

1 International Criminal Court

2 Trial Chamber V(A) - Courtroom 1

3 Situation: Republic of Kenya

4 In the case of The Prosecutor v. William Samoei Ruto

5 and Joshua Arap Sang - ICC-01/09-01/11

6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion

7 and Judge Robert Fremr

8 Trial Hearing

9 Thursday, 19 September 2013

10 (The hearing starts in open session at 10.14 a.m.)

11 THE COURT USHER: All rise. The International Criminal Court is

12 now in session. Please be seated.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

14 Prosecutor, it will be appropriate for you to -- you will -- it

15 would be appropriate for you to -- for you to put on record the

16 information you communicated to Chamber this morning, of course with

17 discretion. And then the end of which we will get a reaction from the

18 Defence and the victims counsel as well. And if there's any application

19 you wish to make, also do that at the same time. Thank you.

20 MR STEYNBERG: Yes. Thank you, your Honours.

21 Pursuant to the request of the Chamber, after we finished

22 proceedings yesterday members of the Prosecution, namely myself and

23 Mr Garcia, together with members of the VWU met with Witness 536 to

24 discuss two things: Firstly security concerns she had raised with the

25 VWU yesterday morning as a result of reports of intimidation she had

1 received from her family members; and secondly, the issue of the  
2 disclosure of her identity in the media.

3 To cut a long story short, she confirmed that she would be in a  
4 position to continue with her evidence today. She, however, conveyed one  
5 request and that was that her evidence should continue from this point  
6 onwards in private session.

7 Now, your Honours, I realise this is a departure from the norm  
8 and it is a remedy I would not in normal circumstances ask for. But in  
9 light of the particular circumstances of this witness, I do make that  
10 application on her behalf and I leave it in the hands of the Chamber.

11 PRESIDING JUDGE EBOE-OSUJI: It occurred to me whether to ask you  
12 this question yesterday in the closed and private sessions heard, it will  
13 be necessary for you to put on record as part of the record of these  
14 proceedings the materials you had referred to, the attempts to reveal the  
15 identity of the witness or revelation of the identity of the witness.  
16 Those materials need to form part of the record of the proceedings in  
17 this case.

18 MR STEYNBERG: Your Honours, I'm happy to do that. I have -- I  
19 have made copies of certain of them. There is a wealth of material and I  
20 don't propose to add everything.

21 PRESIDING JUDGE EBOE-OSUJI: The ones you referred to in your  
22 submissions yesterday, I think that should be enough. We don't need to  
23 delay proceedings to do that right now, but in the course of the day if  
24 you can arrange for them to be put on the record. At that point, when  
25 you're ready to do that, then we will do the necessary procedural marking  
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1 it in series in the proceedings.

2 MR STEYNBERG: Very well, your Honour. I'll tend to that at the  
3 first break.

4 PRESIDING JUDGE EBOE-OSUJI: Defence.

5 MR KHAN: Your Honour, we oppose the application. It's of course  
6 for the VWU to allay any concerns a witness may have, but, your Honour,  
7 there's no risk to this witness in our respectful submission. She is in  
8 VWU care and she's been relocated. I don't see how, given what the  
9 Prosecution said yesterday had entered the public domain, why now the  
10 hearing should suddenly -- the shutters should come down and the hearing  
11 put in closed session. In fact, the reality would militate in the  
12 opposite result, that all the testimony should be public. But, your  
13 Honour, the approach that I am submitting to the Court is the evidence  
14 should be --

15 PRESIDING JUDGE EBOE-OSUJI: One second. Why is that? You say  
16 the reality is that all -- now, that all testimony should be in public.

17 MR KHAN: Well, your Honour, the Prosecution have said yesterday  
18 that the witness's name had entered the public domain, but the -- what --  
19 the approach that I am commending to the Court is that we continue as we  
20 did yesterday, it seems a long time ago, yesterday, with the protective  
21 measures in place, but the testimony should be public except to the  
22 extent when the Bench considers private session is called for; in other  
23 words, periods where the witness's identity may become public because if  
24 one is looking at defamation or other -- it's no -- one shouldn't  
25 re-publish, you know, defamatory comments in the same way one shouldn't  
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1 further disseminate something that should not have become public in the  
2 first instance.

3 I do as an aside say that we alerted just before, in fairness,  
4 just before the Bench came the Prosecutor to the fact that we have just  
5 received or it has come to my attention that from the Kenyan press a lady  
6 has given a statement and her video is there, I think it's been sent or  
7 it's in the process of being sent to the Prosecution, that the photograph  
8 that was displayed and talked about, the cook's outfit, that is clearly  
9 not the witness. I just raised that as an aside.

10 But, your Honour, we have information and it will become apparent  
11 in the Defence case that there are unfortunately a group of witnesses  
12 that are lying in the essentials when it comes to Mr Ruto's alleged  
13 involvement in this criminal conduct, and the information we received  
14 many months ago and it will come in our own Defence case and we can  
15 reveal it *ex parte* if the Court wish to hear it --

16 PRESIDING JUDGE EBOE-OSUJI: Mr Khan --

17 MR KHAN: Your Honour, just one point with respect --

18 PRESIDING JUDGE EBOE-OSUJI: No, one second. One second. What I  
19 want to know now, I asked you the question as to why you said that the  
20 reality now is that the rest of this witness's testimony needs to be done  
21 in open session as opposed to private. That is the limited question and  
22 you can continue it from there.

23 MR KHAN: Your Honour, I clarified that. We should continue as  
24 we did yesterday with the same protective measures that were yesterday.  
25 That's the worst-case scenario, that's the maximum limits of the  
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1 protection that the Court determined were appropriate --

2 PRESIDING JUDGE EBOE-OSUJI: But your submission of course is not  
3 that if attempts are made to reveal the identity of a protected witness  
4 or if, indeed, the identity of a protected witness is revealed, therefore  
5 from then on it means the witness has been outed and would have to be  
6 heard in open session. You're not making that making that submission?

7 MR KHAN: No, your Honour, that's why I used defamation.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR KHAN: If one publishes a defamatory remark --

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 MR KHAN: -- it's an offence to republish and one should not be  
12 rewarded by -- an offence should not continued simply --

13 PRESIDING JUDGE EBOE-OSUJI: Very good.

14 MR KHAN: -- because somebody has done something --

15 PRESIDING JUDGE EBOE-OSUJI: Okay.

16 MR KHAN: -- which ought not to have been done. So I hope I've  
17 been clear on that.

18 But, your Honour, in an *ex parte* session if necessary, but you  
19 can take it from me, we have evidence we received months ago that there  
20 is a group of witnesses that have been got at by various groupings,  
21 intermediaries, and they've been promised closed session hearings.  
22 They've been promised by the Prosecution and by other intermediaries that  
23 their evidence would be behind closed doors. Your Honour, I have  
24 disclosure many months ago to that effect. Your Honour, in --

25 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, one second. We're not

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1       there yet, about other witnesses. We're talking --

2               THE INTERPRETER: Overlapping speakers.

3               PRESIDING JUDGE EBOE-OSUJI: (Overlapping speakers)... in light  
4       of what has occurred so far as regards this witness --

5               MR KHAN: Yes.

6               PRESIDING JUDGE EBOE-OSUJI: Not any other witness.

7               MR KHAN: Indeed. But, your Honour, this witness has been  
8       handled by a Prosecution intermediary and that's why I say that they  
9       should not be a blanket closed session. There are the safe guards, very  
10      significant restrictions of her identity cannot become public, her name  
11      will not be broadcast, there is I think facial distortion, there is voice  
12      distortion, but the public have a right also to hear. I don't see how  
13      that would cause any prejudice to the witness --

14              PRESIDING JUDGE EBOE-OSUJI: I'm sure the public will understand  
15      if effort made by some people, right now we don't know who they are, the  
16      public will understand if it is the case that efforts are being made by  
17      some people to reveal the identity of witnesses with the obvious intent  
18      of discouraging the witness or certain witnesses to testify, the public  
19      will surely understand that measures need to be taken in circumstances.

20              MR KHAN: Well, your Honour that --

21              THE INTERPRETER: Overlapping speakers.

22              MR KHAN: (Overlapping speakers)... public were to think, but I  
23      would respectfully submit that the public, or at least myself, I can  
24      speak for my own views, when there is facial distortion, voice  
25      distortion, and no name being broadcast, why shouldn't the subject, why

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1 should the thrust of a witness's testimony not go into the public domain  
2 except for those aspects of the testimony that may reveal the witness's  
3 identity? Your Honour, that's the aspect where there is a well-founded  
4 reason to go into private session, where anything may be said that would  
5 reveal the identity of the witness. But in circumstances where already  
6 the very significant measures of facial distortion, voice distortion, and  
7 a pseudonym are in place, the thrust of the allegations against my client  
8 should be publicly heard because we are intending, it's very important to  
9 us that we want to publicly expose the lies in this case, and that should  
10 not be hidden between these four walls of this courtroom. That is  
11 something that the people of Kenya and the international community and  
12 those that have come thousands of miles, including the family of  
13 William Ruto, have a right to hear, and that's why, your Honours, I do  
14 submit that the proportionate restrictions are already in place, namely,  
15 the video, facial distortion, voice distortion, and pseudonym. But we  
16 have no intention, with the greatest of respect, of confronting and  
17 exposing this witness behind closed doors. I think the world and the  
18 public as well as your Honours have a right to hear some of the lies in  
19 this case against William Ruto.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

21 Mr Kigen-Katwa.

22 MR KHAN: Your Honour, can I just raise one additional matter  
23 with your leave.

24 THE INTERPRETER: The interpreters request that the five-second  
25 rule be respected. Thank you very much.

1 MR KHAN: Your Honour, I'm most grateful. The additional point I  
2 would ask the Bench to consider is that we don't want to give witnesses  
3 the idea that they themselves - I'm not saying it happened in this case  
4 at all - but they themselves or family members that have sat in  
5 interviews or third parties can also reveal information and it would  
6 allow what we say are lies to be hidden from the public. So, your  
7 Honour, there is a floodgate's argument that should be considered, but  
8 apart from that I rest on my earlier submissions.

9 MR KIGEN-KATWA: Mr President and your Honours, I have three  
10 issues to raise on my part and in principle I oppose the application to  
11 put a blanket coverage to the testimony of the witness. The first  
12 position is that the protective measures that are already in place, I  
13 submit, are adequate. And those measures were targeted at protecting the  
14 identity of the witness and her family members and we submit that the  
15 measures that were already put in place were adequate.

16 Mr President and your Honours, Mr Sang came to this Court and has  
17 the legitimate expectation that the measures that were already in place  
18 were adequate. Any changes made in the course of the trial would be  
19 unfair to him and it is unfair considering that in principle the whole  
20 trial should be conducted in the open. And we submit that really there  
21 is no occasion there is no reason that has arisen to legitimatise the  
22 need to make any additional measures in regard to the testimony of this  
23 witness.

24 We submit that if the Chamber must put any additional protective  
25 measures, they should be -- the Prosecution should make a formal  
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1 application, we should be afforded adequate opportunity to respond to  
2 them, and they should be specific. They should not be in the general  
3 manner that the Prosecution has asked for, that the rest of the testimony  
4 be done in closed session. Thank you, your Honours and Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa-Kigen, that specific  
6 application has been made and the Chamber is taking oral submissions on  
7 the matter. We intend to proceed in this case. There may be instances  
8 where certain matters will be appropriate to make submissions upon and  
9 oral rulings upon in writing, and there may be instances where  
10 applications must be made by counsel standing up and Chamber will then  
11 also consider whether to make rulings, oral rulings on the matter or to  
12 render decisions in writing. This is one of those instances where in  
13 light of the flow of events that have occurred, which you've been party  
14 to up until now, an application is made as part of that flow which is  
15 easy to understand and respond to and argue. So that application has  
16 been made orally and we are dealing with it in that mode.

17 MR KIGEN-KATWA: In that case, Mr President and your Honours, I  
18 raise my submissions as already alighted and insist that it is our  
19 submission that the protective measures that are already in place are  
20 adequate and the request by the Prosecution should be rejected.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

22 Mr Nderitu.

23 MR NDERITU: Thank you, Mr President, your Honours. I think the  
24 circumstances that we are discussing are circumstances which I would call  
25 special circumstances, and they are special in view of the already very  
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1 wide media coverage that there has been with regard to this witness. I  
2 am, of course, mindful of the -- of Article 66 and 68, and in  
3 particular -- in particular Article 68(1) and (2) with regard to the  
4 instances where the Chamber may grant exceptional measures in order to  
5 ensure the well-being of the witness. In this particular case, the  
6 witness is also a victim and it does appear to me and it did appear to me  
7 yesterday when I visited her after the afternoon session that indeed her  
8 psychological well-being, and that definitely has an impact on the manner  
9 in which she would testify, will be very seriously impacted by the kind  
10 of measures that she gets. So for those reasons I would want to  
11 associate myself with my learned colleague Mr Steynberg and ask for  
12 appropriate measures. I thank you.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

14 Mr Khan, when you spoke - this arises now from Mr Nderitu's  
15 submissions - you said there is no risk to this witness. If you looked  
16 at Article 68(1), that requires -- not even recommends but requires, it  
17 says:

18 "The Chamber shall take appropriate measures to protect the  
19 safety, physical and psychological well-being, and dignity and prices of  
20 victims and witnesses ..."

21 When you say there is no risk, can you tell me in what regard. I  
22 mean psychological as well, psychological well-being, because Mr Nderitu  
23 has brought that now into the fore.

24 MR KHAN: Your Honour very correctly details the scope of  
25 Article 68(1). Regarding the safety and physical security, of course the  
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1 witness has been relocated, so there's no risk. She wouldn't be put  
2 where she is if there were. As far as psychological, your Honour, that  
3 needs to be carefully addressed. It cannot be correct that a witness can  
4 hold this Court to ransom effectively and say I will only testify if it's  
5 in closed session. Where would it end? I will only testify if Defence  
6 counsel leaves the room, I'm traumatised. Your Honour, there needs to be  
7 an objective assessment.

8 Now, in circumstances where -- and VWU no doubt can reassure the  
9 witness, this is what therapists do, it's what we all do on occasion when  
10 it's called for. You tell the witness your identity is not going to the  
11 public, there's been already a Court admonition, don't worry about that,  
12 you're in a safe place, your face is not being seen, the photograph that  
13 is being broadcast is not you, not a cook, we've got clear evidence of  
14 that, it's been given to the Prosecution, and your voice is not going to  
15 the public. You use those measures to reassure a witness as a balancing  
16 factor to ensure that her psychological well-being is maintained, but it  
17 can't be for the witness, it can't be the tail that wags the dog, it  
18 can't be the witness that starts putting stipulations down that I'll  
19 testify in these circumstances or not because that is a very dangerous  
20 precedent to adopt. So I hope your Honours have addressed the issue.

21 PRESIDING JUDGE EBOE-OSUJI: I'm glad that you say that. The  
22 witness -- I do not understand from the submissions that the witness had  
23 put such -- the demand in such terms that without this I will not. And I  
24 think it would be wrong for anyone in the courtroom to take that sort of  
25 position. No one should hold a Court of law to ransom in that manner.

1 Requests are made and the Judges will consider the request, some are  
2 granted, some are denied, and everyone moves on with the decisions of the  
3 Court, and I did not understand that the application of the Prosecution  
4 was put in terms other than that. Was that your understanding?

5 MR KHAN: Your Honour, I'm trying to find what was said in the  
6 morning regarding the -- and of course we don't have a recording of  
7 whatever the contact was between the Prosecution and the witness while  
8 she was under oath. Perhaps that recording can be disclosed to us  
9 because it may be -- be helpful to shed clarity on that issue, but, your  
10 Honour, I think my learned friend talked about that the witness, she'd  
11 continue with her evidence today, she, however, conveyed a request that  
12 her evidence should continue in private session.

13 PRESIDING JUDGE EBOE-OSUJI: A request --

14 MR KHAN: So, your Honour --

15 PRESIDING JUDGE EBOE-OSUJI: -- not a conditionality.

16 MR KHAN: Yes. So, your Honour --

17 PRESIDING JUDGE EBOE-OSUJI: A request.

18 MR KHAN: So, your Honour, the fact it's only a request in any  
19 event shows that the psychological well-being issue is not as serious in  
20 that case as would be contended. It's not, it's not -- it's a  
21 preference. It's not something that she says would traumatise her. It's  
22 not something that she says or has said to VWU or the Prosecution would  
23 affect her psychological well-being, and in those circumstances, the  
24 principle again should be in favour of continuing with the very stringent  
25 and robust protective measures that are already in place.

1           PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

2           MR KHAN: I'm grateful.

3           MR KIGEN-KATWA: Mr President, Mr President.

4           PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa is on his feet.

5           MR KIGEN-KATWA: Thank you, Mr President.

6           You have posed the question to Mr Khan in respect of the  
7           provisions of Article 68(1) to the effect that the Court shall take  
8           appropriate measures to protect the psychological well-being of a  
9           witness.

10          I would like also to respond to that question by inviting the  
11          attention of the Chamber to the rider that is at the bottom of that  
12          article which is that:

13          "These measures shall not be prejudicial or inconsistent with the  
14          rights of the accused and a fair and impartial trial."

15          We submit on our part that part of what constitutes a fair and  
16          impartial trial is open proceedings, conducting the proceedings in the  
17          open, and giving an opportunity to the people who are affected and their  
18          families to know what the allegations are facing the accused. We would  
19          very much pray that in considering the psychological well-being of the  
20          witness, the balance be struck with the interests of Mr Sang the accused.

21          We would also like to say secondly that the Court should be alive  
22          to the issues we've always raised, that the witnesses are lying and it is  
23          possible that the motivation for seeking that these proceedings be  
24          conducted in a closed session is so that the lies that they are alleging  
25          cannot be heard by the wider public. And we would pray that the

1       allegations which are wild and are a fantasy should not be given the  
2       window that they are seeking, that it be conducted in a closed session.

3       Thank you, Mr President.

4       PRESIDING JUDGE EBOE-OSUJI: Thank you.

5       The Court will now adjourn for ten minutes to deliberate on the  
6       matter for ten minutes and move back in ten -- in ten to 11.00.

7       (Recess taken at 10.40 a.m.)

8       (Upon resuming in open session at 11.02 a.m.)

9       THE COURT USHER: All rise. Please be seated.

10       PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The Chamber  
11       renders this oral ruling. It was brought to the Chamber's attention  
12       yesterday that an attempt was made to reveal the identity of Witness 536,  
13       a protected witness, that resulted in the interruption of the evidence of  
14       the witness yesterday. The Chamber appreciates that after having been  
15       fully informed of what had occurred, the witness has now indicated her  
16       resolve to continue with her testimony. It is indeed an exemplary act of  
17       courage on the part of this witness that she wants to continue with her  
18       testimony undeterred. It shows that the spirit of justice marches on in  
19       this case. Such acts of courage on the part of this witness are strongly  
20       encouraged on the part of every witness in this case, either for the  
21       Prosecution or for the Defence. That is the only way that we can hope to  
22       get at the truth in this case.

23       The Chamber at this stage makes no determination as to the  
24       forensic worth of this witness's testimony; that can only be done after  
25       the Chamber has heard the rest of her examination-in-chief and  
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1 cross-examinations and assessed her evidence in the context of all other  
2 evidence to be presented in this case by both the Prosecution and the  
3 Defence.

4 In the meantime, because of events surrounding this particular  
5 witness, particularly because in spite of existing measures to protect  
6 her identity, attempts were still made to violate or breach such  
7 protection measures, as a result the Chamber grants the application of  
8 the Prosecutor that the rest of this witness's testimony be conducted in  
9 private session. This revision to her existing protective measures -- I  
10 take that again. This revision to her existing protective measures is as  
11 special one in the particular circumstances of this case. The Chamber  
12 makes the revision, mindful of Article 68(1) of the Statute, which  
13 requires the -- requires the Chamber to take measures to, among other  
14 things, protect the psychological well-being of this witness.

15 The Chamber notes in that regard the obvious attempts made to  
16 intimidate her in the manner of not only the attempts made to mask her  
17 identity but also in calling her extremely unkind names and addressing  
18 other manner of threatening language against this witness. The Chamber  
19 considers that the measure -- this revised measure does not unduly  
20 prejudice the accused. The accused and the Defence will remain fully  
21 able to see and hear the witness testify. The Chamber will also direct  
22 the Prosecutor to propose public, redacted versions of the transcript of  
23 her testimony which will be made public in due course. That is the  
24 Chamber's ruling.

25 At this stage, the -- we will lower the blinds so that the

1 witness may be brought into the courtroom, and after the witness is  
2 brought into the courtroom we will go into private session, meaning the  
3 blinds will go up but there will be no sound feed outside the courtroom.

4 MR KHAN: Your Honour, are we in private session yet?

5 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

6 (Closed session at 11.09 a.m.)

7 THE COURT OFFICER: We are in closed session, your Honour.

8 MR KHAN: Your Honour, just a quick suggestion perhaps. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: That's a very good suggestion,

15 Mr Khan. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted). But your suggestion is taken in good faith. (Redacted)

19 (Redacted).

20 MR KHAN: I'm grateful.

21 MR STEYNBERG: Your Honour, perhaps to save some time while the  
22 witness is coming in, we were dealing with -- I intend to carry on where  
23 I left off on Tuesday with the sketch map, if that could possibly be  
24 brought up on our monitor so we could proceed immediately with that.

25 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We can set that up.

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1 In the meantime, Mr Steynberg, did you already introduce that on  
2 the record, some exhibit for marking? I don't recall that having been  
3 done. Maybe we should do that without further delay. You laid the  
4 foundation and I didn't see that the Defence objected.

5 MR STEYNBERG: Your Honours, my recollection is that I did lay  
6 the foundation. The witness identified her signature and the date and  
7 confirmed --

8 PRESIDING JUDGE EBOE-OSUJI: That she drew this sketch.

9 MR STEYNBERG: -- that she had drawn this for the investigators.

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 MR STEYNBERG: But for the record, the reference number of this  
12 document is KEN-OTP-0090-0658. The Prosecution requests that this  
13 document be entered into the record as an exhibit.

14 PRESIDING JUDGE EBOE-OSUJI: It will be so entered. I think it  
15 might be safe for us to give it a short form designation, Prosecution  
16 Exhibit 1. Is that -- so that we can easily --

17 MR KHAN: That's a good idea.

18 MR STEYNBERG: I'm in the hands of the Court management staff.  
19 They know best how to label the exhibits.

20 PRESIDING JUDGE EBOE-OSUJI: Yes, but I think it makes sense.  
21 Not everyone will be able to recite the extended, the long-form name of  
22 the document. The Court record will do their usual thing of naming it as  
23 they do, but for colloquial purposes we just call that Prosecution  
24 Exhibit 1.

25 And also, in addition, the PIS, was it also introduced? I think

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1 in the process of us getting to the meat of the matter we may forget  
2 these little formalities that we need to do. Did we introduce the  
3 protection information sheet? Perhaps we should also do that now.

4 MR STEYNBERG: As the Court pleases, your Honour. My learned  
5 colleague has just pointed out to me that we hadn't in fact done that.  
6 May I request then that that be handed in as Exhibit 2?

7 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

8 MR STEYNBERG: Not exhibit?

9 PRESIDING JUDGE EBOE-OSUJI: Not exhibit, it would be a PIS  
10 number.

11 MR STEYNBERG: Oh, that's right. Then it was PIS 1.

12 PRESIDING JUDGE EBOE-OSUJI: Yes.

13 MR STEYNBERG: I did in fact mark it.

14 PRESIDING JUDGE EBOE-OSUJI: Again, colloquially for our purposes  
15 subject to the formal names the Court records officer will give, for our  
16 purposes that will be PIS 1 and colloquially Prosecution Exhibit 1 for  
17 the exhibits. Thank you.

18 (The witness takes the stand)

19 PRESIDING JUDGE EBOE-OSUJI: Madam, welcome back to the Court.

20 We heard about the unfortunate events (Redacted)

21 (Redacted)

22 (Redacted). And from now on you are testifying in private

23 session, meaning that that will -- the public will not be able to hear

24 what you say as you say it, but the Defence counsel and the accused are

25 in the Court and they're entitled to see you and hear you fully. And

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 also, the -- later on the Court, the Prosecutor, and the Court system  
2 would publish public versions of your transcript. What will happen in  
3 that effort would be to try and remove information in your transcript  
4 that might lead the public who read it to easily identify who you are but  
5 in the rest of the transcript will be available to the public.

6 Prosecutor, you may now continue. I understand we are still in  
7 closed session. We can now go into the private session mode, meaning the  
8 blinds will go up.

9 (Private session at 11.17 a.m.)

10 THE COURT OFFICER: We are in private session, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

12 Prosecutor, you may proceed.

13 MR STEYNBERG: Thank you, your Honours.

14 May I ask the court officer whether the sketch, Exhibit 1, has  
15 been displayed on the screen.

16 PRESIDING JUDGE EBOE-OSUJI: I see it on my screen.

17 MR STEYNBERG: Ah, yes, we have it. Thank you.

18 WITNESS: P-0536 (On former oath)

19 (The witness speaks Swahili)

20 QUESTIONED BY MR STEYNBERG: (Continued)

21 Q. Madam witness, good morning.

22 THE COURT OFFICER: I'm sorry, Mr President, if I may.

23 Could you please, Mr Steynberg, indicate whether the exhibit that  
24 needs to be shown to the witness is the one that she annotated or the  
25 original one that you presented as evidence which bears document number  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 20

1 KEN-OTP-0090-0658 without any annotations?

2 MR STEYNBERG: Thank you. I intend to continue with the  
3 annotation process, so if we could have the same document on the screen  
4 that we finished with on Tuesday, I would be grateful.

5 PRESIDING JUDGE EBOE-OSUJI: Just lawyer's business while the  
6 document is being pulled up, do we see any difficulty with documents like  
7 this being premarked before coming in to Court so that we are already in  
8 the process of preparation if the witness prepared it to mark what needs  
9 to be marked so that it makes the process quicker? I know that that's  
10 done in certain other places.

11 MR KHAN: Your Honour, the correct thing -- of course, if a  
12 witness when the witness was originally interviewed had wished to mark  
13 any document and that be exhibited, that is fine. We have already  
14 expressed a standing concerns about proofing, but to go a step further  
15 and to get an exhibit marked we say -- this should be done in -- with all  
16 the safe-guards of Court proceedings. Your Honour, it's also sometimes  
17 useful to know hesitation and whether or not a witness is immediate. It  
18 may not be at issue here, but it may be later on. So I ask that there be  
19 no premarking. Any marking can be done that all parties can see and  
20 assess in due course. I'm grateful.

21 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

22 MR STEYNBERG:

23 Q. Madam Witness, do you have the document before you, the sketch  
24 that you drew for the investigators?

25 A. Yes, I can see it.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 21

1 Q. My first question relates to point B which is just above a square  
2 which is labelled Kiambaa police station. Do you see that?

3 A. Yes, I see that.

4 Q. Can you tell the Court please, was that building, the Kiambaa  
5 police station, present at the time of the attack which you described to  
6 the Court on Tuesday?

7 A. That building was built later. Before that, there was a Kiambaa  
8 centre there.

9 Q. Thank you. And can you indicate then with the letter D where on  
10 this map the person you identified as Chamalan stayed, where was his  
11 home?

12 A. (Marks)

13 Q. Thank you. You also mentioned or you identified on Tuesday two  
14 attackers with the surname Bor, that was Emmanuel Bor and Kimei Bor. Can  
15 you indicate where their home was? Sorry, I think I need to precede that  
16 with a clarification. Can you hold off on that.

17 Before you mark that let me ask you this: These Kimei Bor and  
18 Emmanuel Bor, were they related in any way?

19 A. Emmanuel Bor was the brother to the other. They had the same  
20 father but from different mothers.

21 Q. And who was their father?

22 A. Arap Bor, that was their father's name.

23 Q. Just for the record, can you confirm the spelling of the surname  
24 is B-o-r?

25 A. Yes, that is correct. The spelling is B-o-r.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 22

1 Q. And where did Arap Bor live? If possible, could you mark that  
2 with the letter E.

3 A. On the sketch I did not indicate Arap Bor's farm, but I can do  
4 that now.

5 Q. Please do.

6 A. (Marks)

7 Q. All right. Just a few more points I need to clarify. Where --  
8 if you could mark with the letter F (Redacted)  
9 (Redacted).

10 PRESIDING JUDGE EBOE-OSUJI: But before we do that, if we put on  
11 the transcript what E stands for, the marking E.

12 MR STEYNBERG: Your Honour, you want me to place that on the  
13 record or you want the witness to write it on the sketch?

14 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

15 MR STEYNBERG: I beg your pardon. That was representing the home  
16 of Arap Bor, the father of Emmanuel and Kimei.

17 I beg your pardon, your Honour, we seem to have lost the feed.  
18 The wrong button's been pushed, but -- ah, we have it here.

19 Q. I requested you to mark with the letter F (Redacted)  
20 (Redacted). Have you done that?

21 A. (Marks)

22 Q. Two more then. Firstly with the letter G can you indicate (Redacted)  
23 (Redacted).

24 A. (Marks)

25 Q. Thank you. And finally, if you're able to, mark the location of  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 23

1 (Redacted)

2 (Redacted).

3 PRESIDING JUDGE EBOE-OSUJI: One second. I think it is -- in  
4 light of the shape of it was -- has now been indicated as G (Redacted)  
5 (Redacted)," it needs to be clear that we are looking (Redacted)

6 (Redacted)

7 (Redacted)

8 MR STEYNBERG: Thank you, your Honour. That is clearer.

9 Q. Now, on the version I see on my screen, (Redacted)

10 (Redacted)

11 (Redacted) Can you see that on your screen?

12 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

13 MR KHAN: (Microphone not activated)

14 PRESIDING JUDGE EBOE-OSUJI: All right. Ordinarily we should  
15 have taken our break by now. I notice it is 11.34, but the interpreters  
16 who need their break have agreed to indulge us to proceed until 12.00, so  
17 I think we should go until 12.00 and take our break and that will mean we  
18 will adjust the rest of the schedule in terms of time for the day. Thank  
19 you.

20 MR STEYNBERG: Thank you, your Honour, I'm grateful for that.

21 Q. So, Madam Witness, if you could then just indicate to the best  
22 you can on the screen in front of you (Redacted)

23 (Redacted)

24 (Redacted)

25 A. Can I mark it with a dot?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 24

1 MR NDERITU: Mr President, your Honours, I think the  
2 interpretation is not correct.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Can the witness repeat  
4 her answer.

5 THE WITNESS: (Interpretation) I was asking if I could mark  
6 point.

7 MR STEYNBERG:

8 Q. Yes. If you could please mark -- if you're able to on this  
9 sketch mark the point (Redacted). You can use -- you  
10 can make a dot if you want, but mark it then with the letter H.

11 A. (Marks)

12 MR KHAN: Your Honour, I wonder if I could also suggest, because  
13 the public are not see -- you know, hearing anything anyway, it may be  
14 preferable in these circumstances that the shutters come down completely  
15 and the curtain be put back, and that way at least all individuals here  
16 can see the witness and observe the witness. Your Honour, we're getting  
17 the worst of both worlds. We can't see the witness and things are not  
18 being broadcast, so I would ask perhaps it would be better, preferable,  
19 put the shutters down, remove the curtains, and we can all see the  
20 witness give her evidence.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we will consider the  
22 request. It may be better to give the public some pictures even if they  
23 can't hear anything. If it's possible for you to just indulge as you've  
24 done before and move around so you can see the witness, it might be a  
25 better -- until you start asking your questions in cross-examination.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 25

1 MR KHAN: Your Honour, so be it.

2 MR STEYNBERG: Thank you, your Honours.

3 Q. Just a couple more questions then before we move on from this  
4 map. The Bor family, whose home you marked or the father's home you  
5 marked at point E, can you tell the Court, please, what ethnicity they  
6 were?

7 A. They were Kalenjin.

8 Q. And can you tell the Court a little about Mr Arap Bor and what  
9 was his position in Kiambaa society?

10 A. There was a time when he was the director of the school of  
11 Kiambaa (Redacted).

12 Q. Thank you, Madam Witness. Before we move on to the next sketch I  
13 want you to see, I think this would be an appropriate time to get a  
14 little bit more information about the four individuals you have  
15 identified and your knowledge of these individuals. Understand?

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, I'm told that if  
17 you're done with this sketch that the court officer needs to capture the  
18 screen so that it can be saved and marked.

19 MR STEYNBERG: Your Honours, it's not impossible I might refer  
20 back to it, but as far as marking the sketch is concerned I believe I am  
21 done.

22 PRESIDING JUDGE EBOE-OSUJI: Court officer, we can now proceed  
23 with you capturing the screen and marking it.

24 THE COURT OFFICER: Your Honour, the sketch that has been drawn  
25 today by the witness and that was marked as Exhibit 1 will be attributed  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 26

1 reference number EVD-T-OTP-00001 and will be marked as confidential.

2 Likewise, the PIS sheet that was introduced will be referenced as

3 KEN-PIS-0001-0001 and will also be marked as confidential available to

4 the parties and participants in this courtroom. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR STEYNBERG: Thank you, your Honour.

7 Q. Returning to the four individuals you mentioned, starting with

8 Mr Chamalan, please tell the Chamber how you knew this individual.

9 A. I knew him because (Redacted).

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 27

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) there were elections. In

6 fact, there were also semi-elections. When he participated in the first

7 elections, he didn't succeed, and then he changed party, but it was still

8 with the ODM.

9 THE INTERPRETER: Bi-elections, corrects the interpreter.

10 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, before you continue.

11 Madam, remember our rule about taking it slowly so that the

12 interpreters can understand correctly what you're saying and interpret it

13 very well. Thank you.

14 MR STEYNBERG: Thank you, your Honour.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted) and

19 I even voted for him.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 28

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. (Microphone not activated)

6 MR STEYNBERG: I beg your pardon, your Honour, I didn't have my  
7 microphone on.

8 Q. Moving to the second person you identified, Emmanuel Bor, can you  
9 explain to the Chamber, please, how you knew this person.

10 A. I knew him because when you don't have any cows the person who  
11 buys milk for everybody, the person who sells milk to everybody.

12 Q. Do I understand it correctly, are you saying that he was a person  
13 that sold milk to everybody?

14 A. It was his father who sold milk.

15 Q. All right. I'm speaking in particular of Emmanuel, the son. Can  
16 you tell us what his occupation was?

17 (Redacted), I got to know him because he --

18 THE INTERPRETER: The Swahili interpreter didn't understand the  
19 last word.

20 MR STEYNBERG:

21 Q. Can you please repeat your answer. The interpreter didn't  
22 understand the last part.

23 A. As he was a teacher, when he finished his work he went down the  
24 road to drink alcohol.

25 Q. Where was he teacher?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 29

1 A. He was a teacher at Kipkabus secondary school.

2 Q. And where is that?

3 A. It's -- it's situated at a place which we call plateau area.

4 Q. All right. Let's move on to Kimei Bor, how did you know him?

5 A. Kimei used to drink and had done so for a long time.

6 Q. How did you know him?

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. The person you describe as Brown, tell the Court, please, how you  
14 know him.

15 A. Brown was one of the Kalenjins who came from Nyahururu (\* phon)  
16 and they exchanged farms in 1999.

17 Q. Have you known him since that time, 1999?

18 THE INTERPRETER: 1992 corrects the interpreter.

19 MR STEYNBERG:

20 Q. And have you known him since that time, 1992?

21 A. (No interpretation)

22 THE INTERPRETER: The English interpreter didn't hear any  
23 interpretation from the Swahili booth.

24 MR STEYNBERG:

25 Q. There seems to have been a technical problem. Would you mind  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 30

1 repeating your answer, please.

2 A. The parents of Brown came and they exchanged buildings here in  
3 Kimuri. They came from Nyamuru (\* phon).

4 Q. Where was that?

5 A. The exchange of farms took place in 1994.

6 Q. And what was Brown's occupation at the time of this attack?

7 A. Are you talking about the attack of 2007?

8 Q. Yes, I am. The one of the 1 of January 2008 which you described  
9 on Tuesday.

10 A. At that time he was a butcher.

11 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, you see we are now at  
12 12.00.

13 MR STEYNBERG: This would be an appropriate juncture to take the  
14 break as it pleases Court.

15 PRESIDING JUDGE EBOE-OSUJI: Madam, we will take our lunch break  
16 now. So ...

17 We will now rise for lunch and we'll be back at 2.00.

18 THE COURT OFFICER: All rise.

19 (Recess taken at 11.59 a.m.)

20 (Upon resuming in private session at 2.06 p.m.)

21 THE COURT USHER: All rise. Please be seated.

22 THE COURT OFFICER: Mr President, for the record we are in  
23 private session.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

25 Prosecutor, before you proceed, can you give an indication of how  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 much longer you expect to hold this witness in examination-in-chief?

2 And also I know it may be premature to ask you the next question,  
3 considering that counsel will cross-examine, but the next witness,  
4 approximately when do you -- were you planning to put the next witness on  
5 the stand?

6 MR STEYNBERG: Your Honours, as far as the next witness is  
7 concerned -- no, let me answer the first question first. We are  
8 progressing rather slower than I had hoped, but it is important that this  
9 evidence comes out and is captured properly. After I have wrapped up  
10 with the scene at the church, I still need to deal with several meetings  
11 which the witness will testify about. I expect that it will take us  
12 until approximately lunchtime tomorrow at this rate.

13 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

14 MR STEYNBERG: To finish the evidence in chief.

15 PRESIDING JUDGE EBOE-OSUJI: To finish the evidence in chief.

16 MR STEYNBERG: If we sit the full two morning sessions. As far  
17 as the next witness is concerned, the witness is available, the witness  
18 has completed the witness preparation session, so the witness is ready to  
19 proceed as soon as this witness is finalised.

20 PRESIDING JUDGE EBOE-OSUJI: That's good to know.

21 MR STEYNBERG: How long that will take will depend on my --

22 PRESIDING JUDGE EBOE-OSUJI: Will depend on question from both  
23 victims counsel if we grant leave and Defence counsel in cross.

24 You may then continue with the witness.

25 Thank you, Madam, and welcome back. We are continuing with your  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 32

1 questions and you are still in private session.

2 MR STEYNBERG: Thank you.

3 Your Honours, I would like to turn then to the next sketch to  
4 show this witness. For the record, it is KEN-OTP-0090-0660. And once I  
5 have identified -- established authenticity, I will ask it that it be  
6 marked Prosecution Exhibit 2.

7 PRESIDING JUDGE EBOE-OSUJI: Assuming your colleagues do not  
8 object successfully of course.

9 MR STEYNBERG:

10 Q. Madam Witness, do you have the sketch on the screen in front of  
11 you?

12 A. Yes.

13 Q. And in the bottom right-hand corner, just above the date, can you  
14 confirm that that is your signature?

15 A. This is indeed my signature.

16 Q. And who drew this sketch?

17 A. I did.

18 Q. And from the date can we assume that this was on the same  
19 occasion that you drew the previous sketch, Prosecution Exhibit 1?

20 A. Yes.

21 MR STEYNBERG: Your Honours, that being the case may I ask that  
22 this be marked Prosecution Exhibit 2.

23 PRESIDING JUDGE EBOE-OSUJI: Is there any objection?

24 MR FAAL: No objection, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: No objection from the Ruto Defence.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 33

1 And Mr Kigen-Katwa.

2 MR KIGEN-KATWA: None.

3 PRESIDING JUDGE EBOE-OSUJI: The exhibit will be marked the next  
4 in the series. We will call it amongst ourselves as  
5 Prosecution Exhibit 2.

6 Court officer will use the usual recording protocol.

7 THE COURT OFFICER: Yes, Mr President. This Exhibit 2 which  
8 corresponds to document KEN-OTP-0090-0660 will be attributed reference  
9 number EVD-T-OTP-00002 and will be marked as confidential. Thank you.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR STEYNBERG:

12 Q. Thank you, Madam Witness. Right in the middle of this sketch is  
13 what appears to be a building and just below and to the right of it the  
14 word "church" appears. Can you confirm that this is intended to  
15 represent the Kiambaa church?

16 A. Yes. In the middle of the sketch you have the church. Next to  
17 it you have the church kitchen.

18 Q. All right. The kitchen is the building to the left of the church  
19 with the word "kitchen" written underneath; is that correct?

20 A. That's it.

21 Q. And can you explain to the Court what is the larger square drawn  
22 around both the church and the kitchen, what is -- what does that  
23 represent?

24 A. I wanted to show how -- or I wanted to show the topography of  
25 this place.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 34

1 Q. Madam Witness, I heard in your reply the word "compound" which  
2 was not interpreted. Can you explain what this area represents?

3 A. The church is situated on a half hectare, but it's not the whole  
4 place that was built. So that's how or why I drew it putting the square  
5 around the church.

6 Q. So does this larger square simply indicate the boundary of the  
7 church or is there some physical -- something physical which marks the  
8 boundary of this church?

9 A. Well, I told you that this area represents a half hectare. I  
10 wanted to show this place or this square. Next to it there was the house  
11 of the pastor.

12 Q. Very well. And --

13 THE INTERPRETER: The Swahili interpreter points out that the end  
14 of the witness's answer should be repeated, please.

15 MR STEYNBERG:

16 Q. Madam Witness, the interpreter did not catch the last portion of  
17 your answer. If you could just repeat that, please.

18 A. I'm telling you that this is an area or field upon which the  
19 church was built. The square next to it, you had the house of the  
20 pastor, next to this square that I drew.

21 Q. All right --

22 A. So I told you at the top there was the house of the pastor, and  
23 the house of the pastor was on the field of the church -- on the land of  
24 the church.

25 Q. Thank you. And towards the top of the square there is a smaller  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 35

1 square with the word "mattress" to the right of it. Please explain to  
2 the Court what this represents.

3 A. That's where we slept outside.

4 Q. Let me return to your sleeping outside for a moment. The people  
5 who were sleeping at that church on the -- well, let me start like this.

6 On the night before the attack, who was sleeping outside the  
7 church?

8 A. We weren't sleeping outside, but it was the 31 -- on the 31st we  
9 decided to go to the church because there were increasing tension, and  
10 that was the reason why we decided to go to the church.

11 Q. And besides you and the members of your family, who else was  
12 there at the church?

13 A. When I went to this place on the 1st (\* as interpreted) at 2.00,  
14 there were a lot of people there. There were women, there were young  
15 children, there were also adults. We spent the night there. There were  
16 mothers, there were women and children.

17 Q. And, Madam Witness, where were all the men?

18 A. We left the men at home. They were carrying out security at our  
19 home.

20 Q. And on the following morning, on the 1 of January, were there any  
21 men at the church?

22 A. Yes. The men came to see how we had slept and they showed us  
23 that they had slept well at their houses.

24 Q. You've told the Chamber that when the attackers arrived to  
25 morning, you took refuge in the church. What did the men do?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 36

1 A. The men came on the church's land to try and prevent the enemy  
2 attack, the enemy that was going to attack us.

3 Q. And were they successful in doing so?

4 A. No. When the men saw that the situation was bad, they advised us  
5 to go inside the church, and we all went into the church.

6 Q. Yes. And what became of the men then?

7 A. The enemy came and they barricaded the door, and we heard the men  
8 shouting from outside while we were inside the church.

9 Q. And do you know what happened to the men after that?

10 A. When we left, when we went out, some men were in the fields.  
11 They were covered with maize. Others had been attacked with machetes and  
12 they were wounded. It was terrible.

13 Q. And can you explain to the Court the relative numbers of the men  
14 that were there at the church, the men that were together with the  
15 occupants of the church, compared to the number of the attackers that  
16 descended on the church?

17 A. The men -- well, there were a few men. Those were the Kiambaa  
18 inhabitants.

19 Q. All right. If I can direct your attention back to Prosecution  
20 Exhibit 2 again, could you indicate to the Chamber where the window is  
21 through which you first observed Chamalan and the other attackers you  
22 identified? Perhaps you could mark that with the letter A.

23 A. (Marks)

24 Q. For the record, I see you've marked a small square on the  
25 right-hand side of the church building; is that correct?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 37

1 A. Yes.

2 Q. And just to the right of that there is a little stick figure with  
3 the words "Chamalan with" it looks like either jelly can or jerrycan  
4 blue." What does that indicate?

5 A. It's here that he was positioned. He was holding a blue  
6 jerrycan.

7 Q. And where on the sketch is the door through which you escaped the  
8 church (Redacted)?

9 A. What letter do you want me to put on the sketch? Do you want me  
10 to put the letter B?

11 Q. Yes, please.

12 A. (Marks)

13 Q. Thank you. Just below the B that you've written, which is in the  
14 front centre of the church, there is the word "bicycles." What does that  
15 represent?

16 A. If you look the door of the church -- if you look at the door of  
17 the church, there is an arrow. This shows the corridor of the church.  
18 When the enemy came to attack us, they put mattresses, as you can see --  
19 the bicycles were put at the door to block the entry of the church.

20 Q. Thank you. And just below the word "bicycles" there are another  
21 two figures with what looked like Emmanuel and  
22 K-e-m-e-i (\* as interpreted), Kimei, what does that represent?

23 A. Well, I'll go back a bit. Chamalan was there. When I came out  
24 he came towards this place.

25 Q. Yes.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 38

1 A. And he was the person who ordered the young people to open the  
2 door and to make it possible for the women and children to get out.

3 Q. And what about Kimei?

4 A. Kimei was positioned there to force you to go inside the church  
5 or to go to where other young people were.

6 Q. You told the Court on Tuesday that (Redacted)  
7 (Redacted)  
8 (Redacted). Can you  
9 tell us what you did immediately after that conversation?

10 A. Well, I couldn't take any measures at all because I was in  
11 danger.

12 Q. Now just one or two other spots before I move on. You told the  
13 Court on Tuesday that (Redacted)-- I beg your pardon. You'd  
14 noticed person 4 being attacked. Can you show us where on the sketch  
15 that happened. With the letter C if possible.

16 A. Are you referring to number 4 on the list of adults?

17 MR KHAN: Your Honour, it may be simpler, as we're in private  
18 session, just to use the names and then the witness will be properly  
19 directed.

20 MR STEYNBERG: Indeed it would be simpler, your Honours, it would  
21 just mean additional redactions down the line, but I'm happy to proceed  
22 in this manner.

23 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Why don't you proceed  
24 in that manner if it will speed things up.

25 MR STEYNBERG: Very well. Thank you.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 Q. I'm referring to your (Redacted), who you said was injured.

2 A. Do you want me to indicate the spot with a letter or by a letter?

3 Q. The letter C, please.

4 A. Do you want me to indicate the spot at which (Redacted) was caught or the  
5 spot at which (Redacted) was attacked?

6 Q. Try to explain what happened, and if there's more than one spot  
7 you need to indicate you can use the letter C and the following letters,  
8 D, E, as necessary.

9 A. (Marks)

10 Q. I see you've marked the letters C and D on the sketch. Can you  
11 please explain what each of those are.

12 A. C represents the area where they (\* as interpreted) were hiding  
13 close to the gate or to the fence, rather.

14 Q. When you say "they," plural, were hiding, who are you referring  
15 to?

16 A. What I said is that it is where (Redacted) was hiding, one person.

17 Q. And are you referring to (Redacted) ?

18 A. That is where (Redacted) was hiding, but I met (Redacted) at the location which  
19 bears the mark D.

20 Q. What happened at location D?

21 A. That is where (Redacted) was attacked.

22 Q. Just above the letter D there is a word "b-r-o-w," what does that  
23 represent?

24 A. It is not b-o-w, it is b-r-o-w, and I forgot to add letter n. It  
25 is at that spot that Brown was located.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 Q. Thank you. Just two more matters before we move on from the  
2 sketch. You told the Court that on the previous night, the night  
3 preceding the attack -- I beg your pardon. It was on the 30th, and I may  
4 as well read your words, you said:

5 "I was fleeing because of the tension that had arisen following  
6 the burning down of houses on the 30th by young Kalenjin people in  
7 Kimuri."

8 The question is: How did you know that houses were burnt down by  
9 young Kalenjin people in Kimuri?

10 A. Do you want to find out how I became aware of this? Well, let me  
11 tell you. The first time what happened was when a house was on fire,  
12 neighbours would intervene. Secondly, a house doesn't just catch fire on  
13 its own or by itself.

14 Q. Please carry on.

15 A. The third point is that fire does not walk into a house to  
16 collect cows and other property within that house.

17 Q. Could you see the fires or is this something that somebody else  
18 told you about?

19 A. I have told you over and over again that when this incident took  
20 place involving (Redacted), they called me over the phone to ask if the  
21 same thing had happened at my place. I told them all was fine where I  
22 was. Subsequently, I was told that (Redacted) goods have been stolen,  
23 including their cows. (Redacted)  
24 (Redacted).

25 PRESIDING JUDGE EBOE-OSUJI: Madam, I know this is all strange to  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1       you and I don't blame you at all, it can also be frustrating if lawyers  
2       ask you questions over and over again, but you have to bear with us.  
3       That is how we have to understand the story you are telling. Also you  
4       need to remember that we are now in a different stage of the  
5       proceedings -- of the case, of the case. So it may well be the case that  
6       investigators may have asked you questions about these facts in the past,  
7       it may also be the case that the lawyer who is now asking you questions  
8       now may have also discussed this with you before coming to court today.  
9       But all those stories you told them in the past are not now before us.  
10      So to you it may seem like these questions have been asked of you  
11      repeatedly and you may feel frustrated about that, but please understand  
12      that the Judges are hearing this story from you for the first time. So  
13      bear with us. Thank you.

14           MR STEYNBERG: Thank you, your Honour.

15      Q. Just to wrap-up this point, how did you know that it was Kalenjin  
16      youth that were responsible for these attacks in Kimuri?

17      A. (Redacted) were there when their house came under attack. One of  
18      (Redacted) called me on the phone and informed me that the house had been  
19      torched.

20      Q. All right. I'm sorry to repeat this again, but the question was:  
21      How did you know that Kalenjin youth was -- were responsible? Are we to  
22      assume this is something that (Redacted) told you?

23           MR FAAL: Your Honour, for obvious reasons, we object to that  
24      question because it suggests the answer to the witness. Thank you.

25           MR STEYNBERG: I'll rephrase, your Honour.

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 Q. The information -- your source of information -- I'll start  
2 again.

3 What I'm interested in is what was your source of information  
4 that the attackers were Kalenjin youth and not anybody else who that was  
5 responsible for the attack on (Redacted)?

6 A. First I will tell you that there was a lot of tension. Second, I  
7 do not see how someone can burn one, two, or three houses all by  
8 themselves. You see, that very young person had already threatened me  
9 and that is how I came to the conclusion that they were the ones  
10 involved.

11 Q. Thank you. Lastly before we move on, you've told the Chamber  
12 about people who'd been attacked and who'd died outside of the church  
13 building. Can you tell the Chamber about anybody who was injured or died  
14 inside the church building at the time of the fire?

15 A. Yes. Many people were burnt at that place, including women and  
16 children.

17 Q. Thank you. I'll move on. You told the Court on Monday that  
18 after (Redacted) was attacked you proceeded with (Redacted) to the  
19 Moi Teaching and Referral Hospital. Where did you go after that?

20 A. After we went to the Moi Referral Hospital, we then went to the  
21 Eldoret church. We went to the cathedral to be more specific.

22 Q. Why did you go there?

23 A. We went there because we were looking for refuge and safety.

24 Q. I will come back to events at the cathedral, but can I ask you  
25 did you at any stage or when did you next return to Kiambaa?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 A. I spent the night at the cathedral. I did not close my eyes at  
2 all. I was thinking (Redacted). On the 2nd at 5.00 p.m., (Redacted)  
3 and I decided to return to Kiambaa to look (Redacted), thinking that  
4 (Redacted) may have gone into hiding somewhere.

5 Q. What did you observe when you returned to Kiambaa?

6 A. I am sorry, it is very difficult for me to remember this event;  
7 however, let me say that if you look at the diagram of the church, there  
8 is an arrow pointing towards a junction. That is the area where you can  
9 see "dam" and then on the other side "Baba Shalagu."

10 Q. Yes, I have that. Continue.

11 A. That is where I met that old man, Baba Shalagu, and  
12 Madam Margaret Wanjiro who had been raped. She was stark naked. All her  
13 clothes had been removed and a bottle had been inserted into her private  
14 parts.

15 Q. Was she alive or dead?

16 A. She was dead.

17 Q. And Baba Shalagu, what was his condition?

18 A. He too was dead.

19 Q. Did you proceed to the Kiambaa church itself?

20 A. Yes, I went to the church and I went into the church.

21 Q. Please tell the Court what you observed there.

22 A. When I arrived at the church, I found that it had been on fire  
23 and had been destroyed. So we got there and I went into the church where  
24 I found some dead bodies. I was able to determine that they were the  
25 bodies of women and children, but I was not able to identify them  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 individually.

2 Q. Approximately how many bodies did you observe?

3 A. Are you asking about the bodies that were burnt or the dead  
4 bodies of persons who had been killed?

5 Q. I'm sorry, I should have been more specific. I'm talking about  
6 bodies you observed when you were in the burnt church.

7 A. Although I was unable to identify the persons individually by  
8 name, I do recall that there were eight bodies.

9 Q. Thank you. And besides the two people you just described earlier  
10 and the bodies in the church, were there any other bodies in the vicinity  
11 that you observed?

12 A. What I can say is that the area looked like a slaughter-house.  
13 You see, one person --

14 THE INTERPRETER: Whose name the witness mentioned which the  
15 interpreters did not get -- in fact, the witness mentioned a name which  
16 the interpreters did not get, Mr President.

17 MR STEYNBERG:

18 Q. Could you please repeat the name of the person you mentioned for  
19 the interpreter.

20 A. Mui Shege (\* phon).

21 MR STEYNBERG: I'm going to ask the court officer to play you a  
22 short video-clip and ask if you can identify what is being shown to you.  
23 For the record, it's KEN-OTP-0033-0104 and I'll ask that it be played  
24 from time-stamp 7:18 to 7:50, 5-0.

25 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, will she explain

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 the name, Mui Shege, that has been mentioned. Because the name appears  
2 to be dangling there.

3 MR STEYNBERG:

4 Q. Madam Witness, while we are waiting for the video to be queued  
5 up, can you please explain who this person, Mui Shege, is and if possible  
6 spell for the record?

7 A. Mui Shege used to live in Kiambaa. He is a man who lived there  
8 with his family. He was a small man, not too tall.

9 THE INTERPRETER: The Swahili interpreter did not hear the  
10 witness's last few words at the end of her sentence.

11 MR STEYNBERG:

12 Q. Please repeat the last few words of your answer, the interpreter  
13 didn't catch it.

14 A. He was a farmer.

15 Q. And looking at the transcript, it seems that we might have cut  
16 you off before you finished your answer --

17 MR KIGEN-KATWA: Mr President, Mr President, the witness has used  
18 the word "mkorenu" (\* phon) I saw my learned friend Mr Nderitu stand.  
19 The interpreter said that means a farmer. It completely doesn't mean  
20 that, and this is one of the many issues we've raised.

21 PRESIDING JUDGE EBOE-OSUJI: Witness, what we are trying to  
22 determine is Mui Shege's occupation. The interpretation we received has  
23 you saying that he was a farmer. Was he a farmer? If not, what was he?

24 THE WITNESS: (Interpretation) No, he was not a farmer.

25 "Mkorenu," when I talk about "mkorenu," it is somebody who wears a scarf

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 like Muslims do. So he used to buy maize and sell it in our area.

2 PRESIDING JUDGE EBOE-OSUJI: What happened to him? You mentioned  
3 the reason why his name became of interest is that -- in your story, you  
4 said one person and then Mui Shege, what about him at the church at the  
5 time of these events? Why did you mention his name?

6 THE WITNESS: (Interpretation) It was in relation to the question  
7 that was put to me as to whether I had seen other dead bodies on the 2 of  
8 January.

9 PRESIDING JUDGE EBOE-OSUJI: Are you saying that he was a dead  
10 body you saw?

11 THE WITNESS: (Interpretation) His body was not in the church, it  
12 was in the maize field outside.

13 PRESIDING JUDGE EBOE-OSUJI: But you saw that he was dead; is  
14 that the story you are trying to tell us?

15 THE WITNESS: (Interpretation) Of course, he was already dead.  
16 He had already been burnt in his stomach.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
18 Prosecutor, you may continue.

19 MR STEYNBERG: Thank you. If I can just wrap up on this point,  
20 your Honour.

21 Q. You started off by saying when I asked you if you saw any other  
22 bodies outside the church that the area was like a slaughter field. You  
23 mentioned this one person. Can you just describe any other persons you  
24 might have seen, any other dead people you might have seen outside the  
25 church.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 A. (No interpretation)

2 Q. Sorry, I missed the translation of that. Was it translated? I  
3 think I better repeat the question. I'm not sure what's happening.

4 THE INTERPRETER: There's no Swahili into French interpretation  
5 for the English booth to take currently.

6 MR STEYNBERG:

7 Q. Please bear with us, Madam Witness. There seems to be a  
8 technical problem.

9 MR KHAN: Your Honour, can I suggest something? Your Honour, it  
10 seems to me to be -- the game Chinese whispers is there for a purpose, it  
11 shows the danger of relaying messages. And Swahili is a very widely  
12 spoken language. I don't see why there is translation from Swahili into  
13 French into English. It's prone to errors. It would be much better if  
14 the Registrar could be instructed to provide some of the very brilliant  
15 and able directly English into Swahili, Swahili into English interpreters  
16 that we have in this Court and that are otherwise available. I don't  
17 think it's really advantageous to anyone to have Chinese whispers and the  
18 confusion errors that can creep in because of it. I'll ask respectful  
19 request and suggestion to be considered by the Bench.

20 PRESIDING JUDGE EBOE-OSUJI: And it seems to me a very sensible  
21 one. I was actually beginning to wonder that because this is the second  
22 time I've heard that there was no feed into the -- from the -- I was  
23 wondering why we had to have relayed translation when -- it seems to me  
24 the witness is speaking Swahili, isn't that the case? Why couldn't there  
25 be a direct translation of what she is saying into English immediately?  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 MR KHAN: Your Honour, what I would ask is that that definitely  
2 be done before cross-examination starts, that we have that arrangement in  
3 place. It looks like we won't start before Monday. But perhaps if the  
4 Registrar could be so kind as to arrange the resources appropriately that  
5 when cross-examination starts we don't want a confusion, we want direct,  
6 proper interpretation. It's not a criticism of my friends upstairs and  
7 our colleagues that are translating; it's just one of those inherent  
8 difficulties that can creep in and it's no fault of their own. It would  
9 be better organisationally to have direct translation from the language  
10 into English that we're listening to.

11 PRESIDING JUDGE EBOE-OSUJI: The point is noted and it needs to  
12 be taken up, and in the meantime we have to make do with what's available  
13 for today and then we'll look into what can be done to improve the  
14 system.

15 MR STEYNBERG: Thank you, your Honours. I would join my learned  
16 friends on this request. It's been quite difficult to get things flowing  
17 with the interpretation running as it is.

18 On one point that my learned friend raised, however, it's quite  
19 possible that we might get to cross-examination tomorrow. So he  
20 shouldn't bank on not getting to cross-examination tomorrow.

21 Sorry, I lost my train there.

22 Q. Madam Witness, I'm sorry to repeat this question, but just to  
23 finalise this issue, you had mentioned that the area outside the church  
24 looked like a slaughter field. You mentioned one deceased person you had  
25 seen. Very briefly can you just tell the Court how many others, how many  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 other deceased people you saw at the scene? You don't have to name each  
2 one of them.

3 A. There were three people who were killed. Some had been cut with  
4 machines -- machetes, some had been cut with machetes, there were six of  
5 them hacked with machetes.

6 Q. Sorry, I need to clarify that. You mentioned three of them and  
7 then you mentioned six people, six people that were hacked with machetes.  
8 Is it three or six bodies that you saw?

9 A. What I said was the following: The people who I found who had  
10 died, there were three of them. As regards the others, these were people  
11 who were unconscious. The Red Cross took them to the hospital.

12 Q. Thank you. I think that's clear. What became of your house and  
13 your possessions?

14 A. Well, I went back to my house on the 2nd. I found that my house  
15 hadn't been destroyed but my goods had been stolen, my cows, sheep,  
16 they'd been stolen. Also, I had chickens and these chickens also had  
17 chicks.

18 Q. And were they too stolen?

19 MR FAAL: Mr President, I hate object -- making lots of  
20 objections because I don't want to disturb the flow of the  
21 examination-in-chief, but that is certainly a leading question.

22 PRESIDING JUDGE EBOE-OSUJI: Is it a point in dispute? Are you  
23 disputing whether her chickens were stolen?

24 MR FAAL: Your Honour, one thing that is emerging out of this  
25 examination is the capacity of this witness to remember the things she  
26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1       said before, not just in this Court but also to investigators. So if the  
2       Defence allows leading questions, it would just help the witness to come  
3       up with a tailor-made story. That would not necessarily accord with the  
4       truth.

5       So I think in all fairness to the Defence, the proper method of  
6       questioning witnesses that this Court has authorised should be used. We  
7       should not give the Prosecution a lot of room or a lot of latitude to go  
8       outside the norm of questioning witnesses and putting words in the  
9       witness's mouth. Thank you.

10       MR STEYNBERG: Your Honours, of course it was a leading question.  
11       It was a leading question on a minor issue of no consequence that the  
12       witness would have got to in due course. I'm merely trying to move the  
13       proceedings along a little bit --

14       PRESIDING JUDGE EBOE-OSUJI: That's why -- that was why I asked  
15       whether that was a point in dispute, but they seem to be saying that they  
16       want to -- they have a certain strategy to their cross-examination they  
17       have in mind --

18       MR STEYNBERG: (Overlapping speakers)...

19       PRESIDING JUDGE EBOE-OSUJI: It seems to me that to a point they  
20       are entitled to it.

21       MR STEYNBERG: As the Court pleases. I look forward to hearing  
22       their questions about these chickens.

23       Q. Madam Witness, what became of the chickens with their chicks?

24       A. They took the chickens and put them -- they pillaged them, we  
25       also found eggs which had also been destroyed.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 Q. Thank you. At this point I'd like to ask the court officer to  
2 play the video which I read into the record earlier. I repeat for the  
3 record the time-stamp from 7:18 until 7:50.

4 THE COURT OFFICER: Mr President, if I may, just before we play  
5 the video, as it's common practice in this Court, no interpretation and  
6 no transcription will be provided for the audio of this video. Thank  
7 you.

8 MR STEYNBERG: Perhaps I should also specify, we don't need any  
9 audio. It's -- I merely wish to put the images to the witness to  
10 identify what's on them.

11 (Viewing of the video excerpt KEN-OTP-0033-0104)

12 MR STEYNBERG: Thank you.

13 Q. Can you identify what you've just seen for the Chamber, please,  
14 Madam Witness.

15 A. Here I can see the church of Kiambaa.

16 Q. And finally on this before we move on, what are those objects  
17 piled in front of the church?

18 A. These are the bicycles. That's where the bicycles were. But  
19 when the church was burnt, they put all the bicycles together. At the  
20 start they were just around the place.

21 Q. All right. I'll move on then from the events of the 2 of  
22 January. Can you please tell the Chamber what became of you and your  
23 family --

24 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, before we move on,  
25 what are we supposed to do with this?

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 MR STEYNBERG: Thank you, your Honours. I would like to enter  
2 this portion of the video into evidence, please.

3 PRESIDING JUDGE EBOE-OSUJI: Is there any objection?

4 MR FAAL: No objection.

5 MR KIGEN-KATWA: Mr President, I would have thought some basis  
6 could be laid for the document, including the question as to whether or  
7 not it was obtained from the witness herself or elsewhere.

8 PRESIDING JUDGE EBOE-OSUJI: Do you dispute the events indicated  
9 in the image?

10 MR KIGEN-KATWA: We do not necessarily dispute it but would have  
11 liked to have some degree of authentication, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: When there is really no point to  
13 objections, should we make them? Your colleagues didn't see any point in  
14 objecting to it. Is there a dispute from you as to the burning of the  
15 Kiambaa church?

16 MR KIGEN-KATWA: We are not disputing the fact of the burning of  
17 the church.

18 PRESIDING JUDGE EBOE-OSUJI: Then I think that's all this shows,  
19 isn't it?

20 MR KIGEN-KATWA: I will leave it to the Chamber then.

21 PRESIDING JUDGE EBOE-OSUJI: The exhibit will be admitted.

22 Is there any -- I do not know how we do it especially with videos  
23 in this Court. I'm used to seeing an actual video being tendered as an  
24 exhibit, but here ...

25 THE COURT OFFICER: Mr President, I can also attribute an EVD

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 number, as I have been doing so far for the other two exhibits that have  
2 been admitted.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 So we will mark this as the next in the series and that would  
5 also be Prosecution Exhibit -- colloquially for us Exhibit 3 I take it?

6 MR KHAN: And, your Honour, in our filings, because I think it is  
7 simpler just to call them Exhibit -- Prosecution Exhibit 1, 2, and 3 and  
8 we'll do the same. I hope it's all right later on in proceedings for us  
9 to refer them as Prosecution Exhibit 1, 2, and 3, because it's much  
10 easier than all these long EVD numbers.

11 PRESIDING JUDGE EBOE-OSUJI: That's the whole reason why we  
12 adopted the long form and the short form.

13 MR KHAN: Okay. Yes, I'm most grateful. Thank you.

14 THE COURT OFFICER: Mr President, then for the record of the case  
15 this Exhibit 3, which corresponds to video KEN-OTP-0033-0104 that was  
16 presented to the witness at time-stamps 7:18 to 7:50 will be marked as  
17 confidential and will be attributed reference EVD-T-OTP-00003. Thank  
18 you.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

20 MR NDERITU: Yes, Mr President, your Honours, I am sure that the  
21 Registry will also be providing a list of the exhibits just to make it  
22 easier for all the parties and participants. I am sure they will be  
23 doing that. I was just placing it on the record, I'm sure.

24 PRESIDING JUDGE EBOE-OSUJI: Point noted.

25 MR STEYNBERG: Thank you.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

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1 Q. Madam Witness, please tell the Chamber what became of you and  
2 your family after this incident. Where did you go? Where did you stay?

3 A. On the 2nd when (Redacted) I  
4 went home. I took out two bags of maize and I asked for the Red Cross  
5 staff to transport me.

6 Q. Where did you stay after that?

7 A. I went to the cathedral.

8 Q. And can you tell the Court who else was at the cathedral? To  
9 clarify, was it just your family or were there many other people too?

10 A. In the cathedral we found Kikuyu who came from different  
11 localities.

12 Q. Such as?

13 A. Kimuri, Kyambana (\* phon), N'yandians (\* phon), Guma (\* phon),  
14 Langas, Mumbi, there were a lot of us there.

15 Q. How long did you stay at the showgrounds? Let me rephrase that.  
16 How long did you stay at the Eldoret cathedral?

17 A. At that time our intelligence (\* phon) wasn't stable, but I  
18 remember when President Kibaki came to see us at the cathedral. It was  
19 at that time that he ordered.

20 Q. What did he order?

21 A. He ordered us to go to another place. There were a lot of us at  
22 the cathedral and there wasn't enough place for everybody. We went to  
23 showgrounds, there was a place which was smaller and at that time there  
24 were other people who came from other localities. They were brought by  
25 Red Cross vehicles to the cathedral.

26

Witness: P-0536 (Resumed) (Private Session)  
Questioned by Mr. Steynberg (Continued)

Page 55

1 Q. Can you just repeat, where did you proceed to from the cathedral  
2 after that?

3 A. We went to showground.

4 Q. Where was this showground?

5 A. It was in Eldoret, showground Eldoret.

6 Q. How long did you stay at the showground Eldoret?

7 A. We stayed there until the operation to return home started and we  
8 were returned to our homes.

9 Q. How long was that after the attack on the 1 of January?

10 A. I would say one year and four months. We returned at the end of  
11 the month of May.

12 Q. Did you ever find out (Redacted)  
13 on the day of the attack?

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. And apart from going back to the scene of the attack on the 2 of  
18 January, did you search anywhere else for (Redacted)?

19 A. It was a difficult work to carry out. When I worked there on the  
20 2nd, when I heard that there was a place (Redacted), I

21 (Redacted)

22 (Redacted)

23 Q. You mentioned that you went to the Moi Referral Hospital with  
24 (Redacted). Did you go to any other institution to look for (Redacted)

25 (Redacted)

26

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1 A. Yes. We went to mortuary. It was very difficult work to carry  
2 out to mortuary. In the morgue it was very difficult (Redacted).  
3 There were bodies there and we put up a sign on which was written  
4 "Kalenjin" or "Kikuyu."

5 Q. The bodies of Kalenjin and Kikuyu, were they intermingled or were  
6 they separate?

7 A. They were separate. There was a sign in wood in the form of a  
8 cross. We wrote "Kalenjin" on it and we did that for each group, we  
9 wrote "Kalenjin" or "Kikuyu." That was difficult work that we carried  
10 out. If you imagined (Redacted) could be among these bodies and  
11 there is nobody who is helping you, you're asked yourself to carry out  
12 the task of searching (Redacted) yourself. It's very difficult.

13 Q. I can imagine it must have been very difficult. Can you describe  
14 these bodies, where were they? Were they on beds? On tables? On the  
15 ground?

16 MR KHAN: Can I just say if it helps, there's no dispute there  
17 were bodies there. It's my learned friend to decide if this will make  
18 the witness uncomfortable. There's no dispute bodies were there.

19 PRESIDING JUDGE EBOE-OSUJI: I was actually going to ask that  
20 question of you.

21 MR STEYNBERG: Thank you, your Honours. I will move on then.

22 PRESIDING JUDGE EBOE-OSUJI: Before you move on so that the  
23 record is clear in the story, we've heard references, the expressions  
24 even you used and the witness used, (Redacted)  
25 (Redacted)

26

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 THE WITNESS: (Interpretation) (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

9 (Redacted)

10 (Redacted)

11 THE WITNESS: (Interpretation) Yes.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR STEYNBERG:

14 Q. How were you able to distinguish the Kikuyu bodies from the  
15 Kalenjin bodies in the morgue?

16 A. I told you that there was a plank on which the word "Kalenjin"  
17 was written and another bearing the word "Kikuyu." So it was not easy to  
18 identify one's brother, so we had to turn those bodies over. And since  
19 those signs were put up Kalenjin here and Kikuyu there, one had to find  
20 out where the Kikuyus and the Kalenjins were. But what happened in the  
21 end was that we found that some young people had paint on their toes.

22 Those were the Kalenjins. The Kikuyus did not have any such sign.

23 Q. Please describe the paint on the toes of the Kalenjin that you  
24 observed.

25 A. There was red paint, red paint, on the last toe.

26

Witness: P-0536 (Resumed) (Private Session)  
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1 Q. Would that be the big toe or the little toe?

2 A. On the little, the little toe of the foot.

3 MR STEYNBERG: Your Honour, this may all sound a bit strange, but  
4 the significance will become apparent in due course.

5 Q. At this stage I'm going to ask you to identify one further video.  
6 The EVD number is KEN-OTP-0080-0731. And I'll ask that it be played from  
7 time-stamp 21:30 to 24:55. Again, no sound is necessary.

8 (Viewing of the video excerpt KEN-OTP-0080-0731)

9 MR STEYNBERG: Court officer, it seems to stop. I asked that you  
10 play to 24:55, please.

11 (Viewing of the video excerpt KEN-OTP-0080-0731)

12 MR STEYNBERG: Thank you. It may be stopped now.

13 Q. Madam Witness, did you see the video?

14 A. Yes, I did.

15 Q. It depicts the scenes filmed inside some building. Can you  
16 identify for the Chamber where that film is taken?

17 A. That is the church where we sought refuge. It is known as the  
18 Eldoret cathedral.

19 Q. Now, we see in the video a number of people inside the church,  
20 people sleeping on the ground. What we don't see is scenes outside the  
21 church, outside the cathedral. Can you confirm whether besides the  
22 people inside there were also -- were there or were there not also people  
23 staying outside the cathedral?

24 A. Yes. There were so many of us that the cathedral was too small  
25 to hold all of us. So most of the people slept outside.

26

Witness: P-0536 (Resumed) (Private Session)  
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1 Q. And on the face of the video there purports to be a date recorded  
2 of the 1 of January 2008. Now, I know you didn't take this video, but  
3 from your observations when you arrived at the cathedral on that day, the  
4 1 of January 2008, can you comment on the correctness of that date?

5 A. I do not know. You see, I was not aware that there was any  
6 filming going on. In any event, I arrived on the 1st.

7 Q. When you arrived on the 1st, the scenes which you saw, can you  
8 compare those to what you've now seen on this video?

9 A. Yes, yes. They do resemble the images that we see because that  
10 is where we were all assembled.

11 MR STEYNBERG: Your Honour, may I propose then that this be  
12 entered as the following Prosecution exhibit? I believe it will be  
13 number 4, Exhibit 4.

14 PRESIDING JUDGE EBOE-OSUJI: Any objection?

15 MR FAAL: Your Honour, we are not objecting really to the video  
16 in the sense that it depicts images of what may have taken place at the  
17 Eldoret cathedral, but, your Honours, we dispute this date because it  
18 could become relevant later. But at least what we can accept for now is  
19 that indeed these scenes depict what happened at the Eldoret cathedral --  
20 at the Eldoret cathedral during the time of the PEV. The only issue here  
21 with us is the date. Thank you.

22 MR KIGEN-KATWA: I will not object, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: The video will be marked as the  
24 next -- will be admitted into evidence and marked as the next in the  
25 series. That would be colloquially Prosecution Exhibit 4.

26

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1 THE COURT OFFICER: Yes, Mr President. If I may, this will be  
2 Exhibit 4 that would correspond to KEN-OTP-0080-0731 which will be marked  
3 as confidential, and it should be noted that the video excerpts that were  
4 shown to the witness were 21:30 to 24:55. In another note, in order to  
5 rectify what was mentioned at page 32, lines 15 to 17, of the realtime  
6 transcript, the Exhibit 2 which corresponds to EVD-T-OTP-00002 will be  
7 attributed to the second sketch annotated by the witness. So it will be  
8 Exhibit 2 that will be marked as -- with that EVD-T-OTP reference. Thank  
9 you.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR STEYNBERG:

12 Q. Thank you, Madam Witness. Before we move on from the Eldoret  
13 cathedral. Can you tell the Chamber did you feel secure and safe while  
14 you were staying at that cathedral or were there any security concerns?

15 A. Under those circumstances we expected anything, that anything  
16 could happen. We may have survived just like we may have died, and  
17 anyone could have killed us. You see, although I am still alive, I can  
18 say that at that time we did not have any hopes of living.

19 Q. All right. And the final video I would like to show you, please.

20 MR STEYNBERG: Could I ask to show the witness the video  
21 KEN-OTP-0026-4599. It's a short video-clip from time-stamp 2:30 to 2:45.

22 (Viewing of video excerpt KEN-OTP-0026-4599)

23 MR STEYNBERG: Thank you.

24 Q. Madam Witness, can you identify the scene showed on that video?

25 A. This is at the Eldoret showgrounds to which we had been moved.  
26

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1 Q. And can you comment on the conditions there and the number of  
2 people that were staying there?

3 A. Life was difficult there. First, the Red Cross did not bring  
4 food so we had nothing to eat. Second, it is difficult to live in tents  
5 where it is extremely hot when the sun comes up and where one gets wet  
6 when the rains come down.

7 Q. And approximately how many people were together with you at the  
8 showground?

9 A. I would provide an approximation because I did not conduct a head  
10 count. What I would say is that there were more than 10.000 people  
11 there.

12 Q. And finally, can you comment on the ethnicity of the people  
13 taking refuge at the Eldoret showground?

14 A. It was Kikuyus who were there. (Redacted)  
15 (Redacted) I could not dare to call a child by a name that sounded  
16 like a Kalenjin name.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. Thank you. In the short time we have left this afternoon, I'd  
24 like to start with a different topic --

25 PRESIDING JUDGE EBOE-OSUJI: Before that you need to do something

26

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1 with the video.

2 MR STEYNBERG: I beg your pardon. It slipped by mind again, your  
3 Honours.

4 May I then ask that the short video-clip that the witness has  
5 identified as the Eldoret showground be admitted as the following  
6 exhibit, I believe it will be Prosecution Exhibit 5.

7 PRESIDING JUDGE EBOE-OSUJI: Any objections?

8 MR FAAL: No objection.

9 MR KIGEN-KATWA: None, President.

10 PRESIDING JUDGE EBOE-OSUJI: So it will be marked then in the  
11 next -- it is admitted and marked as the next in the series, I think it  
12 should be 5 as well.

13 THE COURT OFFICER: Mr President, Exhibit 5 will be marked as  
14 EVD-T-OTP-00005, which corresponds to the video KEN-OTP-0026-4599. It  
15 will be marked as confidential and the video excerpts will be from 2:30  
16 to 2:45. And Exhibit 4, just to make the correction, it will be marked  
17 as EVD-T-OTP-00004. Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

19 Do we really need to mark all of them as confidential,  
20 Prosecutor?

21 MR STEYNBERG: The -- two of these videos we played in the  
22 opening address in public session, so there's no particular  
23 confidentiality that attaches to them from the Prosecution's side.

24 PRESIDING JUDGE EBOE-OSUJI: I would expect that what is not  
25 really necessary to be kept confidential should remain available to the

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1 public, I would imagine.

2 MR STEYNBERG: We have no objection to any of the three videos  
3 being made available publicly.

4 PRESIDING JUDGE EBOE-OSUJI: So would it be then perhaps better  
5 for you to indicate up front what you would like marked confidential so  
6 that the court officer knows that and what not and that may be a better  
7 way to proceed?

8 MR STEYNBERG: Thank you, your Honour. I can do that. I think  
9 that in the normal course of things exhibits just get marked  
10 confidential, but in the interest of openness we can adopt that  
11 procedure.

12 Your Honours, I wonder whether given the -- are we proceeding  
13 until 4.30 or 4.00?

14 PRESIDING JUDGE EBOE-OSUJI: 4.00.

15 MR STEYNBERG: In that case, your Honours, 2 minutes left, I'm  
16 about to start a new subject --

17 PRESIDING JUDGE EBOE-OSUJI: I think it might be a good idea to  
18 stop here.

19 MR STEYNBERG: Thank you, your Honours.

20 PRESIDING JUDGE EBOE-OSUJI: And take it up tomorrow.

21 At 9.30 we should resume. So Court is adjourned for the day.

22 (Closed session at 3.58 p.m.)

23 THE COURT OFFICER: We are in closed session, your Honour.

24 (The witness stands down)

25 THE COURT OFFICER: All rise.

26

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1 (The hearing ends in closed session at 3.59 p.m.)