

Trial Hearing
Witness: KEN-OTP-P-0536

(Open Session)

ICC-01/09-01/11

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 and Joshua Arap
5 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 Friday, 20 September 2013
10 (The hearing starts in open session at 9.42 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 THE COURT OFFICER: Good morning. For the record, Mr President, we are in
15 open session.
16 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
17 Appearances remain the same, I take it?
18 MR STEYNBERG: Yes, your Honour, the same.
19 MR KHAN: Your Honour, with one exception that at the back we have our trial
20 support, Ms Shalini Jayaraj.
21 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa Kigen?
22 MR KIGEN-KATWA: It remains the same, Mr President.
23 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu?
24 MR NDERITU: And ours is the same.
25 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
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- 1 The testimony of Witness 536 continues today in private session. The -- as the
- 2 Chamber explained yesterday during its ruling, the witness would testify for the
- 3 remainder of her testimony in private session.
- 4 The private session is not, it needs to be explained, a secret session. The accused and
- 5 their counsel will be fully privy to all aspects of the witness's testimony. The
- 6 members of the public can see what's going on in the courtroom, but unfortunately
- 7 will be unable to hear what's going on in the courtroom, and a public redacted
- 8 version of the witness's testimony transcript will be released later so that members of
- 9 the public can see to the extent possible what the witness had testified.
- 10 The need to move her testimony into private session was necessitated by what was a
- 11 clear and deliberate effort to intimidate this witness; a veritable psychological attack
- 12 against the witness comprising attempts to expose her identity, calling her very
- 13 unkind names and directing other manner of threatening language towards her.
- 14 In these circumstances, the Chamber felt it necessary to protect the psychological
- 15 well-being of the witness pursuant to Article 68(1) of the Statute.
- 16 Prosecutor, can you give an indication of how long you anticipate -- not testimony
- 17 now, but the proposal for a public redacted version of the testimony can be done, how
- 18 long do you think that --
- 19 MR STEYNBERG: Please bear with me one minute.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 21 MR STEYNBERG: Would Tuesday next week be in order, your Honours?
- 22 PRESIDING JUDGE EBOE-OSUJI: Can you do better than that?
- 23 MR STEYNBERG: Possibly Monday.
- 24 PRESIDING JUDGE EBOE-OSUJI: Today being Friday.
- 25 MR STEYNBERG: Yes.

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1 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

2 Counsel, do you have any observations as to the lag time for the proposal of a public
3 redacted version?

4 MR KHAN: Well, your Honour, it's actually not a difficult job. The transcript is
5 done by the excellent transcribers that this Court has. It's simply a matter of
6 redactions. There are an army behind the OTP. I'm sure somebody in the back
7 room can just blank out and redact, and in fact it should be possible given that we
8 have breaks for it to be done at the end of the day to be quite honest about it, your
9 Honour, because one wants to look into next week as well.

10 So I would ask that the Prosecution organise themselves so that public redacted
11 versions are ready at the end of the day, or at the very latest the next morning; at the
12 very latest the next morning.

13 Your Honour, the other possibility is at the end of every session the Bench may wish
14 to give a synopsis themselves regarding what's transpired. Your Honour, that's the
15 first proposal.

16 On the second issue, we're not seeking to revisit the protective measures relating to
17 this witness at all, but your Honour with your leave we'd be most grateful if Mr Ruto
18 can address the Bench just for two minutes on this issue because it may well inform
19 the Bench's decisions that are currently pending. Your Honour, he hasn't spoken on
20 that issue, he will only be a couple of minutes, but in my respectful submission it
21 would add to the deliberations that have to take place.

22 PRESIDING JUDGE EBOE-OSUJI: On what issue particularly?

23 MR KHAN: Your Honour, on the issue of the impact of the closed sessions and the
24 balancing considerations that should be in mind by the Bench as we go forward.

25 So, your Honour, it'll be quite a short statement to the Bench, and your Honours you

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1 will note yesterday he has never abused the permissions that the Court has so kindly
2 granted him. So I would ask that the Bench allow the client to speak and address the
3 Bench for a limited period.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you know, we have -- the Bench has
5 been generous in allowing Mr Ruto to address the Court, but this is a matter that we
6 can perhaps rule upon already and it is not necessary to hear Mr Ruto on this one.

7 MR KHAN: Yes. Well, your Honour, the reason I raise it, it's not in relation to this
8 ruling, as I tried to make clear, but in fact the Court has been kind in the sense of
9 allowing Mr Ruto to speak, but of course he has a right even to represent himself and
10 so it's a right that cannot really be curtailed.

11 But, your Honours, my point is a little bit different. It will not be an abuse of the
12 Court's time. The Bench has a matter that is pending in which counsel made certain
13 submissions regarding the need to -- need of protective measures, and in my
14 respectful submission, given that the most -- this case most directly affects Mr Ruto
15 more than anybody else, he's the person that this case is brought against, two minutes
16 of the Court's time is a very small price to pay.

17 But, your Honours, we're in the Bench's hands.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the Bench will not allow that on this
19 occasion. Yes, Mr Ruto does have the right to self-representation. What ordinarily
20 happens is when a party is represented by counsel all representations to the Court are
21 made by counsel so we do not have duplication of representation, but in this case we
22 have allowed Mr Ruto from time to time to address the Court.

23 We'll leave it at that for now. Let's not debate the issue.

24 MR KHAN: Your Honour, I won't say more. The only clarification I will give --

25 THE INTERPRETER: Mr President, overlapping speakers.

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1 MR KHAN: -- is this arises out of something that was said yesterday to Mr Ruto.

2 Your Honour, we've seen it already in this case. Sometimes things happen overnight
3 and they are matters that should be brought to the Bench's attention. Your Honour,
4 we're in the Court's hands, but it does relate to matters and a conversation he had
5 yesterday and I think -- I thought it was matters that actually would help inform the
6 Judges' exercise of discretion in relation to an important pending matter.

7 PRESIDING JUDGE EBOE-OSUJI: We will not do that on this occasion. Thank
8 you.

9 Now, Mr Steynberg, the proposal is that - and I don't think it's an unreasonable
10 proposal - the Prosecution should be able to make best efforts to produce proposals
11 for redacted versions on the transcript at the end of the day.

12 MR STEYNBERG: Your Honours, I think my learned friend's estimation that there
13 are an army of backroom workers in the OTP is rather misplaced. I can confirm that
14 there is no such army, certainly not available to this team.

15 Could I ask that at least it wait until the following morning? It may require working
16 late into the night and, apart from anything else, I'm the person ultimately responsible
17 for these. I would be reluctant to let them go out before I had at least had a chance to
18 cast my own eye over them.

19 PRESIDING JUDGE EBOE-OSUJI: So you would make best efforts to propose
20 redacted -- public redacted versions the next morning after the testimony?

21 MR STEYNBERG: As the Court pleases.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, I think we can accept that?

23 MR KHAN: Yes, your Honour.

24 Your Honour, just one matter, with your leave, and please indulge me. Can I just be
25 very brief? The matter that I wish to raise is that Mr Ruto spoke yesterday to his

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1 mother, who's 80 years of age. She doesn't know English, she doesn't understand
2 English and of course she has been traumatised by the allegations against her son and,
3 to be honest with you, for that generation it's all rather confusing.
4 Now, there's been attempts to explain what's happened. She's been following
5 proceedings and then suddenly the shutters come down and she doesn't know what's
6 happening.
7 Now, there are -- there is a human face. It's not -- we're not mechanical. It's not a
8 mechanical process here. There is Her Excellency, Mrs Ruto, and a daughter in court.
9 There's a family back home, a recently graduated lawyer - a whole family - and
10 they're all in the dark.
11 Your Honour, just in relation to future matters, Mr Ruto has endured being publicly
12 named by Ocampo, a summons and very serious allegations being made. In the
13 exercise of discretion, your Honours, I would ask you to consider that there is a real
14 interest in Mr Ruto having the allegations against him being made in public and so
15 that also the veracity of those allegations can also be tested.
16 Your Honours, life is a gift of God and we don't know how long this case will take.
17 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, I think you're really litigating the issue.
18 The point I take from you is that there are interests outside the courtroom who really
19 want to know what is being said by way of testimony. Is that not it?
20 MR KHAN: Indeed, your Honour. And also the point I was trying to say is that
21 particularly with the mother who's 80 years of age -- and, of course, Mr Ruto wants to
22 reassure his mother and that she has peace that this is a son to be proud of, not a son
23 to be ashamed of.
24 And, your Honour, a decision may be rendered whenever. It could be one year. It
25 could be more. As the trial unfolds every person observing can make their own

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1 assessment regarding the veracity of the case, and your Honour that's the only matter
2 that I would wish the Bench to consider when deciding the pending application of the
3 Prosecution.

4 PRESIDING JUDGE EBOE-OSUJI: Pending application?

5 MR KHAN: Your Honour, protection - uniform protection - as we go forward.

6 PRESIDING JUDGE EBOE-OSUJI: Oh, fair enough. Okay, thank you.

7 Thank you, Mr Khan, for that. It's for that reason that we're making -- putting the
8 extra burden on the Prosecution to do their best to make sure that a public redacted
9 version is released as quickly as we can by way of their proposal and then the
10 Chamber will of course --

11 MR KHAN: I'm most grateful, but your Honours in relation to that matter a lot of
12 people that are interested don't know English or French. Transcripts are produced
13 only in those two official languages, and the advantage if the Court wishes to give a
14 summary is the court staff - the court interpreters - would be able to translate that into
15 a language that the public of Kenya understand. And, your Honour, that's why the
16 Bench may wish to consider that as a supplement to the full redacted transcripts.
17 That's my only point.

18 PRESIDING JUDGE EBOE-OSUJI: That seems to me a useful proposal that the
19 Chamber will consider.

20 MR KHAN: I'm most grateful.

21 PRESIDING JUDGE EBOE-OSUJI: We will consider that and see if there's any
22 particular difficulty in doing that.

23 MR KHAN: I'm grateful.

24 PRESIDING JUDGE EBOE-OSUJI: I wouldn't think there is, but we would need to --

25 MR KHAN: Your Honour, can I just say, if it helps, I do know that other Judges, for

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1 example Judge Parker in the ICTY, whenever we went into closed session when we
2 came back he would give a quick summary of what had transpired, just so that the
3 public would even at least get a taste of what had taken place. I'm grateful.

4 PRESIDING JUDGE EBOE-OSUJI: We will return to you on that. As I said, it
5 seems a reasonable proposal.

6 So, on that note, we will now bring the -- go into -- Mr Kigen-Katwa rose to speak.

7 MR KIGEN-KATWA: Mr President, the first thing I wish to say is I would very
8 kindly request also for audience on issues as substantial as the ones which have just
9 been dealt with in future in -- when the position of the Defence is being invited,
10 kindly, Mr President.

11 Mr President, the issue has been dealt with as between the Prosecution and the first
12 accused's Defence and agreement has been arrived at that transcript -- redacted
13 transcripts can be available the following morning and that's acceptable to my side.
14 We would only pray on our part for a rider that the Court maintains an amount of
15 supervision of the redactions done by the Prosecution so that they do not do it on
16 their own in a manner that eventually conceals material that do not cause any
17 prejudice to the witnesses and to their families.

18 Mr President, my client had also wished to have a word and I don't know if you could
19 afford him an opportunity? I notice, Mr President, that the Chamber is very much
20 alive to the concerns of the accused and, much as a ruling had been made yesterday,
21 the fact that this morning the Court needed to clarify that there is a distinction
22 between closed session and conducting proceedings in secrecy is -- just underlines the
23 importance with which this issue is -- the importance this Chamber attaches to it.
24 My client was very anxious to say something about it and I don't know if,
25 Mr President and your Honours, you would indulge my client to say something on

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1 that issue?

2 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, I'm sure you can anticipate
3 what the answer to that would be.

4 MR KIGEN-KATWA: I could. I just didn't want to presume. I presume you do
5 not intend to allow him to.

6 Mr President, then allow me just to say his concerns. Mr President, the first
7 understanding we have - and I think it is accurate - is that the protective measures
8 that have been given to have the proceedings in respect to the -- this witness does not
9 necessarily apply to the other witnesses. We -- however, we'd pray that the
10 proceedings are not conducted in a way -- as it were, Mr President, it is known that
11 the allegations made against my client have been treated confidentially all along, to
12 the extent that much as he may be aware of the case against him, he's not allowed to
13 tell his family members, he's not allowed to tell his acquaintances, he's not allowed to
14 tell anybody else.

15 When these proceedings come to a point where they are also conducted in a closed
16 session, then it means everybody who is aware that he is on trial doesn't get to know
17 what are the allegations against him.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, we have not come to the point
19 of making a ruling on the protective measure of any other witness to the extent that
20 we've done in the revised ruling on this particular witness. As we were at pains to
21 explain, there were special circumstances attending this witness's appearance in court
22 in the course of her testimony that necessitated the revision of the protective
23 measures in relation to her. When we get to other witnesses, we will see what the
24 situation is. It is hoped that there will not be a repeat of what happened to this first
25 witness. That's all that can be said now, that in the ruling of the Chamber will then

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1 depend on the circumstances presented in the future, but we're not there yet.

2 MR KIGEN-KATWA: I'm obliged, Mr President. Could I just say then in three
3 sentences his concerns.

4 The first thing, Mr President, is that with all the words I can use, I am unable to
5 describe the pain he's going through in the manner of the closed proceedings that
6 have the effect of suggesting that he has absolutely no rights, Mr President, in terms
7 of having his situation understood by people who matter to him, and he would have
8 really wished that these proceedings are conducted in a situation that other people
9 can have audience. He prays that in the balancing act that this Court applies to
10 protective measures for the remainder of the witnesses, his concerns also be taken on
11 board, including his psychological concerns. Thank you, Mr President and your
12 Honours.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And I apologise to you
14 for not recognising you earlier. That was a clear omission, Mr Kigen-Katwa.

15 MR KIGEN-KATWA: I'm obliged, Mr President and your Honours.

16 MR STEYNBERG: Your Honours, if that concludes all preliminary matters, may I
17 request that the witness be called.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. Yes, indeed.

19 Court officer, we will now go into closed session to bring in the witness and then
20 private session thereafter for her testimony.

21 (Closed session at 10.03 a.m.) * Reclassified into open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 The witness will now be brought in.

25 MR STEYNBERG: Your Honour, perhaps while the witness is coming in, I can just

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1 update your Honours on a request you made to the Prosecution yesterday, and that
2 was to place onto the record the various internet articles which I quoted from on
3 Wednesday morning. They are in the process of being registered, and as soon as
4 they are, they will be ready to be produced. May I ask your Honour's guidance as to
5 the manner of production. Is it sufficient that I produce a hard copy of them for
6 them to be registered in the record, or would an electronic copy be preferable?

7 Perhaps the court officer could provide some guidance on that.

8 PRESIDING JUDGE EBOE-OSUJI: Court officer, what is more convenient? I am
9 caught between the modern age and the past one.

10 THE COURT OFFICER: Your Honour, we can either -- they can either provide these
11 documents by way of filings so that it be registered in the case record as a normal
12 filing, with annexes of all those items that need to be registered, or, if they are going
13 to be used as evidence at a later stage, then it would be better to upload it in the
14 eCourt portal and following the normal procedure as stated in the eCourt protocol
15 and then those items will be released to parties and participants and the Chamber.

16 MR STEYNBERG: Thank you, your Honour, that was very helpful. I don't intend
17 to use this as evidence. I think we will submit a filing in this regard.

18 PRESIDING JUDGE EBOE-OSUJI: Also by way of update, Mr Khan, yesterday you
19 raised the issue of relay interpretation. The matter has been explored and we
20 understand that for now it will remain as it is. It is my understanding that we find
21 ourselves in the situation of the Court using the resources it already has. I
22 understand that in the other cases, Lubanga and others, that interpreters had been
23 hired who could speak Swahili and French but not as good with English. So that
24 Swahili is being used for our purposes and then being piped into the English booth,
25 who then give us the interpretation. So it isn't on the cards yet to quickly recruit

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1 interpreters who would do direct interpretation.

2 MR KHAN: Your Honour, I'm most grateful to your Honours, the whole Bench, for
3 making these inquiries. Of course there are these budgetary realities and
4 recruitment difficulties, but it may be in order for the -- if the Trial Chamber thinks it
5 appropriate, to suggest to the Registrar at the very least that, given that there are two
6 cases, case 1 and case 2, and this is an important case -- these are important cases, it
7 may not be a bad idea - it may be prudent, in fact - to recruit specialised
8 English-Swahili interpreters so that proceedings in both cases that the Court are
9 handling have the very best interpretation so that counsel's question can be best
10 understood by the witness and the witness's questions can be best understood by the
11 Bench.

12 PRESIDING JUDGE EBOE-OSUJI: Noted. Suggestion noted.

13 MR KIGEN-KATWA: I'm grateful, your Honour.

14 (The witness enters the courtroom)

15 WITNESS: KEN-OTP-P-0536 (On former oath)

16 (The witness speaks Swahili)

17 PRESIDING JUDGE EBOE-OSUJI: Court officer, with the witness in court, we will
18 now move into private session.

19 (Private session at 10.08 a.m.) * Reclassified into open session

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

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

22 Madam, welcome back to the Court, and we are continuing with your testimony
23 today, and this is also to tell you that we are still in private session. That means you
24 are free -- you can speak freely of what you know without worrying about revealing
25 your identity, because it's only people who are in the courtroom that can hear what

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1 you are saying and not people outside the courtroom.

2 MR STEYNBERG: Thank you, your Honours.

3 QUESTIONED BY MR STEYNBERG: (Continuing)

4 Q. Madam Witness, before we start, if I can just please remind you to remember
5 the interpreters when you answer questions and to take breaks during longer answers
6 so that they can catch up with what you're saying and we can all understand.

7 Do you understand?

8 A. Yes.

9 Q. Thank you. You told the Chamber yesterday how you had led --

10 MR FAAL: Perhaps -- your Honours, I apologise for interjecting at this stage. I just
11 wanted to say that perhaps the witness be reminded that she is still under oath while
12 she continues her testimony. Thank you.

13 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

14 Madam, you're still under oath.

15 MR STEYNBERG: Thank you, your Honour.

16 Q. Yesterday you told the Chamber how you took refuge first at the Eldoret
17 cathedral and later at the Eldoret showgrounds. Can you please tell the Chamber
18 whether during that time you made any statements to any authorities regarding the
19 events of 1 January 2008.

20 A. I interacted with several people. I remember that there were journalists, also
21 (Redacted). There were many people.

22 Q. (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 A. (Redacted)

3 Q. And did you --

4 THE INTERPRETER: From the Kiswahili interpreter: Can the witness kindly
5 repeat the last part of her answer?

6 MR STEYNBERG:

7 Q. Could you please repeat the last part of your answer?

8 A. Yes. (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 THE INTERPRETER: From the Kiswahili booth: The witness did not complete
19 her sentence.

20 MR STEYNBERG:

21 Q. Please continue.

22 A. I had not understood well. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 20 Q. Thank you. (Redacted)
- 21 (Redacted)
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11 (Redacted)

12 (Redacted)

13 Q. All right. I intend to shortly move on to matters that transpired before the
14 Kiambaa attack, but there's one issue from the evidence yesterday I'd like to clarify,
15 please.

16 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, I will ask everyone to please
17 switch off their phones. If any mobile phones were brought into the courtroom
18 please switch them off, and there will be no more mobile phones in the courtroom
19 when the Court is in session. From now on, the security will have to -- please don't
20 bring mobile phones in the courtroom.

21 That's all. Thanks.

22 MR KHAN: Your Honour, I do apologise.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Khan.

24 MR STEYNBERG: Thank you, your Honour.

25 Q. Now, yesterday when I was questioning you about the sketch of the Kiambaa

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1 church - your sketch of the Kiambaa church - I asked you about two figures that you'd
2 drawn with the names "Emmanuel" and "Kimei" written under them. Can you recall
3 that?

4 A. Yes, I do remember.

5 Q. The answer which is recorded is, and I'll quote it for accuracy's sake,
6 "Well ..." -- and for the record this is from page 37 of the edited transcript of 19
7 September, going on to page 38. "Well, I'll go back a bit. Chamalan was there.
8 When I came out he came towards this place, and he was the person who ordered the
9 young people to open the door and to make it possible for the women and children to
10 get out."

11 A. What I said is that Chamalan did not move from that place. It is rather
12 Emmanuel who moved and ordered the young people to open the door so that the
13 women and children could get out. I did not say that Chamalan had moved away
14 from his location.

15 Q. Thank you. I think that clarifies it.

16 Now, Madam Witness, you mentioned in the earlier part of your testimony back on
17 Tuesday that (Redacted)
18 (Redacted)
19 (Redacted)

20 Q. Please tell us a little bit more about Mark Too. Who was he, what sort of
21 business was he in, what was his financial standing and so forth?

22 A. Mark Too was a farmer. He had a lot of cattle and sheep, cows, and he also
23 owned some lorries.

24 Q. Can you comment on his financial means?

25 A. What I can say simply is that he is a rich man, but I'm not able to tell you how

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1 much money he had in his accounts. All I can say is that he was the richest man in
2 our area.

3 Q. And had Mr Too ever held any political or government offices?

4 A. Let me back-track a little bit. He was a parliamentarian, a member of
5 parliament, and he was the Chairman of Lonrho, East Africa.

6 Q. When approximately was he a member of parliament?

7 A. What I can say is that it was in the '90s. In the '90s. I can't be more specific
8 than that because, you see, at the time we did not pay attention to those types of
9 details in relation to a specific period because we didn't expect to be questioned on
10 such matters.

11 Q. I understand. Can you tell the Court which party he was an MP for?

12 A. Can you please kindly explain your question to me? Are you talking about his
13 constituency, or the political party to which he belonged?

14 Q. Firstly the political party, but if you can clarify the constituency too that would
15 be useful?

16 A. At the time, there were not many political parties. He was a member of KANU
17 and he came from the Nandi constituency.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 the Court anything about the relationship and the history between Mark Too and
2 Mr Ruto?

3 A. When the -- when Nyayo was in power, those people were friends under
4 Nyayo's regime.

5 Q. And approximately when was that, what year?

6 A. I have told you that it was not in my habit to take down dates, but it was in the
7 '90s - in the '90s - at the time when Mark's mother died. At that time I realised that
8 or I saw that Mr Ruto was very concerned about that situation.

9 Q. Why do you say that?

10 A. I say so because he is the one who was in charge of the funeral, or the burial.

11 Q. Can you just please clarify for the record, when you say "he," who are you
12 referring to?

13 A. I am referring to Mr Ruto.

14 Q. And just for clarity, the person you've identified as Mr Ruto, can you be -- I'm
15 sure there are a lot of Mr Rutos. Can you be more specific about who you are talking
16 about.

17 A. He is seated in this courtroom behind the lady.

18 MR STEYNBERG: May the record reflect that the witness points towards accused
19 number 1?

20 PRESIDING JUDGE EBOE-OSUJI: The record will so reflect.

21 MR STEYNBERG:

22 Q. Was there ever an occasion, to your knowledge, where the relationship between
23 Mr Ruto, the accused, and Mr Too, Mark Too, deteriorated?

24 MR FAAL: Your Honour, we object to that question. I cannot recall the witness
25 suggesting that there was a relationship and I cannot recall the witness saying that a

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1 relationship has deteriorated. This question is definitely leading.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, are you maintaining the objection?

3 MR FAAL: Your Honour, we withdraw it, just to ensure smooth

4 examination-in-chief. Thank you.

5 MR STEYNBERG:

6 Q. Perhaps I should repeat or clarify. You did tell the Court earlier that Mr Ruto

7 and Mr Mark Too were friends. Did that situation ever change?

8 A. In relation to the 1992 conflict, Mr Mark Too saved or salvaged some people and
9 hosted them in his home; they were Kikuyu.

10 Q. Can you please tell us a bit more about this 1992 conflict. What was this all
11 about?

12 A. Mark Too hid Kikuyus in his home.

13 Q. What I'd like to get some more details on is what was the conflict, what caused
14 the conflict and who was the conflict between.

15 A. The conflict was between the Kikuyus and the Kalenjin. Houses were
16 destroyed and at that time (Redacted).

17 Q. And what triggered this conflict between the Kikuyu and the Kalenjin? What
18 were they fighting over?

19 A. Whenever there are elections, conflicts arise between us, between the Kalenjin
20 and the Kikuyus.

21 Q. So as a result -- well, what then led Mark Too to host the Kikuyu at his farm?

22 A. We thought that he was (Redacted) who had a good human heart.

23 Q. Yes. But why was it necessary for people to go to Mark Too's farm, Kikuyu
24 people?

25 A. At the time he was a member of parliament and that is why (Redacted)

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1 (Redacted). We did not at any time whatsoever think that we would experience any
2 clashes of that nature, and we believed that he was somebody who had experience
3 (Redacted)

4 THE INTERPRETER: The interpreter corrects: Somebody who had compassion,
5 who was compassionate.

6 MR STEYNBERG:

7 Q. All right. Now, you started giving this detail in response to the question
8 relating to the friendship between Mr Ruto and Mr Too and whether the situation
9 changed. Can you please continue with your answer?

10 A. Their relationship deteriorated at some point because at some point a lorry had
11 come with some cattle.

12 THE INTERPRETER: From the Swahili booth: Could the witness please be asked
13 to repeat her answer for clarity? Thank you.

14 MR STEYNBERG:

15 Q. Could you just please repeat your answer for the interpreters?

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted) some cows had been brought.

20 Q. All right. Let's just go back and clarify. You started telling the Chamber
21 about cows that were brought or cattle that were brought on a lorry. Can you just
22 clarify whose cattle they were and why they were brought to Mark Too's farm?

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we are now at 11 and it's time for
17 the morning break of 30 minutes. How much longer do you --

18 MR STEYNBERG: As soon as the last question is interpreted, I think we can take the
19 break.

20 PRESIDING JUDGE EBOE-OSUJI: Very well.

21 MR STEYNBERG: Sorry, I see that there's an answer on the transcript but it didn't
22 come through in my earphones. May I just read it quickly?

23 Perhaps this would be an appropriate time to take the break? I can read it during the
24 break. Thank you.

25 MR KHAN: Your Honour, we heard the answer that was given, if that's any

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1 assistance. It was quite clear.

2 PRESIDING JUDGE EBOE-OSUJI: At this stage we will rise, but after the witness
3 has been escorted from the courtroom. So if we can lower the blinds and escort the
4 witness out, then the Court will rise.

5 (Closed session at 11.02 a.m.) * Reclassified into open session

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 The witness will be escorted out of the courtroom now.

9 (The witness stands down)

10 PRESIDING JUDGE EBOE-OSUJI: The Court will now rise.

11 THE COURT OFFICER: All rise.

12 (Recess taken at 11.03 a.m.)

13 (Upon resuming in open session at 11.50 a.m.)

14 THE COURT USHER: All rise.

15 Please be seated.

16 THE COURT OFFICER: Your Honour, for the record we are in open session.

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

18 The Chamber wishes to revisit the matter of proposals - the protocol for
19 proposals - for the public redacted version of the transcripts of testimonies in private
20 session.

21 In the morning we indicated that the Prosecution for purposes of this witness would
22 have to propose redactions to be done the following day, and when Mr Kigen-Katwa
23 made his submissions he requested that the matter not be left to the discretion of the
24 Prosecution alone.

25 In light of that, the Chamber considers that it will be appropriate in the normal course

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1 to -- appropriate to follow the normal course of resolving matters such as this. It will
2 be appropriate then for the calling party to make the proposal, then communicate it to
3 opposing parties for their reaction and the Chamber to make a ruling thereafter. So
4 in this case we've indicated that the Prosecution is to notify -- make the proposal
5 within 24 hours following the edited version of the confidential transcript having
6 been notified.

7 The question now is: How long would it take - should we take - for the opposing
8 party, the Defence in this case, to communicate their reaction as to whether or not
9 they agree with the Prosecutor's proposal, if we can take quick two-minute
10 submissions on that?

11 Mr Kigen-Katwa?

12 MR KIGEN-KATWA: Within a day, Mr President, we should be able to have
13 responded on our part.

14 PRESIDING JUDGE EBOE-OSUJI: Another 24 hours?

15 MR KIGEN-KATWA: Yes, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

17 MR KHAN: Your Honour, if the Prosecution -- we of course want - we're going to
18 be consistent about this - these proceedings to be in the public as far as possible. If
19 the Prosecution, for example, gave us the redacted version in the morning, by
20 lunchtime we would endeavour to get back to the Prosecution and so that hopefully it
21 could be released, you know, with the Court's --

22 PRESIDING JUDGE EBOE-OSUJI: By the end of the day.

23 MR KHAN: Indeed.

24 PRESIDING JUDGE EBOE-OSUJI: Do we have any difficulty with that proposal?

25 MR STEYNBERG: Not at all, your Honour. If I may, however, just seek one

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1 clarification? The time period of 24 hours, would that include the weekend or
2 exclude the weekend? So if we are testifying for Friday's session, would Monday
3 morning be fine or would it be then Saturday morning?

4 MR KHAN: Your Honour, we would ask Saturday. We're happy to do that. And
5 perhaps, your Honour, it's a matter for the Court, we're not trying to usurp any
6 functions, but it may be the Court may agree that if both parties are in agreement then
7 the Prosecution can be authorised to -- or through the usual manner, I suppose, that
8 this can just be put into the public domain. Maybe the Bench only needs to be
9 troubled in the event that there's a disagreement between us, but your Honours
10 whatever the Bench decides we're happy with.

11 But I think regarding the question if it's a Friday, they can give us it, you know,
12 on -- end of Friday, or they can give it us Saturday morning and we will respond on
13 Saturday. Then, if there is a disagreement, of course the Bench can look at it first
14 thing on Monday. If there's not, it can be posted, you know, without delay.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, I notice a difference between
16 your position and that of Mr Khan. You said you would need another 24 hours, but
17 Mr Khan has a shorter reaction time.

18 MR KIGEN-KATWA: We could make ours twelve hours, Mr President. We are
19 on legal aid also and so we have limited resources.

20 But, apart from that, I wish to say on our part we would like the time within which
21 the Prosecution is to react to apply regardless of weekends and regardless of holidays.

22 We would really like that to happen regardless of that.

23 And probably to hasten the redactions, on our part we are prepared to
24 attempt -- should I slow down, Mr President?

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

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1 MR KIGEN-KATWA: I'm obliged. On our part we are prepared to attempt an
2 agreement with the Prosecution on the perimeters of the redaction, so that they do not
3 need -- so that there is a criteria for determination and we do not mind the criteria
4 that was applied in the redaction of the statements that were provided for us.

5 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, about on the question of the weekend
6 and holidays?

7 MR STEYNBERG: Your Honours, the -- I'm looking at the calculation of time limits
8 in Regulation 33 of the Regulations of the Court, which reads as follows:

9 "For the purposes of any proceedings before this Court, time shall be calculated as
10 follows. Days shall be understood as calendar days. Days for notification of a
11 document, decision or orders shall not be counted as part of the time limit. Where
12 the day of notification is a Friday, or the day before an official holiday of the Court,
13 time limits shall not begin to run until the next working day of the Court."

14 Now, this is dealing with filings and not necessarily the sort of matters which the
15 Chamber has before it, but -- of course the Prosecution can and does work over the
16 weekend, but my submission is it should not be part of the ordinary -- ordinary duties
17 that the Prosecution is required to do that it should have to do it every weekend.

18 We are talking about a public redacted version here, it doesn't affect my learned
19 friends' preparations in any way and my submission is that if the matter -- when we
20 are -- when we are talking about a five-day period that's one thing to include a
21 weekend, but when you're talking about a 24-hour period, your Honours, and we
22 receive the edited transcript normally at about 5.20 or 5.30 on a Friday afternoon, that
23 there should be no reason why that cannot be delivered on Monday morning.

24 MR KHAN: Your Honour, can I just say that earlier I suggested that, whether it's an
25 army or whether it's a hive of activity, certainly the Assembly of State Parties have

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1 given sufficient budget to the Prosecution that there's many more people in the
2 engine of that office than are present in this courtroom and perhaps one of them on a
3 Friday, when we finish at 4 o'clock - we finish at 4 o'clock -- during the day they can
4 follow the transcript and decide which bits needed to be edited out and then it's a
5 very simple job. We have software and you redact it out. You don't need to leave it
6 all to the last moment. Somebody can follow the proceedings.

7 Your Honour, it's not only a question of prejudice towards us, of course we are
8 following the full discussions and the full evidence, but there is of course not only
9 public interest by dint of the client's occupation as Deputy Head of State. We also
10 have this very important matter that we want as much evidence as possible to be
11 heard so that people that know the truth may be able to come forward and contact the
12 Defence before evidence is completed that may allow us to put questions, or put
13 information, that may assist the Bench properly to determine whether or not
14 witnesses are telling the truth, in whole or in part, or whether or not they're not
15 telling the truth.

16 And, your Honour, the publicity of proceedings is directly linked to the ability of the
17 Defence to test the evidence, and that's the only matter that we raise and that's why
18 we do have an interest in that getting into the public domain as soon as possible.

19 For example, if the Prosecution did this by the end of Friday, for example, it may
20 be -- we don't know how this would be broadcast, how that would be relayed. If the
21 Bench gives a summary, that may of course help, but, your Honours, if we have to
22 cross-examine on a Monday or a Tuesday, from experience we all know from public
23 proceedings, people come up and say, "Oh, I know about this person. This person
24 wasn't there, they were here." And that is directly relevant to us in our attempts at
25 cross-examination so that your Honours may uncover the truth rather than a simple

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1 narrative. Sometimes it may be truthful, sometimes which may be coached, and
2 sometimes which may be a mix of both.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, I think we've got to a point, but the
4 rule about public holidays and weekends are usually by convention in other places.
5 Normally, when you have a short period of time, weekends and public holidays do
6 not count. I mean, it's not only in this Court that we have that. And the thing then
7 is that weekends and public holidays have the effect of shrinking time, so it loops
8 over to the next business day.

9 MR KHAN: Your Honour, indeed, Regulation 33 --

10 PRESIDING JUDGE EBOE-OSUJI: It doesn't create any prejudice in that sense, does
11 it?

12 MR KHAN: Well, your Honour, as my learned friend indicated, Regulation 33 deals
13 with filings. It doesn't deal with inter partes communication. What we are
14 proposing is the inter partes communication takes place within these time limits. Of
15 course, the filing or the publication will be subject to the order of the Court and it
16 would allow, for example -- if it's done on Friday, it can be released on Friday before
17 the end of business hours - we finish at four - if work's been done during the day. If
18 it hasn't been done during the day, it allows it to be disseminated first thing on
19 Monday. But, your Honour, if we don't even get the material before Monday, it's
20 going to mean probably Tuesday or Wednesday if there's a dispute before and the
21 witness may not be here then.

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough. I think we've heard enough on
23 that. We will render our ruling on the matter by the end of today's proceedings.

24 MR STEYNBERG: Thank you, your Honours. I wonder if I could not raise a
25 related issue? It also relates to the interpretation of the 24-hour -- a 24-hour

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1 time-period which the Chamber has established and that relates to the provision by
2 opposing counsel for documents that they intend to use for cross-examination. Now,
3 depending on how many other delays we have today, it may be that the witness will
4 be cross-examined on Monday.

5 What I would like clarity on, please, your Honours, is whether that means the
6 disclosure by the Defence should only be on Sunday morning or whether it should be
7 before the weekend? I wonder if your Honours could clarify that?

8 PRESIDING JUDGE EBOE-OSUJI: I'm not sure the cross-examination will start
9 immediately upon your resting because it seems that if the -- it depends on the ruling
10 the Chamber makes as to Mr Nderitu examining the witness, doesn't it?

11 MR STEYNBERG: It may be, but I anticipate that this issue will arise again during
12 the course of the trial - it's going to be a long trial - and all I seek is clarity in this
13 respect, your Honours.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Khan was standing up.

15 MR KHAN: Your Honour, we will respect of course the rulings of the Court, but my
16 learned friend of course sent certain correspondence to the Chamber yesterday that
17 was inter partes. The ruling, as we understand it, of the Court regarding 24 hours is
18 not to give the Prosecution before they finish their examination-in-chief Defence
19 disclosure so that they can mold their testimony.

20 Your Honour, we took the liberty of speaking to my learned friend for the victims
21 yesterday and he indicated that were the Bench to give leave for him to ask questions,
22 he would be in the region of two to three hours. Your Honours, if the Prosecution
23 finish today, and even that's not certain - the way things are going, it's rather -- things
24 are moving a little bit slowly - but, your Honour, if the Prosecution finish today, I'm
25 prepared to give on this occasion disclosure today. But, your Honour, the rule is

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1 clear, it's 24 hours, and ordinarily we say the rule must be complied with as the Bench
2 indicated. Otherwise, your Honour, there is this real risk that we face. There is this
3 real risk that we face.

4 If one looks at the chronology, the way that examination-in-chief has been dealt with,
5 starting with the first and then going back in time, there's a real risk, and every
6 experienced practitioner knows it, and that may have disclosed itself with the vigour
7 with which my learned friend sought Defence cross-examination material yesterday,
8 that the Prosecution will not use it in the right way but will use it to inform
9 examination-in-chief which is going to hamper the Defence ability to test this case
10 properly and is, in our respectful submission, not the purpose that the Court rendered
11 its decision. In that regard, your Honours, it is important that -- with this witness we
12 anticipate, with the Court's leave, that the cross-examination may take two days. It
13 will be quite some questions. It may be shorter. But, your Honour, the Prosecution
14 will have ample time to look at the material before any application may be made
15 regarding the merits of any re-examination that they may wish to make.

16 Your Honour, if on a case-by-case basis the Prosecution say that they are hampered
17 legitimately in relation to a particular document or a particular line of Defence
18 cross-examination, your Honours always have the residual discretion to adjourn
19 matters to allow the Prosecution time. But, your Honours, we say that really is very
20 speculative. In the real world, with experienced counsel on the other side, that will
21 not occur.

22 Your Honour, we've all dealt with systems, whether it's the ICTR or the ICTY, where
23 the traditional manner has been that only when the Prosecution sits down and says,
24 "No further questions," the binders are passed to the other side for cross-examination.
25 Your Honour, that is the normal course. We're happy to comply with the Court

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1 order, but it must be restrictively read and not a licence for the Prosecution to get
2 advanced notice in order to change their examination-in-chief.

3 PRESIDING JUDGE EBOE-OSUJI: But for now, for present purposes --

4 MR KHAN: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: -- your undertaking is if the Prosecution rests
6 their examination-in-chief today, you will provide them with your documents --

7 MR KHAN: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: -- for cross-examination?

9 MR KHAN: Yes, today, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Why don't we leave it there for now so that when
11 we get into the more troublesome waters on this matter, we will cross that bridge
12 then.

13 MR KHAN: I'm grateful.

14 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Kigen-Katwa, do you --

15 MR KIGEN-KATWA: Other than to appreciate that you remembered to ask me, I
16 have nothing else to say.

17 PRESIDING JUDGE EBOE-OSUJI: Next time I think I'll begin with you.

18 MR STEYNBERG: Thank you, your Honours. I regret that there is one further
19 issue I need to raise which has nothing to do with -- well, it doesn't -- it's not directed
20 at my learned friends in any way, but rather at the proceedings with this witness so
21 far. And --

22 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, before -- I did not mean to
23 interrupt you. If you can rest for a minute.

24 The -- Mr Khan raised the matter of e-mail being copied to Chambers, inter partes
25 e-mail. It is the wish of the Chamber that this doesn't happen. Parties should not

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1 be copying Chambers of their inter partes communications outside of the
2 Court - inter partes communication, period - unless there's a specific request being
3 made and those sorts of communications are relevant in some material way, relevant
4 to the application being made or request being made. It does not assist for us to be
5 in the traffic, in the middle of the traffic, between counsel in their attempt to resolve
6 matters.

7 You may now proceed.

8 MR STEYNBERG: Thank you, your Honours. I take your point on that. If I may
9 just add one thing on that, that there was a specific purpose with copying the
10 Chamber on that and that was that a date or a time estimation which may have been
11 relevant to the Chamber's -- to orders to which the Chamber may have been disposed
12 to make was the purpose of that. But I won't take it any further.

13 PRESIDING JUDGE EBOE-OSUJI: There's always a purpose, but let's not -- just
14 copy Chambers when there is a request being made --

15 MR STEYNBERG: As the Chamber pleases.

16 PRESIDING JUDGE EBOE-OSUJI: -- when communications are relevant. Thank
17 you.

18 MR STEYNBERG: If I may return then to the -- hopefully the last matter that needs
19 to be raised. It relates again, I'm afraid, to the question of interpretation, and I have
20 been having great difficulty communicating, I believe, effectively with this witness
21 and I say that -- well, I raise the issue of interpretation because during the witness
22 preparation sessions, there were no communication difficulties whatsoever. This
23 issue has been raised both by my learned friend for the common legal -- for the
24 victims and by my learned friend for Mr Sang. And at this stage, if I could ask the
25 Chamber to consider two things: Firstly, whether the witness could be asked by the

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1 Chamber whether she is experiencing any difficulty understanding the interpretation,
2 because I think it's very important to know. And I've noticed during the course of
3 her evidence a number of non-responsive -- strangely non-responsive answers
4 which --

5 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, one second. Are we dealing here
6 with language difficulty or something else when you say, "difficulty communicating
7 with the witness"?

8 MR STEYNBERG: I believe that, at least to an extent, it is indeed language
9 difficulties, your Honours. And one strange, almost surreal, exchange relating to
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted). That's just one example.

16 All I'm asking at this stage in respect of the witness is that we establish, or the
17 Chamber establishes, whether or not she is experiencing any difficulties. I don't
18 know. I don't know --

19 PRESIDING JUDGE EBOE-OSUJI: Okay, one second.

20 Let's suspend that matter now because I think we're still in open session, are we not?

21 MR STEYNBERG: We are.

22 PRESIDING JUDGE EBOE-OSUJI: All right. Let's move on to something else, on
23 oral decision of the Chamber.

24 Yesterday the Chamber was seized in the afternoon of an urgent confidential request
25 for disclosure of certain information, request made by the Ruto Defence in filing

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1 number 955. It's a matter of proper classification. The Chamber is not persuaded
2 that the Legal Representative cannot be notified of this filing. Pursuant to Regulation
3 23 bis of the Regulations of the Court, the Chamber therefore hereby directs that the
4 confidential redacted version of filing number 955 be reclassified so that the Legal
5 Representative is also presented with a copy.

6 The Chamber notes that the Ruto Defence attaches six annexes to its filing. Given
7 that the Chamber's ruling is that the filing should be notified to the victims' counsel,
8 the Chamber seeks the views of the Ruto Defence as to which annexes may also be
9 notified to the victims.

10 MR KHAN: Your Honour, perhaps I can be given a few minutes. There's no -- the
11 actual confidential version the Court has ruled that it will be given to the Legal
12 Representative for the Victims. If your Honour will give me a few minutes just to go
13 through the annexures and come back at a suitable time and make submissions on
14 that point.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

16 MR KHAN: Your Honour, can I just say I think your Honour stopped my learned
17 friend for a reason, but has a redaction order been made in relation to the earlier
18 matter that was in public session?

19 PRESIDING JUDGE EBOE-OSUJI: We will be getting that.

20 MR KHAN: I'm grateful.

21 PRESIDING JUDGE EBOE-OSUJI: While Mr Khan looks at the annexes to see which
22 could be notified, the Chamber wishes also to indicate that, in light of the urgency of
23 the matter and pursuant to Regulation 34, the Chamber hereby shortens the
24 dead-lines for responses to this filing and requests that the parties be prepared to
25 present any responses they may have orally in an inter partes proceedings at the end

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1 of the hearing this afternoon.

2 Should any party consider that ex parte information is required to be submitted as
3 part of such a response, that party is directed to submit a supplementary ex parte
4 filing by the end of today as well.

5 That is the Chamber's ruling, and that of course puts Mr Khan under particular
6 pressure to indicate which of the annexes that may be withheld. Perhaps, Mr Khan,
7 it might be better if you did that as part of the -- if you have any reason to withhold
8 particular ex parte filings, you may do that in -- as part of your written response.

9 MR KHAN: I'm grateful. And, your Honours, in relation to the earlier request, it
10 seems that with the assistance of my learned friend, Ms Alagendra, that there are only
11 three annexures that were classified confidential that the Prosecution were given
12 access to. They relate to Prosecution confidential incriminatory evidence. And so,
13 your Honours, it may be that the Prosecution -- we don't have a problem with the
14 Legal Representatives seeing it, but they were classified as incrim confidential by the
15 OTP. So, your Honours, it's a matter for them.

16 In relation to Annex E, that is a PEXO extract that was served upon us by the
17 Prosecution. Likewise, we don't have any trouble with the Legal Representative of
18 the Victims having sight of it if the Prosecution agree.

19 And, your Honour, the same applies in relation to Annex F, which is e-mails between
20 the Prosecution and the Defence. Again, we have no problem with my learned
21 friend seeing it if the Bench is so minded.

22 PRESIDING JUDGE EBOE-OSUJI: So as a -- would it be the case that you have no
23 objection --

24 MR KHAN: No, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: -- to the --

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1 MR KHAN: None.

2 PRESIDING JUDGE EBOE-OSUJI: -- victims' counsel receiving any of the annexes
3 as well?

4 MR KHAN: No objection, your Honour. No, no problem.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR KHAN: Thank you.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

8 MR STEYNBERG: If it's material, your Honours, that have been disclosed to the
9 Defence, there is no reason why my learned friend for the victims cannot see it.

10 PRESIDING JUDGE EBOE-OSUJI: Fair enough. In that case, the victims' counsel
11 should be given access to all the six annexes. That concludes the ruling on that
12 matter.

13 MR NDERITU: Mr President? Yes, Mr President, your Honours. I have taken
14 note of the arguments that will be there between the Defence and the Prosecution this
15 afternoon and I have taken special note of the fact that this is supposed to be
16 inter partes, although of course at this stage we do not have any idea as to the
17 confidential filing.

18 I just needed a guide-line as to whether we would be then entitled to sit in during
19 the -- so is it inter partes vis-à-vis the parties, or we would also be entitled to sit in
20 although of course not to effectively participate otherwise?

21 PRESIDING JUDGE EBOE-OSUJI: You will be entitled to sit in because you're
22 getting the filings.

23 MR NDERITU: So the filings will be notified to us before the afternoon then?

24 PRESIDING JUDGE EBOE-OSUJI: That will have to be the case, yes.

25 MR NDERITU: I'm much obliged.

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1 PRESIDING JUDGE EBOE-OSUJI: We can now go into private session, or first
2 closed session to bring in the witness -- sorry, sorry, let -- let's back up. Let's first go
3 into private session.

4 MR KHAN: Your Honour, before that's done, if I can just alert my learned friend
5 through the Bench that, in order to prevent a whole new filing, we will just send him
6 now a courtesy copy of what we sent the Prosecution and so he can look at it
7 immediately while he's doing other things.

8 PRESIDING JUDGE EBOE-OSUJI: That's very much appreciated.

9 MR KHAN: With the annexures, I mean.

10 PRESIDING JUDGE EBOE-OSUJI: Much appreciated, Mr Khan.

11 Private session, court officer.

12 (Private session at 12.20 p.m.) * Reclassified into open session

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

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Mr Steynberg, you were saying something.

16 MR STEYNBERG: Thank you, your Honour. I apologise for my inadvertent lapse
17 in the public session.

18 The only point I was making - and I think I had finished making my first point - is
19 that there seems to be a palpable communication gap which may or may not -- which
20 may or may not have anything to do with interpretation, but my submission is that at
21 least the Chamber should inquire from the witness what her feelings are in regards to
22 the interpretation. I have no idea what that is, but I think it's important that we
23 should know at this stage, rather than find out some time in the middle or towards
24 the end of cross-examination, or even later on.

25 And, secondly, because of the difficulties that have been raised by a number of parties,

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1 I understand that in the Lubanga case an order was made that the records -- the
2 interpretation should be reviewed afterwards and any corrections made to the
3 English and French transcripts by the interpretation section.
4 It seems that -- I understand that the interpreters have a difficult job, I understand
5 that it's a new case and there may be new interpreters, but this is an important
6 witness and my submission is it's important that we get the evidence right the first
7 time.

8 Those are my submissions, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, any reaction?

10 MR KIGEN-KATWA: It's our position, Mr President, that any significant issues of
11 interpretation should be raised by the Prosecution in the course of the translation,
12 rather than afterwards.

13 We do not want to co-operate in a situation where later on every other issue
14 contained in the transcript is said to be a product of translation issues, although
15 Mr President I would wish to say what I had said at the outset of these proceedings
16 that it may -- it may deserve some attention to consider getting a Kiswahili interpreter
17 who has understanding of the way Kiswahili is used in Kenya, because there are
18 some things which are completely at variance from this witness -- from the
19 interpreter.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

21 MR KHAN: Your Honour, I agree, but the additional thing I'll say is that sometimes
22 counsel doesn't get an answer that counsel wants and I don't want it to be said later
23 on that difficulties the Prosecution may face is because of translation errors.
24 Your Honours, there's no problem at all with transcripts being checked. The
25 Prosecution, if they feel that there's an error that's come to light, can always clarify by

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1 way of proper, non-leading questions.

2 There's also the opportunity that everything is recorded and preserved by the -- by
3 the Court Support Section, by the Court Management Section. Tapes are there to be
4 listened to.

5 But, your Honour, I don't want any attempt to be made to put building blocks in
6 place, as it were, to explain evidence that may not turn out to be completely
7 favourable, or what the Prosecution don't expect.

8 Your Honour, there's no problem with the translation being properly checked if the
9 Court wished that to be done, but I think all parties have a safeguard by using their
10 own judgment, their own experience, and either seeking clarifications -- unfortunately
11 there's no Kenyan in the Prosecution team, but I'm sure their -- they have Swahili
12 speakers. Somebody can act as an additional pair of ears, if they think.

13 All witnesses are important. Of course this is an important witness, but your
14 Honours those safeguards can be put in place by the parties. And in addition careful
15 questioning can be conducted on areas where counsel believes there is any ambiguity
16 or uncertainty, and that's an additional safeguard in addition of course to the
17 diligence and the assistance that we all receive from the interpretation section of the
18 Court.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, quickly on this matter?

20 MR NDERITU: Mr President, your Honours, could you just give me a minute to
21 retrace my steps?

22 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, you don't really have to respond to
23 this matter and so let's proceed.

24 The suggestion is to ask the witness whether she has been having difficulty with
25 interpretation.

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1 (Trial Chamber confers)

2 PRESIDING JUDGE EBOE-OSUJI: The Chamber has considered the matter and the
3 Chamber's ruling is that the witness will not be asked a general question whether
4 she's having difficulties with interpretation. That sort of question is fraught with
5 certain forensic dangers. It may -- obviously, not only in terms of the answer that
6 the -- that pleases one side, but also an answer that pleases the other side as well. So
7 if we throw the issue in such a grave doubt, I'm not sure that it furthers the course of
8 the proceedings.

9 It has been indicated from time to time - not always - it has been indicated from time
10 to time that translation difficulties had arisen, but that's not to say that everything
11 that has been said was fraught with translation difficulties. Given indication that
12 there had been difficulties sometimes with translation, it will be more appropriate if
13 counsel asking the questions of the witness is allowed some more scope to
14 reformulate questions in order to enable the witness better understand where there's a
15 question of doubt as to clear interpretation on any particular matter. That is the
16 ruling of the Chamber on that.

17 MR STEYNBERG: As the Chamber pleases. May we then proceed with the
18 witness?

19 PRESIDING JUDGE EBOE-OSUJI: We can now lower the blinds and bring in the
20 witness.

21 (Closed session at 12.29 p.m.) * Reclassified into open session

22 THE COURT OFFICER: Closed session, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 The witness will now be brought in.

25 (The witness enters the courtroom)

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

2 The consultation of course that you saw with the court officer was the witness has just
3 been brought in, and we are supposed to have risen for lunch at one hour. But we
4 also have to take into account that while the lawyers who are of course in here
5 debating the procedural matters, the interpreters are on duty working so they need
6 their break too. So we have to take all that into account. That's why from time to
7 time we ask them for their indulgence to stretch their time, and they've been
8 understanding so far and so they continue to bear with us on this matter.

9 Mr Steynberg, can you please continue.

10 Madam, welcome back to the witness stand, and we are back in private session.

11 Mr Steynberg, I think the curtains have to go up first.

12 And, Madam, you're still in private session. Again, it means that your testimony is
13 not being heard outside the courtroom and you're not being seen also from outside
14 the courtroom.

15 Court officer, private session.

16 (Private session at 12.33 p.m.) * Reclassified into open session

17 THE COURT OFFICER: We are in private session, Mr President.

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

19 Mr Steynberg, I think we can continue. Even though there is a noise from the curtain
20 going up, we are wearing headphones.

21 MR STEYNBERG: Thank you, your Honour.

22 Q. Madam Witness, just before the break you were telling the Court (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted) so this was around 1992.

3 Q. Could you try to explain with reference to the elections, was it before or after
4 the elections, and if so, how long?

5 A. I no longer remember the period. When the winners of the elections were
6 announced, the disturbances started. After the results of the election, we went to the
7 location that I mentioned before and it was during that period that (Redacted)
8 (Redacted)

9 Q. Thank you. And following this telephone conversation and in the months and
10 years that follows, can you comment on the relationship between Mr Mark Too and
11 Mr Ruto?

12 (Redacted)

13 (Redacted)

14 Q. If I can move back -- forward in time then to 2007 at the time --

15 MR NDERITU: Mr President, your Honours, still on the issue of interpretation, the
16 answer that was given by the witness was not complete. I'm listening to the
17 Kiswahili channel and that answer was not complete.

18 PRESIDING JUDGE EBOE-OSUJI: Okay. Let's have the witness repeat the answer.

19 MR STEYNBERG: Just for clarification, my learned friend informs me it was the
20 translation that was not completed.

21 Q. But can you please repeat your answer, Madam Witness, for the interpreter?

22 A. (Redacted)

23 Q. Very well. Moving forward then to the year 2007, (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Yes.

2 Q. And can you comment on the relationship between Mr Ruto and Mr Too at that
3 stage?

4 A. In 2007 they had a good relationship.

5 Q. Very well. Let's move on to that meeting. Besides Mr Ruto (Redacted),
6 (Redacted), were there any other prominent people present on that occasion?

7 A. There were several of them. (Redacted)

8 (Redacted)

9 Q. Can you mention any of the other prominent people that you knew or
10 recognised?

11 A. Yes, I saw Kibor and Kosgey.

12 Q. Please tell us firstly about Mr Kibor, who was he? What did he do?

13 A. Kibor was a farmer. I also know that he was a councillor.

14 MR STEYNBERG: I beg your pardon, your Honours. I understand that other
15 people in the Court heard an interpretation of that. I had nothing through my
16 headphones.

17 PRESIDING JUDGE EBOE-OSUJI: Can you read it on the transcript?

18 MR STEYNBERG: As the Chamber pleases. I'm trying to do that now.

19 PRESIDING JUDGE EBOE-OSUJI: Witness, what I read on my screen to your last
20 question is that: "Kibor was a farmer. I also know that he was a councillor."

21 MR STEYNBERG: Thank you. I have that now.

22 Q. Madam Witness, do you know this person's first name, this Mr Kibor?

23 A. Kibor is the only name that I know, but he has another name and that is Jackson.

24 Q. Very well. The other gentleman by the name of Kosgey, can you tell the Court
25 about him?

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1 A. Kosgey was a Nandi member of parliament.

2 Q. Can I just clarify whether you mean he was an ethnic Nandi member of
3 parliament or a member of parliament for the Nandi area?

4 A. Kosgey is a Kalenjin.

5 Q. And for which constituency, if you know, was he a member of parliament?

6 A. Kosorai, that was his constituency.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 A. Yes.

13 Q. Please tell us who.

14 A. Shortly afterwards there were some young people who also arrived.

15 Q. Please give us more detail about these young people. Who were they? What
16 ethnicity? How did they arrive?

17 A. I do not know the means that they used, but I saw them arriving on foot.

18 These were young Kalenjin people.

19 Q. Did they arrive separately, or together?

20 A. These young people arrived together.

21 Q. And approximately how many of these young Kalenjin people arrived?

22 A. I did not count them, but I can estimate. I think there were about 3,000 of
23 them.

24 Q. (Redacted)

25 A. (Redacted) I saw these

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1 people. They had started discussing amongst themselves.

2 MR STEYNBERG: Now I think to assist you in your narration, if I can show you a
3 document.

4 Can I ask the court officer to bring up on the witness's screen (Redacted)

5 MR KHAN: Your Honour, can I just ask if my learned friend thinks that sufficient
6 information has been elicited before the document is put?

7 PRESIDING JUDGE EBOE-OSUJI: I think we should leave it up to him.

8 MR STEYNBERG: Thank you, your Honour.

9 MR KHAN: The only reason I raised it now is I'd hate it that leading questions can
10 take many forms, but your Honours I will say no more than that.

11 MR STEYNBERG:

12 Q. Do you have the document? I think the document should be before you now;
13 is that correct? All right. Perhaps then before we get to this document, (Redacted)
14 (Redacted)
15 (Redacted)

16 A. Amongst the young people, I saw that there was Chamalan, Bor and Emmanuel
17 and other persons whose names I no longer remember. There was also Kimei.

18 MR KHAN: Your Honour, can I note for the record my concern that the proper
19 course would have been to elicit information in court regarding the witness's
20 recollection and only then put in a document, rather than put in a document that
21 contains information that has not been properly led in court. This is why I said
22 leading takes many forms.

23 MR STEYNBERG: Thank you, your Honours. I take my learned friend's point.
24 That's why I decided to lead her on that before I asked her -- questioned her on the
25 document.

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1 Q. Now, can you please describe to the Court (Redacted)

2 (Redacted)

3 MR KHAN: Your Honour, can I just say - I'm sorry to interrupt - the document is on
4 the screen.

5 THE INTERPRETER: The five-minute (sic) rule is not being observed, please, from
6 the interpreters.

7 MR KHAN: I am sorry.

8 PRESIDING JUDGE EBOE-OSUJI: Leave five seconds.

9 MR KHAN: I apologise. I had taken my earphones out.

10 Your Honour, the document's on the screen and my learned friend didn't do that

11 which I think -- unless I misunderstood him, the document -- for the first time these

12 names are mentioned only when a document is put to the witness that was prepared

13 earlier. The proper course for any experienced counsel would be to elicit evidence in

14 court and only then put a document which may or may not be a previous consistent

15 statement, or may be an inconsistent statement.

16 The alternative is to get the witness to draw - as she drew previously - a diagram and

17 then the Court and all parties can decide whether or not there's an inconsistency in

18 the account.

19 What my learned friend has done is improper, it's prejudicial and it should not have

20 been allowed, in our respectful submission.

21 Your Honour, even it details the seating arrangements and where the seating

22 arrangement was. None of that has been elicited by way of evidence-in-chief. This

23 is why I'd asked -- you know, the horse has bolted now, it's too late, but I would ask

24 that my learned friend be astute and alive to the concerns of the Defence and conduct

25 himself accordingly before we are prejudiced further.

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1 PRESIDING JUDGE EBOE-OSUJI: Isn't this a matter of laying foundation for this
2 document?

3 MR KHAN: Indeed.

4 Your Honour, it's not even the foundation point alone. Foundation is the first point,
5 but your Honour even then it's not a -- counsel can't, you know, put some questions
6 and then, you know, throw in a whole lot of documents and say, "Ah, yes, that's all
7 correct."

8 What counsel should do is ask questions first and then if it's relevant to show a
9 document lay a foundation, but the -- a document can't be a substitute for oral
10 testimony. Otherwise the Bench has no -- is hampered in its ability to look at
11 consistency and reliability of the testimony, because what is being fed the Court is
12 previous prepared statements, rather than the witness's own recollection.

13 That's the concern that we have and that's why in every court the concerns we've put,
14 which go to the factual allegations and the reliability of this witness's account and
15 even the veracity, should be laid with due diligence.

16 The Prosecution has said it's an important testimony. I think we have a right that the
17 evidence that is so important be elicited in a careful manner.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

19 MR STEYNBERG: I take note of my learned friend's admonitions and I will do my
20 best to ensure that I follow his suggestions in the future.

21 I should of course add that the document which is before the witness is -- well, let me
22 rather lead the witness on the provenance of this document before I make any further
23 submissions.

24 PRESIDING JUDGE EBOE-OSUJI: I think that would be a proper way to proceed to
25 begin with, and then after that we will see whether or not the document, as you ask

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1 questions on it, amounts to introducing previous consistent statement into the record.

2 Why don't we first do the foundation.

3 MR STEYNBERG:

4 Q. If you could have a look then at the document in front of you, can you look at
5 the bottom right-hand corner and just above the date that appears there do you
6 recognise that mark?

7 A. Yes.

8 Q. What is that?

9 A. You want to know about the date of the 16th?

10 Q. No, my question related to the mark above the date, the writing above the date.
11 Can you tell us what that is, please?

12 MR KHAN: Your Honour, I do apologise. I wonder firstly can this document be
13 taken off the screen? That's my first request before I go further.

14 PRESIDING JUDGE EBOE-OSUJI: Let's take it off the screen, court officer, for a
15 minute and then let's hear Mr Khan.

16 Is the document off the witness's screen? Okay, very well.

17 Mr Khan?

18 MR KHAN: Your Honour, I will do my best in this case not to object too much and
19 not take a lawyer's point of taking every single objection, but your Honours will note
20 how the Prosecution led the evidence regarding the Kiambaa church where Mr Ruto
21 is not mentioned.

22 PRESIDING JUDGE EBOE-OSUJI: And then you did not object. You allowed --

23 MR KHAN: Indeed.

24 PRESIDING JUDGE EBOE-OSUJI: -- leading questions. Fair enough.

25 MR KHAN: Your Honour, here --

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1 PRESIDING JUDGE EBOE-OSUJI: But on this one what is your -- what's the
2 difficulty?

3 MR KHAN: Your Honour, here the witness was asked who was present and the
4 prominent people mentioned were Kosgey and Kibor and Mr Ruto. No other
5 mention of other people. She was asked questions in-chief.

6 Your Honour, what counsel should have done is to say, "Who was present? Who
7 else was present? Where were they seating, (Redacted) Where was
8 Mr Ruto in relation to those people?" None of that has been done in relation to the
9 first time after hours of sitting here we're getting direct evidence that's relating to
10 Mr Ruto. We're not disputing the burning of the fire in Kiambaa, (Redacted)
11 (Redacted), but this is disputed.

12 And so the Prosecutor owes it to us, owes it to justice, to elicit this evidence properly
13 and it's not good enough. You know, putting it now, laying a foundation now,
14 doesn't cure the prejudice that's already been caused.

15 PRESIDING JUDGE EBOE-OSUJI: But, Mr Khan, you're not before a jury --

16 MR KHAN: Your Honour --

17 PRESIDING JUDGE EBOE-OSUJI: -- so I do not see the prejudice you're talking
18 about. All you can argue, it seems to me, is that the document need not be taken into
19 account --

20 MR KHAN: Your Honour --

21 PRESIDING JUDGE EBOE-OSUJI: -- if it has already come in.

22 MR KHAN: Indeed.

23 PRESIDING JUDGE EBOE-OSUJI: And the Chamber will then make a ruling at that
24 stage.

25 MR KHAN: Your Honour --

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1 THE INTERPRETER: Overlapping speakers.

2 MR KHAN: -- the prejudice I meant was not the Bench's inability to assess the
3 evidence properly. It is the reliability of the evidence that can come from the witness
4 in the first place.

5 Your Honour, these safeguards are here for a purpose and my concern is that, instead
6 of us being given an important opportunity of hearing the witness's own recollection
7 because it may be relevant to credibility depending upon what emerges in
8 cross-examination, the Prosecution has jumped a critical and important step that he
9 would have done in South Africa, he would do in other courts and he hasn't done it
10 here.

11 And, your Honour, that is something that should not have been allowed, and counsel
12 do owe a duty of care to ask particularly these important issues that are not
13 peripheral matters, but are core matters, to lead that evidence properly and that has
14 not been done.

15 Your Honour, I'll say no more, the horse has bolted, but your Honour we do ask the
16 Trial Chamber to pay cognizance that this has been done improperly and bear it in
17 mind as we go forward.

18 Your Honours, we don't need to assist witnesses in giving answers that may be what
19 the Prosecution wants. We want to hear what the witness has to say and the manner
20 of getting that evidence should follow traditional and well-established practices,
21 rather than innovation that has inherent jeopardies.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, your point has been made.

23 It is now time for us to take our break, the lunch break. We're not rising yet.

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: You probably saw the Judges passing notes at

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1 some point. It was simply we got communication through note-passing that today
2 the interpreters are short staffed so they're not able to adjust to extended -- extending
3 the time we had in mind. So we will have to rise now and return at 2.30, but we will
4 do that -- we will wait for the witness to be taken out of the courtroom first.

5 (Closed session at 1.00 p.m.) * Reclassified into open session

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 The witness can be escorted out of the courtroom.

9 (The witness stands down)

10 PRESIDING JUDGE EBOE-OSUJI: We now -- before we rise, on the matter that
11 Mr Khan raised, I think it -- the Chamber will take it into account, his concerns. We
12 also -- when we get to it, keep in mind how long that document had been on the
13 screen, what exactly it was doing on the screen for the witness. Was she merely
14 identifying her signature or attempt to do so, or had the -- had questions as to the
15 content of the -- substantive content of the document already been disclosed to her, so
16 as to give her a preview of what she is to talk about? All those considerations and
17 more of course will be taken into account, and if it becomes a point of contention in
18 the course of the litigation, I'm sure counsel will canvass it further. That needed to
19 be noted now. We will rise now --

20 MR KHAN: Your Honour, I do apologise. Just for the record, so I don't need to
21 raise it later, in that assessment - and I'm grateful for it - at the end of page 52 and the
22 beginning of page 53 of the LiveNote or the Transcend transcript, it's clear that the
23 witness who didn't remember names gave three names for the first time only when
24 the document was put on the screen, and that's the only matter I'd ask the Bench to
25 take into account.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Fair enough. So we will rise then on that note
2 and come back at 2.30.
3 (Recess taken at 1.03 p.m.)
4 (Upon resuming in private session at 2.43 p.m.) * Reclassified into open session
5 THE COURT USHER: All rise.
6 Please be seated.
7 THE COURT OFFICER: Your Honour, for the record we are in private session.
8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
9 Welcome back everyone.
10 Welcome back, Witness.
11 Before we proceed, I understand that there's some -- a need for clarification as to the
12 annexes we discussed earlier, what needs to be provided to the victims' counsel, that
13 it should not be six annexes but three, annexes A, E, F.
14 MR KHAN: That's correct. I'm grateful.
15 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, that's the case?
16 MR NDERITU: Yes, that's --
17 PRESIDING JUDGE EBOE-OSUJI: So then the record is corrected accordingly.
18 Mr Steynberg, please proceed.
19 MR STEYNBERG: Thank you, your Worship. I wonder if I, before I start to
20 question the witness, if I can just ask her to take off her headphones for a short
21 moment so that I can just address the matter of how to proceed from this point
22 onwards in light of what happened before the adjournment?
23 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
24 MR STEYNBERG: Thank you.
25 Your Honours, I have had the opportunity to go back to the record and reflect on

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1 what happened before the break, and I see now -- well, I saw shortly afterwards I was
2 remiss in not leading this witness on the names of the three persons whom she
3 mentioned before the document was shown to her and I own up to that, your
4 Honours.

5 However, what I would like to say is the nature of my learned friend's objection, if it
6 was such, was not clear to me. I believed that the objection related to providing the
7 provenance and introducing the document in the normal way, and it was only when
8 the document was called up on the screen and I saw the names that I realised that I
9 hadn't covered that ground yet.

10 However, one correction is that my learned friend for Mr Ruto mentioned during one
11 of his objections that the witness could not remember names. If it is suggested that
12 she was led because she could not remember the names of these three people, I
13 submit that is not the case. I simply had omitted to lead her on that, and it is clear
14 from what she said already that she does class these people as part of the youth and
15 not part of the people whom -- the prominent people whom I'd questioned her on
16 earlier.

17 But having said that and having made that concession, I suggest that the way I
18 proceed from now onward is that I will not refer to this annex anymore and, if
19 necessary, I will ask the witness to draw her own sketch map of the events in question
20 in court today so as to prevent any further prejudice, if there has been such, to the
21 Defence.

22 As far as prejudice is concerned, that also in my respectful submission needs to be put
23 into perspective. What was shown to the witness was in fact part of her own
24 statement --

25 MR KHAN: Your Honour, sorry to interrupt. Your Honour, I'm grateful for

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1 the -- what's been said so far.

2 Regarding any issues of prejudice, I think that should take place in the absence of the

3 witness. My learned friend has said previously she understands some English --

4 PRESIDING JUDGE EBOE-OSUJI: Yes, fair enough, fair enough, but still, Mr Khan,

5 there was also another point that Mr Steynberg made. I think it will be better if,

6 when counsel are making objections, they make objections straight out so it is clear

7 they are making objections.

8 You started the last time as if it was a suggestion, and in the course of litigation it's

9 often the case that counsel may suggest to opposing counsel a manner of proceeding

10 and such suggestions are often received in good faith, sometimes declined. So if you

11 started it as what looked like a suggestion on how we should have started, but what

12 you had in mind was an objection, it really wasn't clear.

13 So perhaps when you -- that's not to say that counsel should not make suggestions to

14 move proceedings forward, it will make it more efficient, but when there is an

15 objection it helps if that is stated clearly and the grounds stated -- indicated so that we

16 know and make a ruling on it. That was --

17 MR KHAN: And --

18 PRESIDING JUDGE EBOE-OSUJI: That was why I said, "Let him proceed. It's up

19 to him," because I thought you were suggesting something to him, but up to the point

20 where you make an objection then we'll come in and rule.

21 MR KHAN: I'm grateful, your Honour. I think I said there were many ways of

22 leading, but of course in future I will present my objections with greater clarity and

23 robustness as necessary.

24 Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, can we avoid the question of

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1 arguing the prejudice? If we get to it I think this is something that may be addressed
2 at any point later when the evidence is to be used, but for now I believe you can
3 continue with your -- with the rest of the examination and deal with what you need to
4 deal with.

5 MR STEYNBERG: As the Court pleases, your Honour. I'm grateful for that.

6 If I may just ask one further point of clarity as far as the proceedings this afternoon.

7 Does your Honour have a specific time in mind at which the Chamber will receive the
8 oral arguments to which it alluded earlier this morning on the document filed by my
9 learned friend yesterday evening?

10 (Trial Chamber confers)

11 PRESIDING JUDGE EBOE-OSUJI: We should adjourn for the day at 4.00, so in that
12 case what will happen is we'll take the testimony up until 3.30 and then we will
13 adjourn the testimony and then move into discussion --

14 MR STEYNBERG: As the Court pleases.

15 PRESIDING JUDGE EBOE-OSUJI: -- and the oral submissions we discussed earlier
16 today.

17 MR STEYNBERG: Thank you, your Honour.

18 Q. Thank you, Madam Witness. If I can return your mind to what was being
19 discussed -- what you were discussing before counsel got involved in arguments
20 before lunch. You were telling us about the events (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Why do you refer to this other group as "Chamalan's youth"?

15 A. I said that Chamalan was if you like their leader, as it were, because even in the
16 church, every church or every group was positioned on its side and each group had a
17 leader.

18 Q. Now, you mentioned besides Chamalan -- well, let me rather take it from the
19 beginning. Besides Chamalan, were there any other people amongst the youths
20 whom you recognise? Can you please give us their names?

21 A. Among the people who were sitting on the straw, you had Chamalan, Kimei,
22 Emmanuel and Brown. They were the people who I recognised.

23 Q. Just so there can be no misunderstanding, can you give the full names of Kimei
24 and Emmanuel?

25 A. That was Emmanuel Bor, Kimei Bor.

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18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Before we proceed, I think probably the record

21 needed to have reflected that, when the question -- the answer to the question as to

22 (Redacted)

23 (Redacted)

24 (Redacted). The record needs to reflect that, but in the meantime, Mr Steynberg,

25 we're at 3.30 by the clock on the wall.

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1 MR STEYNBERG: Indeed. I can continue with this matter when we next resume.

2 PRESIDING JUDGE EBOE-OSUJI: That will be on Monday?

3 MR STEYNBERG: As presently advised, I believe so.

4 PRESIDING JUDGE EBOE-OSUJI: And how much more time do you think you will
5 need with this witness?

6 MR STEYNBERG: As I -- well, I had certainly hoped that I would have finished with
7 this witness today, but unfortunately we've lost a significant amount of time through
8 various other activities and discussions. I need to finish this meeting and deal with
9 one further meeting and then I would be done. So I would hope within a session,
10 perhaps slightly longer, depending if we spend the whole session in questions and
11 answers.

12 In that regard, I just note that in the first two days that the Court has sat, two full days
13 excluding the day when the witness did not testify, according to my case manager we
14 only heard a total of just over four hours of evidence in eight-and-a-half hours of
15 court time. So if things are proceeding a little bit slowly, there are I submit some
16 mitigating circumstances.

17 PRESIDING JUDGE EBOE-OSUJI: Well, let's adjourn -- no, not adjourn. Let's
18 release the witness for the day now and then we will take the submissions on
19 shortening the dead-line -- sorry, submissions on the Defence request received
20 yesterday.

21 We can lower the blinds and escort the witness.

22 MR KHAN: Your Honour, could I with your leave suggest that the witness be
23 informed of the importance that she should not discuss her testimony with anybody,
24 even family members or anybody, over the weekend until she comes back before your
25 Honours?

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1 PRESIDING JUDGE EBOE-OSUJI: It's an appropriate reminder.

2 Madam, we will let you off for the --

3 MR KHAN: And, your Honour, I trust that over the weekend also the witness will
4 not be given access to her statement. I think now she's under oath, she's been
5 proofed, there's no reason for her to be given access to her statement.

6 PRESIDING JUDGE EBOE-OSUJI: I'm sure Mr Steynberg understands that.

7 MR KHAN: And, your Honour, because she's in the hands of VWU, perhaps as a
8 matter of caution if the VWU could be directed accordingly?

9 PRESIDING JUDGE EBOE-OSUJI: All right.

10 Madam, we will discharge you for the day and you will have to come back on
11 Monday to continue your testimony, but in the meantime you are still giving your
12 testimony and you understand it's important that you do not discuss your testimony
13 with anybody, be it family members you may contact, or other people who may come
14 to visit you, or you may run into over the weekend, and also you are not to look at
15 your statement for now since you've started your testimony. It's important that you
16 continue with your testimony.

17 If you do forget in the course of your testimony there's a way the law allows you to
18 refresh your memory, but we come to that point if there's a need for it, but in the
19 meantime just try and turn your mind to other things than talking to people about
20 this matter and also reading your statement.

21 MR KHAN: Your Honour, perhaps -- I don't want to make the same mistake of
22 being ambiguous. Perhaps it would be prudent to VWU to take the statement off the
23 witness and it should be now in the hands of the Court? Your Honour, I think
24 there's good --

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

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1 MR KHAN: Your Honour, I believe access was given. Of course I haven't been in
2 contact, but if it has been given by VWU we should ensure that it's no longer with her.

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

4 MR KHAN: I'm grateful.

5 MR STEYNBERG: May I clarify that, your Honours? I think it's easily dealt with.

6 The Witness Preparation Protocol now puts the duty on the Prosecution to refresh the
7 witness of her statements. As such, that was done during the witness preparation
8 session. The statement was shown to her and taken away. No copies have been
9 provided either to the witness, nor to VWU, and we do not have access to the witness.
10 So my learned friend can rest assured she will not have access to her statement.

11 MR KHAN: I'm most grateful.

12 PRESIDING JUDGE EBOE-OSUJI: That's at all said. Let's leave it at that for now
13 and escort the witness out of the courtroom, if the blinds could be lowered.

14 (Closed session at 3.34 p.m.) * Reclassified into open session

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

16 PRESIDING JUDGE EBOE-OSUJI: The witness will now be escorted out.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: With the witness out of the courtroom, let's go
19 straight to submissions.

20 Mr Khan, this was or is your request. It is in writing. You need not revisit
21 everything. We will be containing all the submissions we have to make within the
22 remaining time. Could you take five minutes --

23 MR KHAN: Your Honour, I'll take five seconds.

24 PRESIDING JUDGE EBOE-OSUJI: -- to update?

25 MR KHAN: Your Honour, the submissions are contained in the written filing. I

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1 have nothing to add.

2 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

3 MR KHAN: I'm grateful.

4 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, you would have ten minutes to
5 respond.

6 MR STEYNBERG: Thank you, your Honours. That should suffice.

7 At the outset, I should just say that our responses have been hampered by two
8 matters: Firstly the short time to prepare, most of which has been spent in court, but
9 secondly, as your Honour expected or forecast this morning, certain issues of the
10 response will need to be dealt with on an ex parte manner.

11 So I will only deal at the moment with matters which can be dealt with inter partes,
12 and the Prosecution will submit today an ex parte filing dealing with the remaining
13 matters. It's unfortunately not possible at this stage to go into them inter partes
14 as -- for reasons which will become abundantly clear when your Honours see the
15 filing.

16 Very briefly, my learned friend requests the disclosure of two discrete sets of
17 information. The first relates to the recordings of a meeting between -- of contact
18 between OTP investigators and Mr Walter Barasa, intermediary 540, and the second
19 relates to the disclosure of supposed audio recordings of conversations between 536
20 and 540.

21 The request is made, as far as I can make out from what has been disclosed to the
22 Prosecution, on the basis of Rule 77. The Defence make a bold statement -- ah, I beg
23 your pardon. I will correct that. I'm reading from paragraph 2, "The Defence
24 submit that these items are material to the preparation of the Defence and may also
25 contain information of a potential exculpatory nature." So there are two legs.

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1 As far as the Rule 77 is concerned the grounds upon which the Defence rely are
2 redacted, so when they make the submission that this material is clearly relevant to
3 the preparation of the Defence, the Prosecution has no means of assessing the
4 correctness of that submission.

5 The Prosecution notes that, in a similar request for disclosure relating to the
6 intermediary information that was the subject of the Chamber's ruling number
7 904-Conf, the Prosecution raised a similar objection and that is that relief should not
8 be granted against it on the basis of information which has been withheld from it and
9 to which it has not been able to respond.

10 The Chamber ruled in that matter, and I quote from paragraph 33 of the filing: "The
11 Chamber notes that the only justification provided by the Ruto Defence for the
12 ex parte status of Annex H are that the information is not the subject of any disclosure
13 obligations, and given that it relates to the evidence of Defence witnesses, disclosure
14 at this stage would cause severe prejudice, but these reasons do not necessarily justify
15 a privileged party's positive use of ex parte material as a basis for a relief that affects
16 the opposing party. It is a difference between a shield and a sword."

17 And for those reasons, your Honours, the Chamber, in my respectful submission,
18 correctly refused to rely on that evidence that was provided ex parte in its decision,
19 notwithstanding the fact that it in fact granted or partially granted the request.

20 Your Honours, again, the basis for the redactions and the nature of the evidence
21 relied upon is not clear from the redacted version in the Prosecution's possession.

22 However, if I read from paragraph 5 of the request of my learned friend, filing
23 number 955, it starts, "On the basis of information that the Defence had previously
24 received from a potential Defence witness and in view of the immanence of Witness
25 536's testimony ..."

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1 From that it would appear that both the evidence relied upon and the reasons for
2 redacting the evidence are similar, if not identical, to the previous Defence filing, and
3 for the same reasons the Prosecution submits that the Chamber ought not to place any
4 reliance on this.

5 In the absence of any such evidence, unlike the previous matter in which there were
6 other grounds relied upon, the Defence puts forth no material, in the Prosecution's
7 submission, which could found a claim of disclosure under Rule 77.

8 As for the reference to potentially exculpatory -- information of potentially
9 exculpatory nature, all I can say at this stage is that any material relating to 536 and
10 540 and their -- and their interaction which is in the Prosecution's possession has been
11 reviewed for potentially exculpatory material, and whatever potentially exculpatory
12 material was found has been released. Now, this relates to an excerpt from an
13 interview between -- from a contact between Prosecution investigators and Mr 540 in
14 relation to an entirely different matter.

15 My learned friend may raise the recent Appeal Court ruling in the Bemba case, which
16 states that if a document is relevant, then the entire document should be disclosed.

17 However, in my submission this does not apply in this matter for two -- in two
18 instances. In this case it is not the document that is in question, but rather discrete
19 information. That discrete information has been released. And in any event, even
20 if that argument did hold water, the remaining parts of that communication would be
21 covered by the necessity for secrecy based on the protection of ongoing investigations.

22 And that will be expanded upon further in ex parte filings.

23 If the Court will bear with me, please?

24 The other aspect which I will allude to but unfortunately I cannot go into in great
25 detail is that there is an issue of the applicability of Regulation 42(1) of the

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1 Regulations of the Court relating to protective measures put in place by other
2 Chambers and the effect of those protective measures on the present Chamber. And
3 I can say no more than that in inter partes argument.
4 Furthermore, the nature of the evidence sought being evidence in a -- in relation to a
5 separate and discrete investigation -- sorry, I believe I referred to appeal decision of
6 Bemba. It was in fact an appeal decision in the Lubanga case. I know it was
7 sometime in May, but other than that -- I'm sure my learned friend will remind the
8 Court, if necessary. And I'm also sure that it would be footnoted in our filing.
9 My submission is that the nature of this evidence falls squarely within the scope of
10 Rule 80(1)(ii), and I note that in the present case there are in fact ongoing
11 investigations that have been allowed in the redaction -- sorry, ongoing redactions
12 that have been permitted in the redaction protocol relating to matters such as the
13 protection of investigative techniques, and again I will say no more than that in the
14 open session.
15 So, to sum, the Prosecution submits that relevance has not been established, at least
16 not on the basis of evidence available to the Prosecution. Secondly, that there are
17 procedural matters that provide an impediment to my learned friend's request; and
18 thirdly, as regards PEXO, that there is none other than what has already been
19 disclosed.
20 Now, Rule 67(2) or Article 67(2) provides that in case of doubt the Chamber shall rule.
21 If the Chamber is minded to review the material, the Prosecution will gladly provide
22 it. Those are my submissions. Thank you.
23 MR KHAN: Your Honour, before my learned friend Mr Kigen-Katwa makes his
24 submissions in response, there's a clarification and additional document that I should
25 hand up. Your Honour, at paragraph 4 of the filing that we submitted we referred to

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1 an OTP report. Your Honour, I have the report here. It wasn't annexed. I'll file in
2 due course a corrigendum but, your Honour, with the assistance of the usher, I'd ask
3 that this be handed to the Bench.

4 MR STEYNBERG: May I just ask that I have sight of it?

5 MR KHAN: Yes.

6 MR STEYNBERG: I'm not sure which --

7 MR KHAN: It's the Prosecution's investigation report filed on 12 September 2013,
8 and then subsequently given to the Defence.

9 MR NDERITU: Mr President, your Honours --

10 MR KHAN: Your Honour, that may be a document that is not -- well, it's for the
11 Prosecution to decide if that's a document which should be given to the Legal
12 Representative of the Victims, but it pertains to --

13 PRESIDING JUDGE EBOE-OSUJI: Do you have an extra copy for the Prosecution?

14 MR KHAN: I beg your pardon? Your Honour, it's their document. It's the
15 Prosecution document.

16 PRESIDING JUDGE EBOE-OSUJI: I know, but I don't know whether they brought it
17 to court.

18 MR STEYNBERG: Can I just confirm, was the date there of 15 September 2013?

19 MR KHAN: We have another copy. We'll provide it to you.

20 MR STEYNBERG: Thank you. If that's the document, I have a copy. I haven't had
21 time to compare.

22 PRESIDING JUDGE EBOE-OSUJI: This says filed on 12 September 2013, last
23 updated.

24 Why don't you give this to the Prosecutor?

25 MR KHAN: I'm grateful.

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1 PRESIDING JUDGE EBOE-OSUJI: All right, Mr Khan.

2 MR KHAN: Your Honour, I'll be very brief. The controlling authority, we say, in
3 relation to this matter in fact, and the most recent decision is the case of Banda and
4 Jerbo and the Appeals Chamber decision, which we detail at footnote 4 of our filing,
5 which states that the Defence only have to show -- make a prima facie showing of
6 materiality and relevance before we're entitled to certain information.

7 The Prosecution cannot, with respect, hide behind assertions of investigative
8 technique because we know both that their handler, their intermediary, has been
9 spoken to and we also know that this witness was used in a sting operation. All of
10 that has already been disclosed to the Defence. So that argument does not hold
11 water.

12 In our respectful submission, we have shown ample cause as to why the evidence is
13 relevant. We do not want to have to request that this witness comes back later
14 because of material that we should have been given now. And, your Honours, for
15 that reason we ask that the application be granted. I'm most grateful.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa, since this wasn't your application, can
17 you --

18 MR KIGEN-KATWA: Yes, your Honour --

19 PRESIDING JUDGE EBOE-OSUJI: -- do it in five minutes, your response?

20 MR KIGEN-KATWA: Yes, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: Or less?

22 MR KIGEN-KATWA: Thank you very much for the opportunity.

23 Mr President, we support the motion filed by the first accused's team and we contend
24 that the material will assist us in preparing the cross-examination of the witness who
25 is on the -- who is testifying. Secondly, it will assist our investigations. And thirdly,

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1 it is relevant in terms of the credibility of the witness.

2 Mr President and your Honours, if we do not get the material now, we risk the

3 prejudice that the information and the advantage we could make from that material

4 will be lost because then we will have concluded our cross-examination.

5 Mr President and your Honours, I have looked at the material that Mr Khan has just

6 produced -- has just supplied to the Court. And, Mr President and your Honours, it

7 will be observed that there were correspondence on the following dates between the

8 Prosecution and P-536 -- between 536 and 550 --

9 MR STEYNBERG: I believe it's 540.

10 MR KIGEN-KATWA: Yes, 540, sorry. And those correspondence were on 3

11 August, 9 August, 16 August, 25 August, 28 August, 29 August, and then again on 2,

12 4, 5, 6, and 7 September. And in virtually every single day it was the Prosecution

13 who initiated the correspondence with that intermediary. In each instance the

14 initiative is by the Prosecution asking witness number 536 to call that gentleman.

15 Now, there is a lot of significance in what is reflected at paragraph 21 of that material

16 that has just been supplied. At paragraph 21 this is what is contained. This is a

17 conversation of 28 August 2013: "P-536 told Barasa that he was not happy with the

18 people, ICC -- "... 'people' ...", in commas, "... ICC." "Barasa told P-536 that he wants

19 to come there and take her back." So 536 is saying: Please come take me back.

20 Paragraph 25 is very telling. It says this: "P-536 asked Barasa what would happen

21 if my company, that is ICC, decided to prosecute her for withdrawing from the

22 process. Barasa told P-536 there is no problem, they, that is ICC, cannot prosecute

23 me. P-536 reminded Barasa that he was the one who introduced her to the company.

24 Barasa told 536 nobody would prosecute her and said that there were -- there are so

25 many people who have withdrawn and nobody prosecuted them."

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1 Mr President and your Honours, we have raised concerns about the likelihood that
2 this witness is well prepared, well coached, and the content of their testimony is not
3 true. This conversation where at paragraph 21 witness number 536 expresses a
4 desire to pull out of these proceedings and the contents of paragraph 25 when
5 arguments relate to whether or not she will be prosecuted - whether or not she will be
6 prosecuted if she were to withdraw from these proceedings - could be very telling in
7 terms of the question of the credibility and the likelihood that we might be right, as
8 Mr Karim said yesterday, that the Defence could be right that these witnesses are not
9 saying the truth and from time to time could have bouts of conscience when they
10 contemplate and consider pulling out. And what is contained in paragraph 25 is the
11 type of information that the Prosecution could have told them and said: It doesn't
12 matter. We guarantee you that you will not be prosecuted, whether you say the
13 truth or not.

14 Now, I'm saying all this as a matter of speculation, but I'm saying it, Mr President and
15 your Honours, to just emphasise the importance and the necessity for your kind
16 consideration of giving us this information, Mr President. Thank you, Mr President
17 and your Honours.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Mr Nderitu, in the remaining time we have?

20 MR NDERITU: Thank you, Mr President, your Honours. I find myself in a bit of
21 an awkward situation, given that I have not had sight of the Prosecutor's report, the
22 one dated 12 September, but I would just want to say that, firstly, P-540 is the subject
23 of Article 70 proceedings, as I understand it, and that then does raise, and this is
24 something that I would say with a lot of hesitation given the position that I hold, but
25 prima facie I think there is an issue that would impact on the Defence's ability to have

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1 a fair trial. And while I am interested as much as possible to ensuring that the views
2 and concerns and interests of the victims are taken into consideration, then this must
3 still be subject to Article 68(3). And for that reason, I think my submission would
4 only go to the extent to which there would be measures that would be taken to ensure
5 that there is no prejudice that is done to the well-being of the victim, in this case P-536,
6 as a result of any disclosure that may be given. Thank you.

7 MR STEYNBERG: Thank you.

8 If I may just clarify a couple of matters, your Honours. Firstly, may I clarify, this
9 report is the last of a series of four documents which record the course of the contact
10 between Witness 536 and former intermediary 540. May I just request whether the
11 other three documents have been attached and are in the possession of the Chamber?
12 Because if one refers only to this document, specifically only to this one later
13 conversation, it is very misleading on its own.

14 PRESIDING JUDGE EBOE-OSUJI: I take it then that you will as a matter of course
15 provide it in your response -- in your written material you're going to -- you indicated
16 you will be filing.

17 MR STEYNBERG: This is a matter which has just come to my attention now that this
18 has been handed up and is being relied on. My learned friend can tell me one way
19 or the other. If the other three documents are included, then I'm afraid I don't have
20 all the annexes before me at the moment, which is why I ask, then there's not a
21 problem. But if it's not, then I need to take urgent steps to make sure that those are
22 placed before the Chamber. Because my learned friend for Mr Sang makes it appear
23 as if it was the Prosecution that has initiated this contact. Far from the truth. It was
24 Mr Barasa that contacted the witness and this was part of the res gestae that flowed
25 out of that, but it's misleading if one looks at it only on itself. That's the first

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1 question.

2 The second clarification which I could just ask. My learned friend for Mr Ruto says
3 he's made -- generally placed ample evidence before the Chamber but he did not
4 specify which it is. If I could ask him with reference to the specific paragraphs of his
5 filing or the specific confidential inter partes annexes that he says he's made out of his
6 case, I'd be grateful, because at the moment it's very vague.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, why don't -- I think the
8 Prosecution since have indicated that there are -- this is one in a series of documents.
9 Why don't we just have you file the rest in context so that the context is clear so we
10 don't spend time wondering what the Defence has filed along those lines. It's only
11 fair, isn't it?

12 MR STEYNBERG: Very well. I can clarify that immediately we get out of court,
13 but of course we now pass the normal filing hour. So if that has not already been
14 attached by my colleagues who are responsible for this filing, then I'll have to take
15 steps to urgently file it and provide courtesy copies to the Chamber.

16 PRESIDING JUDGE EBOE-OSUJI: Courtesy copies would be really appreciated.
17 Right. Why don't we leave it at that for now and then we will communicate our
18 ruling to the parties in due course.

19 We will now rise for the day.

20 THE COURT USHER: All rise.

21 (The hearing ends in closed session at 4.00 p.m.) * Reclassified into open session

22 RECLASSIFICATION REPORT

23 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
24 2013, and the email's instructions dated 30 September 2013, the version of the
25 transcript with its redactions becomes Public.