priority over
4 those that need to be re-interviewed.

5 As to your Honour's question, the scheduled dates for the first of those re-interviews
6 is somewhere around 8 August. The second of those, I'm able to inform your
7 Honours that there are logistical difficulties with the witness himself, not with the
8 Office of the Prosecutor. The witness is in a location at the moment and engaged in
9 such a manner as makes it such that he is unable to make himself available for an
10 interview until some time towards the middle, or possibly even the end, of August.
11 What we have decided to do is to contact him early in August to determine when his
12 availability is.

13 So, in a nutshell, the response to your Honour's question is no longer six
14 re-interviews, now two; the first two of those, 8 or 9 August. The second of those,
15 hopefully sometime in the middle of August. I hope that assists your Honours.

16 PRESIDING JUDGE ALUOCH: Thank you very much. And whilst you are still on
17 your feet, can the Chamber know when you anticipate finalising your witness list,
18 please.

19 MR OMOFADE: In the same breath, Madam President, we're able to inform the
20 Chamber we did indicate, as your Honour rightly pointed out, that we've been
21 reviewing and we intended to revise further the list of witnesses. The list we had
22 provided to your Honours in the last filing contained 16 witnesses. We proposed at
23 the time, and we still intend to do, to remove a further six of those -- a further four of
24 those witnesses.

25 Now, with the caveat of course that the trial will proceed on the basis of the agreed

1 facts, I'm actually able to inform your Honours of those four witnesses as we speak.
2 They are Witness 466, Witness 441, Witness 433 and Witness 314. Those are the
3 witnesses, your Honours, that will no longer feature in the list of witnesses that is
4 currently before the Court, should the trial proceed on the basis of the agreed facts.
5 Might I mention, in the same breath, that there's the possibility that we might deselect
6 a further one of those witnesses. The effect that that would have is to reduce the
7 number of witnesses that your Honours currently have to eleven, as opposed to 16.
8 It's only right, of course, that I mention in the same breath that the Prosecution still
9 intends to interview a number of fresh witnesses and we did mention that in the
10 filing and at the last status conference. Those witnesses are now five. I believe we
11 mentioned six. One of those would be the expert witness, and I believe your
12 Honours will come on to the issue of the expert witness subsequently. For the other
13 four of those, I'm able to inform your Honours interviews are scheduled to take place
14 commencing the middle of next week.
15 What that means is if we're able to complete the four interviews by the end of
16 July - and that's the projected time - we will have a revised witness list of 15 or 16
17 witnesses, and on the basis of the agreed facts, if a trial proceeds on that basis, we
18 expect that the witness list of the Prosecution would be round about that number.
19 I hope that assists your Honours somewhat.
20 PRESIDING JUDGE ALUOCH: Well, round about that number would more or less
21 be the same. It's 16. But, anyway, the question was, if you're able to answer it,
22 when do you anticipate finalising your witness list? Are you able to answer that as
23 of now?
24 MR OMOFADE: It would be remiss of the Prosecution to actually add witnesses to
25 that list that we haven't actually interviewed and obtained signed statements from.

1 So it's anticipated that at the close of that interview session - and we anticipate some
2 time around the end of July - we would be able to add the further four to our list.
3 We will therefore I say, your Honours, after that series of interviews update the list
4 currently before your Honours, which will be excluding the four that I have referred
5 to earlier and replacing them with the four that we hopefully would have
6 interviewed by the end of July.

7 So in the days after 31 July we propose to file an amended witness list. I predicate
8 that with the caveat that even that list might be revised either upwards, or
9 downwards. Obviously, there will be the expert witness.

10 PRESIDING JUDGE ALUOCH: Thank you very much.

11 Defence, do you have any comments to make on this issue? Thank you.

12 MR KHAN: Madam President, I'm much obliged. I do. I was searching to find
13 the answer, or a clear answer, to the Presiding Judge's very pertinent question, and I
14 must confess I found it rather difficult to find an answer.

15 Your Honour, can I perhaps ask a question? Is it correct that the Prosecution are
16 saying that, since their filing of 14 April in response to the Bench's request and the
17 submissions made on 19 April, the Prosecution have not interviewed any of the six
18 identified potential new witnesses and have also failed to re-interview any of the six
19 identified witnesses? So, in other words, nothing at all done since April; is that the
20 correct position? I'd be grateful for some clarification before I come back.

21 PRESIDING JUDGE ALUOCH: Prosecution?

22 MR OMOFADE: Your Honours, the position as we outlined it then I believe, your
23 Honours, was that we proposed to interview six further witnesses, including an
24 expert, by the end of July. We were mindful of the logistical circumstances involved.
25 In fact, I believe we mentioned that the expert witness would probably be towards

1 the end of August. We were mindful even then of the logistical difficulties involved
2 in organising these interviews, which are not in The Hague by the way, and it was
3 with that in mind that we gave your Honours the projected dates that we mentioned.
4 The interviews that are commencing next week, as I mentioned earlier, are expected
5 to conclude by the end of July, so we would still have been within the time-frame that
6 we mentioned before this Court at the last status conference. Your Honours, that's
7 the response.

8 PRESIDING JUDGE ALUOCH: Yes, Mr Khan. The Prosecution say they will still
9 be within the time-frame. They are doing their best, I suppose. Yes.

10 MR KHAN: Well, madam, doing one's best of course is a matter of interpretation.
11 What I will say is that on the record the Prosecution informed your Honours that they
12 would complete - not start, complete - re-interviewing six witnesses and taking six
13 new witness statements by the end of July. It now seems that that process will start
14 not in July, but maybe in the middle of August, and so that's hardly satisfactory, in
15 my respectful submission. But, your Honours, the Prosecution have their own
16 obligations to give disclosure. I do not know -- I do note that there are problems.

17 PRESIDING JUDGE ALUOCH: Please be mindful of the interpreters.

18 MR KHAN: I am.

19 PRESIDING JUDGE ALUOCH: Thank you.

20 MR KHAN: Madam President, I am aware that there are problems in this case
21 regarding interpretation, but that in my respectful submission should not be a licence
22 for tardy Prosecution action, and in my respect of late much of the Prosecution
23 reaction can unfortunately be described as insufficient and tardy.

24 Your Honour, I would ask, with your leave, that the Bench consider asking the
25 Prosecution who are the two witnesses that they intend to re-interview? That would

1 be a starting point. I think there's no reason on earth why the Prosecution cannot
2 give the pseudonym and the witness number of the two witnesses, if indeed they are
3 protected. That would give a little bit of clarity and pin the Prosecution down, and
4 I would ask that the Bench and Madam President consider making that request to the
5 Prosecution.

6 The second issue, with your leave, that I would pose is simply to give notice of one
7 difficulty. It's well catalogued --

8 JUDGE DIARRA: (Interpretation) I beg your pardon. Now, when the Presiding
9 Judge asked you to take into account the interpretation, I think she was meaning the
10 people who are actually interpreting right here, right now, into French for some of us.

11 MR KHAN: I do apologise and I will be more mindful of the transcript.

12 Your Honours, I do place on record that we have raised on several occasions the
13 rather unique and rather challenging obstacles that confront the Defence and, your
14 Honours, we are mindful of your recent decision regarding cooperation and
15 assistance. I just put the Prosecution on notice that we will be asking them for very
16 specific requests of disclosure so that they could fulfil very diligently, as is required,
17 their Article 54 obligations.

18 Now, your Honours, the reason I raise that is that various witnesses have been relied
19 upon by the Prosecution to bring us here today, and in order -- to the trial stage.

20 Many of these witnesses the Prosecution now say they do not intend to call.

21 Your Honours, I reserve my right, because of the difficulties we have, to make at an
22 appropriate juncture an application to the Bench to bring those Prosecution -- bring
23 those witnesses to The Hague and make them available to the Defence.

24 Your Honours, I don't need -- unless required I don't need to go into the substance of
25 that application but, because of the difficulties of this case and consistent with

1 domestic practices in numerous jurisdictions where the Prosecution must make
2 available witnesses who are relied upon at committal, for example, must make them
3 available to the Defence, I simply put them on notice that I reserve the right of
4 Mr Banda and Mr Jerbo to insist, with the Court's leave, to bring these witnesses to
5 trial.

6 PRESIDING JUDGE ALUOCH: Thank you, Mr Khan. Thank you. Thank you.
7 Would you like to make any comments at all, Prosecution, very briefly please?

8 MR OMOFADE: There's a minor comment. It was my omission when I was
9 mentioning the proposed re-interviews. We are able to say that the witnesses we
10 intend to re-interview, indeed we did provide I believe in the last -- in the filing that
11 your Honours referred to, we provided the pseudonyms of the six witnesses we
12 intended to interview at the time. So it's quite clear to everyone who has read the
13 filing that it must be at least two of those six, but I'm able to confirm anyway that it's
14 Witness 307 and Witness 442 that we intend to re-interview now.

15 PRESIDING JUDGE ALUOCH: Thank you. Thank you very much. I'll
16 proceed -- we'll proceed, please, with agenda item 1B, time estimate for the
17 translation of incriminatory evidence.

18 The Prosecution has given some indications as to the status of translation of some
19 documents in its list of evidence. That's in filing 162. Some materials still need to
20 be translated into Zaghawa.

21 I'll address you, the Prosecution. What is the time estimate of the Prosecution for the
22 translation into Zaghawa of Rule 76 evidence in list 162 -- in your filing 162, yes?

23 MR OMOFADE: Your Honours, mindful of my earlier submissions that the list of
24 Prosecution witnesses will now be somewhat reduced, the number of items - witness
25 related items - that fall under Rule 76 would also reduce.

1 We approximate the number of pages that fall under Rule 76 to be approximately
2 1,020 pages. That's roughly a third, or less, of the 3,700 pages that we mentioned in
3 our original filing.

4 Can I therefore say that, on the basis of the witness list currently before your Honours
5 and proceeding on the basis that we're calling twelve of those, we would be looking
6 at 1,020-odd pages.

7 We did point out to the Chamber the difficulties involved in the translation of these
8 documents. They first have to be read into an audio tape and this takes a
9 considerable amount of time.

10 The discussions that we've had with our Language Services Unit reveal that, if three
11 translators are working on the documents, the approximate time-frame would be
12 approximately eight-and-a-half months.

13 Your Honours will recall that in the last filing that we provided the higher page count,
14 which was 3,700, the time-frame that was proposed - rather high - was 30 months.

15 Now, perhaps I should also say that in the event that the Defence is agreeable to some,
16 or all, of those witness-related materials being summarised first and then read on to
17 an audiotape, we estimate that the page counts would reduce drastically to
18 approximately 180 pages.

19 By extrapolation of some sort, if that were to happen, we would be looking at
20 approximately two months to have them read into Zaghawa. But, your Honour, I
21 have to also temper that with a number of caveats; the first being that this page count
22 does not include the witnesses that we have not yet interviewed, neither does it
23 include the two re-interviews that we spoke of earlier, but this is what would
24 probably fall under Rule 76.

25 The other pertinent fact is that the Document Containing the Charges, the list of

1 evidence as well as the pre-trial brief, if any, may also have to be read into audiotape,
2 depending on the arrangement that can be reached. We've managed, to some extent,
3 to project ahead and come up with an estimated page count, and we do think that
4 that would probably be around 800 pages. This is looking at a reduced list of
5 evidence based on what we filed before your Honours in June and based on a
6 Document Containing the Charges with the normal page limit of about 50 pages. So
7 I merely point that out for your Honours.

8 If that were to be the case, then the number of months that it would take to translate
9 the 800 pages also would probably be in the region of about six-and-a-half months.
10 So if one comes to a conclusion that it's going to be summaries of all the statements
11 and it will still include the Document Containing the Charges, the list of evidence and
12 possibly the pre-trial brief, we still appear to come back to the same figure, or the
13 same month count, of around about eight months, and of course that does not include
14 the new interviews. I hope that assists your Honour.

15 PRESIDING JUDGE ALUOCH: Do you feel that the DCC needs to be translated?
16 When there is a -- yes? Yes, do you feel so?

17 MR OMOFADE: Well, the only thing that the Prosecution bears in mind is that
18 circumstances -- particularly if a trial proceeds on the basis of the agreed facts,
19 circumstances would have changed considerably compared to the ones that existed at
20 the pre-trial stage.

21 What that means is that there would, in effect, be an amended Document Containing
22 the Charges. From the Prosecution's point of view we would relish the opportunity
23 not to have to do this, but I do believe it's a matter more for the Defence as to whether
24 or not they think their client requires it.

25 PRESIDING JUDGE ALUOCH: Yes, I'm coming to you, Mr Khan. Yes, this is an

1 issue where I really hope we can have some -- the parties can have some discussion.

2 MR KHAN: Madam President, I think, as the record discloses, the Defence has been
3 actively engaged from the initial appearance onwards with discussion, dialogue and
4 cooperation with the party opposite, and you have my assurance that that will
5 continue.

6 As far as the DCC is concerned, which was the last point raised by the Prosecution,
7 the Prosecution of course in every case so far have ensured that the DCC is translated
8 into a language that the accused fully understands and that, I believe, was predicated
9 not on expedience, but on principle. But, your Honours, I will discuss this issue
10 with the clients and inform the Trial Chamber in due course if they are willing to
11 waive or amend their position in order to assist the Court.

12 Your Honour, as far as the various statements that have to be translated, the
13 Prosecution have given various figures - six months, eight-and-a-half months - based
14 upon the material they currently have, the statements currently in their possession,
15 and not only statements, of course, interviews.

16 Your Honour, some of these interviews are quite extensive. For example, Witness
17 442 has a transcript running into 470 pages. Now, whilst the Defence can continue
18 to be exceptionally cooperative, there are certain core rights that, as counsel, I cannot
19 waive and I cannot advise they be waived, given the seriousness of the allegations.

20 Now, your Honours, perhaps an expedient and productive and a fair way of
21 proceeding is if the Prosecution comply with the jurisprudence of this Court and
22 don't -- are not satisfied with simply providing us with transcripts, but giving us fair
23 and accurate statements from those transcripts.

24 Your Honours, I refer to Trial Chamber II's decision, presided over by Judge Cotte,
25 with Judge Diarra and Christine Van den Wyngaert - Her Honour Christine Van den

1 Wyngaert - of 23 October 2009. Just for the record I will give the ICC number, if it's
2 needed, and the ICC number is ICC-01/04-01/07.

3 At paragraph 35 the learned Trial Chamber was very clear that the Prosecution
4 obligated not just to give transcripts of interviews, but to reduce them into statement
5 form. And, your Honour, the last paragraph I can read, but it's there as part of the
6 record. Perhaps to save time I won't read it, but in our submission there is a -- not
7 only an obligation, but an efficient way of proceeding would be for the Prosecution to
8 go through the interview very carefully, produce a fair statement, go through that
9 statement with the witness, give the witness a chance to agree or amend anything that
10 should be noted and then that statement should be signed. Your Honours, perhaps
11 that's a way of reducing, for the sake of example, 470 pages into 30 pages, and it may
12 have consequent knock-on effects to ease the burden of the translation unit of the
13 OTP.

14 Your Honour, that's the humble suggestion the Defence puts forward, hopefully
15 constructively, that may alleviate some of the Prosecution's very necessary and
16 inescapable obligations, but the Bench can rest assured that we will continue to do
17 what we've done all along, which is to focus the issues and reduce to the maximum
18 extent possible the administrative burden on all parties in this courtroom. I hope
19 that assists.

20 PRESIDING JUDGE ALUOCH: Thank you very much. Did you want to comment
21 at all, because this is an area where I believe that there's cooperation going on
22 between the parties?

23 MR OMOFADE: Indeed, your Honour. I think in this particular area we, all of us,
24 find ourselves in new territory and the Prosecution is entirely grateful for the
25 cooperation received from the Defence, particularly at the pre-trial stage, in this

1 regard.

2 The only thing I mention is at the pre-trial stage many of these witnesses -- and I have
3 to say that the issue of transcripts being reduced into statement form only half deals,
4 probably even a quarter deals, with the problem. This is because they don't feature
5 that many in the current list of witnesses.

6 At the pre-trial stage also, however, we relied on summaries of the witness
7 statements. Many of those summaries were rather extensive and probably
8 equivalent to what would have been a witness statement in many other instances.

9 What I say is a summary, for instance, of a witness transcript that would be about 300
10 or 400 pages long, we reduced into a summarised form of approximately 20 to 30
11 pages and we did this at the pre-trial stage. So in effect we would still have what the
12 Defence have now, except there's an offer to add further material.

13 PRESIDING JUDGE ALUOCH: Thank you very much. As I see, this is an area
14 where both parties seem to be talking, if I may use that phrase; that terminology.
15 (Trial Chamber confers)

16 PRESIDING JUDGE ALUOCH: Sorry. The Chamber would ask the parties to
17 continue to discuss this matter and the Chamber would like to propose to the parties
18 to, or rather, order the parties to, propose any practical solutions - any practical
19 solutions - in this respect in a joint filing, because this is an area where we feel that
20 you have ideas and if you could put these ideas together for the Chamber in a joint
21 filing, taking into account the suggestions that you both seem to have. We hope that
22 by 8 August you can give us some practical solutions as you see it, both parties, the
23 two parties.

24 MR KHAN: Madam President, I will be so instructed. I will say that the most
25 practical and specific solution that I put forward is the Prosecution seek to reduce 400

1 pages of transcript into a statement that could be 30 pages and then only those 30
2 pages be translated. That is the most practical and efficient solution that I could
3 come up with, but of course we can consider it further.

4 PRESIDING JUDGE ALUOCH: Thank you very much, because there are -- you
5 know, there is the issue also of the order in which, you know, issues will be presented.
6 That could be another one. There are several other issues. That's why I'm asking
7 for practical solutions. Thank you.

8 JUDGE DIARRA: (Interpretation) Madam President, I need a clarification from
9 the point -- from Mr Khan.

10 Mr Khan, you did say that you were reducing by 400 pages to 30. You're going to
11 whittle it down to 30 pages. Is that indeed what you said?

12 MR KHAN: Your Honour, perhaps I wasn't clear and forgive me if I wasn't. It was
13 an example. It depends on the degree of repetition in an interview, how much
14 ground has been covered how many times, that will impact upon the amount of
15 pages that can be reduced in statement format. So it's -- it was simply an example
16 that one would think, given sometimes the long-winded questioning, that a 400 page
17 statement could definitely be reduced to less than 400 pages and that would no doubt
18 save Prosecution resources and the resources of this Court.

19 PRESIDING JUDGE ALUOCH: Thank you, Mr Khan. I understood it as an
20 example. That's why I said the two of you - the two parties - would be able to give
21 us, the Chamber, some practical solutions as you continue to have discussions in this
22 respect.

23 Now, item - agenda item - 1C is Article 54(3)(e) material. The Prosecution has now
24 filed a further update on the status of ten documents obtained pursuant to Article
25 53(3)(e) of the Statute on Friday, 8 July. This is document 176.

1 The Prosecution has been ordered by way of an email on 11 July to file a public
2 redacted version to this update, and this is expected this week, Prosecution, on 15
3 July. That's correct? Yes.

4 MR OMOFADE: Indeed, your Honour. Your Honour, in light of the nature of the
5 filing that the Prosecution made, can I merely ask that, if your Honours propose to
6 discuss this in more detail, we would suggest -- I see your Honours nod and so I --

7 PRESIDING JUDGE ALUOCH: No, we don't intend to.

8 MR OMOFADE: I'm grateful, your Honour.

9 PRESIDING JUDGE ALUOCH: Yes. Agenda item 1D, expert witnesses. It
10 appears that no expert witnesses are included in the revised list of evidence. After
11 the status conference of 19 April this year, the Prosecution and the Defence submitted
12 filings with updates on the discussions relating to the joint instructions of expert
13 witnesses. This was done on 30 May, filings 153 and 156.

14 Prosecution, following your submissions in filing 153 on the issues arising as regards
15 the disclosure of the identity of the expert witnesses, what is the position now? By
16 now the Chamber assumes that the Prosecution knows at least the area of expertise of
17 a witness, or witnesses, it intends to call to testify. Prosecution, are you able to share
18 this information today?

19 MR OMOFADE: Your Honour, there were certain constraints as at the time we last
20 addressed this issue as to whether or not this person was actually willing and able to
21 be instructed by the Prosecution as an expert. Things have moved on slightly since
22 then. We're now in a position where we are able to share with the Defence this
23 individual's name and, indeed, to some extent the nature of the expertise. That's all I
24 say, your Honours.

25 PRESIDING JUDGE ALUOCH: Any comments from the Defence?

1 MR KHAN: Well, Madam President, I will look forward to receiving the same. It
2 was a matter of regret that on 30 May we had to file a separate filing. There seemed
3 to -- for the Defence we saw no reason at all why the Prosecution could not, or chose
4 not, to give us at least the area of expertise of the witness that they had mentioned in
5 court in April. Your Honours, better late than never is all I can say.

6 PRESIDING JUDGE ALUOCH: Thank you, Mr Khan.

7 Agenda item 1E, protection of witnesses. The Prosecution seeks redactions to be
8 applied to the identities of Witness 314 and 433, because they do not benefit from any
9 protective measures. This is in their filing 159 of 6 June this year, and for Witness
10 314 it's filing 433 -- no, sorry.

11 However, in its report on 9 May this year, the VWU apparently has not received any
12 information on these two witnesses. (See filing 141.) The Chamber would first like
13 to know whether the Prosecution and VWU are coordinating their efforts at assessing
14 the need for protection of these two witnesses.

15 Prosecution, what is your position? Are these two witnesses part of the witnesses
16 who may be removed from the final list of evidence? Do you have any comments
17 before I turn to the VWU?

18 MR OMOFADE: Your Honours would have noticed from my last -- the list of four
19 witnesses that I -- the list of four witnesses that I mentioned that it did include
20 Witness 314 and Witness 433, so the Prosecution at least for the purposes of a trial
21 that proceeds on the basis of the agreed facts -- for the purposes of that trial we do not
22 intend to rely on those two witnesses.

23 PRESIDING JUDGE ALUOCH: Thank you.

24 VWU, anything to say on this?

25 MS SCHAUDER: (Interpretation) No, your Honour. We haven't yet received any

1 information bearing upon these witnesses, so with regard to their protection we have
2 nothing further to add. Thank you very much.

3 (Trial Chamber confers)

4 MR KHAN: Madam President, just with your leave?

5 PRESIDING JUDGE ALUOCH: Yes.

6 MR KHAN: Just one issue. Whilst the Prosecution have indicated they may not
7 wish to call these two witnesses, it may well be the case that we will be requiring the
8 names of these two because of course information has been given that's been
9 judicially considered. So I just raise that now, that that's a separate issue from being
10 called. It may well be that we need the names and identity of those individuals.

11 PRESIDING JUDGE ALUOCH: Does that call for a reaction, Prosecution, from you?

12 MR OMOFADE: No, your Honour, save that the Prosecution would maintain that
13 the redactions that are currently in place, all of which were sought pursuant to Rule
14 81(2) and Rule 81(4), that the circumstances that caused the Prosecution to request
15 those redactions, those circumstances still subsist. So regardless of whether we
16 intend to rely on those witnesses as incriminatory witnesses, pursuant to Rule 76, we
17 would like to maintain the redactions to their statements.

18 (Trial Chamber confers)

19 MR KHAN: Madam President, if it assists, I don't know --

20 PRESIDING JUDGE ALUOCH: Yes.

21 MR KHAN: -- but Madam President was quite clear. I know perhaps there were
22 some other rulings by other Chambers, but my understanding was that in relation to
23 Witness 314 and 433 Madam President said that they do not benefit from any
24 protective measures. Your Honour, that being the case, there's no reason for such
25 names to be withheld albeit on a confidential basis to the Defence, but of course it's a

1 matter that may well be germane to our preparation and evaluation of the evidence
2 and may even impact upon how we use it. So, bearing in mind the principle of
3 disclosure and openness, it may well be the case that I request such an order in due
4 course.

5 PRESIDING JUDGE ALUOCH: Prosecution, you have taken note of that?

6 MR OMOFADE: Your Honours, I have taken note. There are protective measures
7 as regards redactions in place for these witnesses. These were redactions that were
8 sought at the pre-trial stage, so they might not have come before your Honours, but
9 in any event the decision of the Pre-Trial Chamber I believe in the case of Abu Garda
10 actually applies consistently and it was on that basis that we made the submissions.

11 PRESIDING JUDGE ALUOCH: Thank you. Does it take it any further, Mr Khan?

12 MR KHAN: Well, Madam President, I don't need -- I was mindful of the
13 one-and-a-half hour admonition at the outset.

14 PRESIDING JUDGE ALUOCH: Yes.

15 MR KHAN: At the appropriate time --

16 PRESIDING JUDGE ALUOCH: Not quite admonished.

17 MR KHAN: Well, the guidance.

18 PRESIDING JUDGE ALUOCH: Thank you.

19 MR KHAN: The judicial guidance.

20 PRESIDING JUDGE ALUOCH: Yes, judicial guidance.

21 MR KHAN: Your Honour, at the appropriate time we may file, but even protective
22 measures which may be necessary pre-trial, there's ample case law with which the
23 Prosecutor should be familiar that says that at trial it's a different kettle of fish, if I can
24 put it in those terms, and the principle is one in favour of disclosure. But, your
25 Honours, perhaps you can become seized of that by way of a formal motion if the

1 Prosecution persist on the current line that they have expounded today.

2 PRESIDING JUDGE ALUOCH: I think you have given them notice, if I may refer to
3 what you -- you know, to that statement. They are aware now.

4 MR OMOFADE: Your Honour, just for the record, because I bear in mind that I
5 might have misstated the position, the order that subsists from the Pre-Trial
6 Chamber is actually an anonymity order, rather than an order for redactions, just that
7 I put the record straight. It was my error. I was aware that there was a protective
8 measure in place, but it was anonymity.

9 PRESIDING JUDGE ALUOCH: I think application for redactions is pending before
10 the Chamber. Yes, good.

11 Agenda item point --

12 MR DIXON: I am sorry, your Honour, could I --

13 PRESIDING JUDGE ALUOCH: Sorry.

14 MR DIXON: Before we move off the Prosecutor's evidence there's one matter we do
15 need some guidance on, and that is that the legal representatives were given the
16 confidential annexes to the revised evidence that was served on 13 June. It sat in all
17 of our emails for nearly a week, and then there was a notice withdrawing it from our
18 emails. It wasn't clear whether that notice came from the Trial Chamber, or it was a
19 decision of the Prosecution, but it would help us to know what the position is and,
20 depending on the answer to that, when the victims would be entitled to disclosure in
21 line with the limitations in the Statute and the case law of the tribunal, which is that
22 victims are entitled to confidential material if it directly impinges upon their personal
23 interests.

24 PRESIDING JUDGE ALUOCH: I was going to say something on victims a little later
25 on.

1 MR DIXON: I'm sorry to have pre-empted that, but that was just a concern we had
2 which we did want to raise.

3 PRESIDING JUDGE ALUOCH: Yes, I will say something.

4 MR DIXON: Thank you, your Honour.

5 PRESIDING JUDGE ALUOCH: The Chamber has something to say, yes.

6 Point 2 of the agenda, the date for final disclosure of Prosecution evidence and the
7 date of trial. Bearing in mind the duty of the Chamber to ensure that the trial is
8 expeditious, the Chamber's view is that the trial should start at least before the end of
9 the year.

10 Prosecution, what would be the earliest workable deadline for the final date of
11 disclosure of Prosecution evidence? The Chamber expects a specific proposed date,
12 even if this is only a tentative one at this stage. What would be the earliest
13 possible -- yes, can you react to what I've just asked you before I come to the Defence?

14 MR OMOFADE: Your Honours, as regards the non-witness evidence that was
15 relied on at the pre-trial stage and that still is included in the list of Prosecution
16 evidence, we're able to disclose that by the end of July. As regards the list of
17 witnesses, the witnesses that we've identified that come what may we'll be relying on,
18 the Defence appear already to have received disclosure of those from the pre-trial
19 stage in any event.

20 The difficulty is the Rule 76 disclosure that attaches to those statements, and it's
21 incredibly difficult to project how far ahead because we don't know at this stage
22 whether or not all, or some, of those would need to be summarised. So the
23 Prosecution struggles, because it's only after an agreement with the Defence and after
24 the translations of whatever number have taken place that we will know why -- when
25 that can take place.

1 So I hesitate to a large extent to tie the hands of the interpreters who are meant to
2 carry out this task, but --

3 PRESIDING JUDGE ALUOCH: According to you, Prosecution, what would be the
4 earliest possible date of trial? Just -- I just want -- we want to assess, according to
5 Prosecution.

6 MR OMOFADE: On the projection that the full statements would need to be
7 translated, it would probably be in the earlier part of next year. On the projection
8 that we are able to agree to summaries, the Prosecution will use its best endeavours to
9 ensure that a trial can start before the end of this year. I don't know if that assists.

10 PRESIDING JUDGE ALUOCH: Mr Khan -- or, sorry, Defence, I beg your pardon.
11 Yes.

12 MR KOUMJIAN: Thank you, your Honours, Nicholas Koumjian. Your Honours,
13 the Defence simply wants to make it clear to your Honours that, in our view, we
14 cannot answer your question as to when we will be ready for trial.

15 If I understand the Prosecution's submissions today, they have indicated that about
16 11 of their witnesses on the current list they will be calling, two of those will be
17 re-interviewed and there are possibly five additional witnesses. So five out of 16
18 possible witnesses are new witnesses, including an expert whose area of expertise
19 we're not sure of yet - it hasn't been disclosed yet as of this moment - and potentially,
20 counting the new statement that -- the re-interviews, that would be seven of 16. So
21 almost half of the evidence against the Defence potentially we have not, even the
22 lawyers, seen it yet. Some of it hasn't even been produced yet. The Prosecution
23 doesn't know what it is. And further, of course, we do have to discuss the evidence,
24 after the translations are received, with our clients in order to know how to
25 investigate this case.

1 Our clients do have a case to be investigated and it's very difficult, as your Honours
2 know, because we cannot enter the country practically, in practical effect, where the
3 crimes occurred. So our position is we cannot, given the situation now, tell the
4 Court when we would be ready for trial as we haven't yet received the evidence
5 against us.

6 PRESIDING JUDGE ALUOCH: Thank you. I was going to turn to legal
7 representatives and see if I can get a comment, or an observation, on this issue of the
8 earliest possible trial date. Will one of you speak for all of you, or which way shall I
9 put it? Yes, because I know that you are a team of six and I'm looking at the time
10 also. Yes.

11 MR DIXON: Your Honour, I'll leap in then. All I can say, subject to the disclosure
12 point, is that the victims who we represent are obviously eager for the proceedings to
13 commence as soon as possible. At the last status conference, we did raise a question
14 regarding translation and whether it was necessary to translate all of this material
15 and what basis there was for filing, that it had to be done in this particular language,
16 and said that there would be a filing forthcoming. That hasn't been filed yet because
17 investigations are going on, but I simply flag that up again. That is a matter we may
18 be able to return to assist, where we can, with attempting to limit the amount of time
19 between now and when the trial can begin.

20 PRESIDING JUDGE ALUOCH: Thank you very much. Very briefly, yes, because
21 I'm taking the view that the victims are eager. Yes, okay.

22 MS CISSÉ: (Interpretation) Yes, your Honour. Regardless of this whole issue of
23 the setting of the date, we would merely remind the Bench that, beyond any results
24 that may come from the common legal representation, we did make an application to
25 make observations regarding the arrangements for the presentation of evidence. We

1 are of the belief that there are -- there is an essential point to make here; namely, some
2 of the victims - many of the victims - are dual status in light of the agreement between
3 the Defence and the OTP.

4 The contested charges relate to international law. Were certain acts illegal under
5 international law? And we believe that the victims who were high-ranking officers
6 did have contacts with the movement in question and they may be in a position to
7 provide very useful information, particularly in light of their involvement or their
8 awareness of any violations of international law. Specifically, the AU mission is
9 very important and we must consider the future of the mission, particularly whether
10 or not peacekeepers will be able to enjoy protection under international law in the
11 future.

12 PRESIDING JUDGE ALUOCH: Thank you very much.

13 MR KHAN: Madam President?

14 PRESIDING JUDGE ALUOCH: Yes.

15 MR KHAN: With your leave, I must rise to respond to the submissions put forward
16 by my learned friend, Mr Dixon. I know he said that he hoped they were helpful,
17 but with regret I must deprecate this intervention. On the last occasion also
18 Sir Geoffrey Nice, for the same three victims, purported to put a question mark over
19 my two clients and the bona fides, in effect, of their representation to the Court that
20 Zaghawa is the language that they fully understand.

21 Now, of course, we do know the sad history of Sudan and we do know, of course,
22 there are elements within that country and within Khartoum that would have it be
23 homogenous and Arab dominated, but the reality is people do speak African
24 languages and Zaghawa is the language spoken by our two colleagues.

25 Now, I do deprecate raising a spectre of implausibility and not filing since April, and

1 it was inappropriate and unjustified, in my respectful submission. That's point 1.
2 Point 2 is the locus standi of legal representatives to the victims, who are not parties
3 in this case but seem to have party-like rights, to speak at all to the Article 67(1)(f)
4 rights of Mr Banda and Mr Jerbo. I say no more than that.

5 PRESIDING JUDGE ALUOCH: Thank you, Mr Khan. I want to move to victims'
6 participation in the case.

7 Messrs Dixon and Nice, in application 171, sought leave to make observations on the
8 joint submission by the parties filed on 27 June of this year. The Chamber has also
9 received filing 177 from Mr Adaka. This was on 8 July this year. Document 177 is
10 in response to the Registry's report of 20 June of this year. Application 177 and
11 filing -- application 171, that's the application of Messrs Dixon, filing 177, and a filing
12 received today, 178, are currently under consideration by the Chamber, awaiting the
13 outcome of the Registry's consultations on common legal representation. That is
14 what the Chamber can say on that.

15 In this respect, therefore, the Chamber wishes to inform the parties that the deadline
16 for the Registry to make proposals to the Chamber on common legal representation,
17 which was out in order 138, was extended. The deadline was extended to 8 August
18 this year. In case of disagreement among the victims, the Registry should make a
19 proposal to the Chamber at the latest by 15 August.

20 Now, I need to ask the Registry to make observations, in particular as to the training
21 of Zaghawa interpreters, as this has an impact on the date of trial. Sorry, I
22 overlooked you, but I needed to get your comments on this point.

23 MR LAUCCI: Thank you, Madam President. Very quickly, well, initially, the
24 Registry had announced that to have a booth of Zaghawa interpreters ready for trial
25 it would take it between six to eight months of training. Since the Chamber issued

1 orders we have of course struggled to make it as short as possible, and now we are in
2 a position to announce that to train Zaghawa interpreters for consecutive
3 interpretation that would take us four months and this duration of training would be
4 up to six months for simultaneous interpretation.

5 We also have worked on identifying candidates for these trainings and we have
6 currently identified five, which would be our requirements, and we have
7 confirmation from three out of the five that they would be ready to start by 15 August.
8 We are still waiting confirmation from the two others. So -- which means that if we
9 start their training by 15 August, if we had four months, that leads us to 14 December,
10 which would be the date when the first interpreters would be ready to ensure
11 consecutive interpretation.

12 If the Chamber decides to go for simultaneous interpretation, then we will need to
13 require two additional months. That will lead us to mid-February. On top of that I
14 need to mention, because as I already explained the interpretation into Zaghawa will
15 not be straight from English or French but will have to go through Arabic, so we'll
16 have to have the official language - English or French - interpreted in Arabic and then
17 there will be the interpretation in Zaghawa. In any case, the Registry will
18 require -- in order to make sure that we reserve the Arabic booth for the trial, we
19 would need to be informed from the Chamber three months in advance before the
20 trial in order to make sure that the Arabic booth is also ready and available.

21 So these are the requirements on our side.

22 PRESIDING JUDGE ALUOCH: So you are talking of either four months for --

23 MR LAUCCI: It's four months, starting from 15 August, to have consecutive
24 interpretation in Zaghawa, and we will need anyway the confirmation of the date of
25 trial at least three months in advance to make sure that we also have the Arabic

1 booth.

2 PRESIDING JUDGE ALUOCH: Thank you very much.

3 MR LAUCCI: I hope it's clear.

4 PRESIDING JUDGE ALUOCH: Yes. I look at the Prosecution, I look at the
5 Defence and I see the Defence seem -- have a comment to make.

6 MR KOUMJIAN: Yes, your Honour, just my own contribution. Given the situation
7 with translation of documents, hopefully we can work out some agreement to reduce
8 the amount of documents and statements that have to be translated. But if I
9 understand what the Prosecution has said, currently, the current statements are eight
10 months, unless we reduce them. In addition, there are six, I believe, new -- or seven
11 new interviews, potentially. All those statements, or some reduction, would have to
12 be translated, plus there are some documents which have to be translated.

13 So my suggestion is that your Honours order the training as simultaneous, because
14 we're going to go -- the translation of these documents is likely to take six months, in
15 any event, and in addition the simultaneous translation will speed the trial because
16 we won't be waiting for everything that's said to be translated consecutively to the
17 clients.

18 (Trial Chamber confers)

19 PRESIDING JUDGE ALUOCH: Thank you very much for the contribution. We
20 will not announce a decision now, at this status conference, but the Registry we
21 believe that this training will start off straightaway anyway.

22 MR LAUCCI: It is already on schedule for 15 August, as I announced, at least for
23 three out of the five.

24 PRESIDING JUDGE ALUOCH: Thank you very much. Now, an issue was raised
25 by one of the representatives of the victims and I think this is what the Chamber has

1 to say on the issue that was raised.

2 The order not to give access to legal representatives of confidential filings was given
3 by the Chamber. That order has already been given by the Chamber. This is in line
4 with the approach of the Pre-Trial Chamber. The Chamber still has to take a
5 decision on the modalities of participation by victims. The issue of access to
6 confidential filings by legal representatives will be dealt with in the decision on
7 modalities of participation. We need - the Chamber needed - to make that clear.

8 Can I see -- Prosecution, do you have anything else that you would want to address
9 very quickly before I go to the Defence? Yes?

10 MR OMOFADE: Your Honours, there was a minor issue that the Prosecution
11 proposed to raise, but we did intend to raise it ex parte.

12 Now, I'm mindful firstly of the time allotted to us this afternoon, as well as the
13 logistical difficulties in reorganising the Chamber ex parte. I can only say for the
14 record that my submissions would probably have taken five to ten minutes, so in the
15 event that it's possible to hear us on this issue I would like to make those
16 submissions.

17 If your Honours -- well, if circumstances are unable to accommodate us, then I will
18 happily -- the Prosecution will happily make those submissions in a filing. I'm in
19 your Honours' hands.

20 PRESIDING JUDGE ALUOCH: First of all, Prosecution, this is a public hearing. Is
21 it the sort -- the matter that -- a matter that you would have raised in public?

22 MR OMOFADE: No, your Honour, it's a matter that we --

23 PRESIDING JUDGE ALUOCH: Yes.

24 MR OMOFADE: -- would have asked the Chamber to convene -- to reconvene ex
25 parte.

1 PRESIDING JUDGE ALUOCH: So can you raise it in a filing, please.

2 MR OMOFADE: Certainly, your Honour.

3 PRESIDING JUDGE ALUOCH: Thank you very much. Defence, any other issues?

4 MR KHAN: No, Madam President. We're most grateful.

5 PRESIDING JUDGE ALUOCH: Thank you. Registry, any issue that might not

6 have come up?

7 MR LAUCCI: No, thank you, Madam President. This is all for us.

8 PRESIDING JUDGE ALUOCH: So I believe that for now I have raised -- I have

9 addressed the issues that legal representatives had in mind, unless there's a binding

10 issue. Is there one? No, you don't have a binding issue, do you?

11 MS CISSÉ: No.

12 PRESIDING JUDGE ALUOCH: No, no. You didn't look like you had one, no.

13 Well, that brings us to the end of this status conference. I think the issue of a date of

14 trial is an issue that the Chamber will consider and it's an issue that we'll have to

15 come back to because of the issues that have been raised today.

16 With that, may I thank the Prosecution team, the Defence team, legal representatives,

17 the Registry, interpreters and court reporters.

18 We apologise, as a Chamber, to interpreters and court reporters. They did such a

19 wonderful job on the 19th and the record did not bear that. We thank them. We do

20 want you to know that we actually rely on your interpretation in order to conduct our

21 proceedings.

22 Thank you, everybody, and that will be the end of this status conference. Thank

23 you.

24 THE COURT USHER: All rise.

25 (The hearing ends in open session at 4.19 p.m.)