

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of the Prosecutor versus William Samoei Ruto and Joshua Arap
5 Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion, and Judge Robert
7 Fremr
8 Trial Hearing
9 Thursday, 16 January 2014
10 (The hearing starts in closed session at 10.54 a.m.) Reclassified into open session.
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in
17 the Republic of Kenya, case of The Prosecutor versus William Samoei Ruto and
18 Joshua Arap Sang, ICC-01/09-01/11. We are in closed session, your Honour.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Appearances, please?
21 MR STEYNBERG: Good morning again, your Honours. For the Prosecution this
22 morning are Anton Steynberg, Lucio Garcia, Lorenzo Pugliatti, Yulia Nuzban and
23 Jasmina Suljanovic. Thank you.
24 PRESIDING JUDGE EBOE-OSUJI: Counsel for the Defence?
25 MR KHAN: Good morning, Mr President, your Honours. For Mr William Ruto,

1 David Hooper, Queen's Counsel, Shyamala Alagendra, Ms Leigh Lawrie, Mr Essa
2 Faal - sorry, I missed Mr Essa Faal - and Ms Grace Sullivan. Your Honours, my
3 name is Karim Khan.

4 MR KIGEN-KATWA: Your Honours, good morning. Mr Sang is present in court
5 today and is represented by myself, Katwa-Kigen, Caroline Buisman, Logan
6 Hambrick, Philemon Koech and Honor Lanham. Thank you, Mr President.

7 MR NARANTSETSEG: Good morning, your Honours. Victims are represented by
8 myself, Orchlon Narantsetseg, and with me Caroline Herzig, case manager. Thank
9 you.

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

25 (Trial Chamber confers)

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5 Prosecutor.

6 MR STEYNBERG: Your Honour, my colleague will speak to that issue as well.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR GARCIA: Yes, your Honour. I don't intend very -- to be very long actually. I
9 will -- the Prosecution will largely rest on its submissions made in writing regarding
10 this witness. In light of the importance of the witness, in light of the type of evidence
11 that he's going to give, the fact that he is (Redacted), we obviously are
12 soliciting that the voice/face distortion, that the use of pseudonym during his
13 testimony and in -- limited in-camera sessions. And I think I've already spoken
14 (Redacted).

15 The Prosecution is not in -- the Prosecution is well aware of the -- and intends to
16 obviously be as fair as possible in that regard. We want to lead the evidence as
17 much as we can in public session, obviously without, without causing any risk to the
18 identification of the witness.

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24 The rest of his testimony regarding circumcision rituals, Kass FM and what he heard
25 of Sang, his return from (Redacted), the

1 road blocks he encountered, what he saw in Ziwa, this type of evidence, since it's
2 non-identifying, we'll make sure that it isn't, because some portions might be, we
3 intend to lead them in public.
4 So it's just very limited circumstances of private hearing that we intend to lead with
5 this witness. And we'll be very mindful of that. The ones that we are leading
6 privately in a private session are the ones that we really feel are so identifying that it
7 would disclose his identity immediately.
8 So basically we rest on our submissions which we feel are quite reasonable in the
9 circumstances in light of the fact that he is (Redacted) and he's highly
10 vulnerable.

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

12 (Redacted)

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14 So, your Honours, the point of video recording was there for a purpose. It hasn't
15 been utilised in the months since this trial started. I'd ask that this is an appropriate
16 juncture the Prosecution be asked to disclose it.
17 Your Honour, the next point is regarding the substance. Your Honour, I'm not going
18 to repeat all my previous submissions about public hearings. I'd ask that the Court
19 take them as read, the misgivings, the concerns that we have. And the very real
20 importance that we attached to publicity of proceedings as an essential right, not an
21 addendum, not an appendage, but a central right to a fair trial.
22 Your Honour, this witness (Redacted)
23 (Redacted), said he would be willing to give evidence even in front of the cameras.
24 Why is it when he's in the arms of a (Redacted) in this courtroom
25 and (Redacted) suddenly protection is sought, closed sessions are sought?

1 Your Honour, there's tendencies here -- and that's why I'm saying from assessing this
2 right context is important. Your Honour, of course we have recommendations from
3 the Victims and Witnesses Unit, but I've expressed previously concerns about that,
4 because their concern is witness focused. They're not -- there is no evidence that's
5 disclosed that they are using other measures like counselling, like reassuring a
6 witness as to measures that can be -- to give a witness confidence, to reassure a
7 witness.
8 Instead it seems that they're being told things are unstable, all this what I say is
9 baloney, all this hot air about you know chilling effect and there's people in Kenya out
10 there. There may be some truth to it, but it's been magnified to quite a significant
11 extent, and sometimes it appears that some fear, some concern is being put into the
12 witness rather than fear being taken out of a witness and a witness is being reassured.
13 And I've previously, perhaps I haven't, I would ask it may be useful for those
14 meetings, those conversations with the witness to be closely monitored.
15 But, your Honour, there is an issue here. Why is it that a witness (Redacted)
16 (Redacted) says he's willing to give an account and gives an account and gives an
17 account, and yet later on suddenly these whole raft of measures need to be put into
18 place.
19 Your Honour has rightly -- and normally it is my position, I must confess. One
20 wants -- one hopes for an independent and impartial Victims and Witnesses Unit and,
21 if it was operating as such, I'd be the first to say a margin of deference could be given
22 to that institution.
23 But the reality is it's -- that organ -- that entity I should say is not working. And
24 that's not just an assertion by the Defence. Your Honours would have seen the very
25 unfortunate, the independent review team on the post instant review of allegations of

1 sexual assault which was chaired by perhaps one of the most eminent and respected
2 international prosecutors, Brenda Hollis.

3 And, your Honours, what Brenda Hollis -- of course the former Prosecutor of the
4 Special Court for Sierra Leone with a great lineage in international law -- what she
5 found is that there were pervasive structural and functional shortcomings. She talks
6 about the inability of the VWU and whether or not it's fit for purpose, the lack of
7 management skills.

8 Your Honour, I don't want to put all the faults and all the omissions and failings of
9 the VWU out. The report is there. But, your Honours, one can't just turn aside
10 from that and say well, all these structural failings, this lack of leadership, people
11 keeping secrets from each other inside the VWU apply when it comes to this report.
12 And of course the analysis - the investigation - by Ms Hollis was wider, and yet when
13 it comes to these proceedings, we accept or we give a margin of deference to the
14 reports from that entity.

15 Your Honour, something more is needed. I'm not saying bad faith. I'm not
16 asserting that for the least. But more effort is needed, more weight it seems should
17 be given to the concerns by the Defence at least that the VW act in a more diligent
18 manner and ask further questions, because as it seems at the moment, a
19 one-size-fits-all formula is being adopted by VWU, which is unheralded in all the
20 cases before this Court so far. It hasn't happened. You know, this raft of measures,
21 pseudonym, some private sessions, some confidential sessions, voice distortion seems
22 to be the norm.

23 Now your Honours of course will make your own assessment, but in making that
24 assessment we ask that a margin of deference not be given to the VWU. We say this
25 witness can give evidence publicly because he said so.

1 And, your Honours, I've said it before, but it's a point. I think the law can
2 legitimately -- it's never a bed of roses giving evidence, and yet pensioners, single
3 mothers regularly are required and they give evidence domestically. And the law
4 can expect a reasonable fortitude, reasonable robustness for a witness to give
5 evidence.

6 And, your Honour, just because they're transplanted here in the ICC, the Court
7 should be alive I would ask, and I'm not saying it's happened, but they're not to be
8 mollycoddled to an extent that unnecessary -- unnecessarily invasive measures are
9 imposed which eviscerate in large measure or dilute at the very least a core and
10 important right, which is namely the publicity of proceedings.

11 Your Honours have previously --

12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, is that evidence on record, the evidence
13 of the witness having said earlier that he could give evidence in public in front of
14 cameras?

15 MR KHAN: Your Honour, it is in his --

16 PRESIDING JUDGE EBOE-OSUJI: Is it on the record of the Court? Is it on the
17 record of the Court?

18 MR KHAN: Yes, your Honour. It's KEN-OTP-0092-0454, it's at page 8 and the
19 exact quote is, "I am willing to testify even in front of all the cameras."

20 And, your Honour, I think elsewhere in the transcript he repeats that. So, your
21 Honours, we've had a previous witness also that said they're going to testify publicly
22 and then restrictive measures.

23 So something is happening it seems to me or may be happening when witnesses come
24 to The Hague. Of course there's a comfort zone that protective measures give. I
25 accept that. It's understandable. But whether or not that comfort zone is necessary

1 is a matter that I dispute. And I'd respectfully ask that although it's -- you know,
2 they say beggars can't be choosers. Your Honour, compared to in-camera
3 proceedings, of course, pseudonym and voice distortion seems a breath of fresh air.
4 But objectively looking at that measure I would say that this witness should give
5 evidence publicly. It's important, it's in the public interest, even more so when the
6 Prosecution says it's an important witness.
7 Your Honour, the witness (Redacted). We know that much. He's (Redacted).
8 And one of the reasons for all these measures and the expense that's gone to (Redacted)
9 witnesses, of course the primary purpose I would submit is protection of witnesses.
10 But, your Honour, there must be some other positive that comes from that which
11 must be an expectation that a witness can speak more freely and the Court can have
12 more confidence that a witness should be expected to tell the truth knowing he is not
13 (Redacted), he's not (Redacted) that he or
14 she may be at risk.
15 But, your Honour, it seems that from the assessment of the Victims and Witnesses
16 Unit and the submissions of the Prosecution, no weight is given at all to that expense
17 of (Redacted) and all those raft of measures. We want this evidence to be public.
18 And your Honours, we say that the VW assertion, the mere assertion, because it
19 emanates, it happens to emanate from a dysfunctional, unfortunately -- and I'm sorry,
20 it really is not personal, but a dysfunctional Victims and Witnesses Unit that has
21 systemic weaknesses within it that have been acknowledged by the Registrar, that
22 have been noted, and I've got the references from the International Bar Association in
23 its report in the past by Brenda Hollis's recent review team militate in favour of some
24 real weight being given to Defence concerns that those recommendations need to be
25 far better reasoned by VWU.

1 The Court deserves better. Your Honours deserve better, more cogent reasons than
2 simply saying an environment we've had some like, you know, people -- resolutions
3 in parliament and some blocking and all the rest.

4 There's no evidence that I've seen - and I stand to be corrected - that this witness has
5 been threatened, there's been any attempt when the witness was (Redacted),
6 has been beaten up or threatened or the family attacked, and yet suddenly we're
7 going to this cotton wool environment, which I have no problem to if it wasn't for our
8 right to a fair trial and the importance that we attach to it.

9 Your Honours, for those reasons it's my submission that the Prosecution have not
10 made out its case. I have said previously, it's a submission I do hold fast, and it's a
11 submission I would make if I was prosecuting, because it's a belief I hold, that very
12 often publicity of proceedings is one of the best protections that a witness will have.
13 I had that in East Timor. We've all had experience of it. By publicising the identity
14 of a witness, in fact, is the best safeguard to ensure that people do not mess around,
15 do not target or harass the witness.

16 So, your Honours, there's an actual philosophical difference with the Prosecution, but
17 on the facts I say the case is not made out. I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

19 MR KIGEN-KATWA: With your permission, your Honour, I would ask my
20 colleague, Ms Buisman, to address that issue. Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

22 MS BUISMAN: Thank you, Mr President.

23 Well, first of all, we agree with the observations made by Mr Khan. While it's been
24 stated many, many times how important public trials are, and you have also
25 acknowledged it yourself, it's in the Statute, the Appeals Chamber stressed that the

1 overriding principle is that full disclosures should be made, must always be borne in
2 mind, that the authorisation of nondisclosure of information is the exception to this
3 general rule.

4 And this was in a different context, and it was actually nondisclosure to the Defence,
5 which we, of course, understand is, is even more important that a disclosure is made
6 to the Defence, but, your Honours, Mr President, we should not underestimate the
7 importance of making these trials public, particularly in a situation like this witness,
8 who makes very, very serious allegations. He's not just alleging -- making
9 allegations against our clients. He's also implicating many other people. And
10 we've already heard the name of Mr Kibor. Isn't it even his right to know what is
11 stated, what is alleged against him?

12 And, Mr President, these people are being mentioned, being implicated with this
13 witness, these are the people we need to comment, to state whether this is true or false.
14 We're here to establish what actually in truth happened. These are allegations.
15 These are not facts. The only way we can establish what really happened is to
16 engage the Kenyan audience. We cannot do it behind, behind closed, closed
17 sessions.

18 So this is a very important issue for us. We also share the observations made
19 regarding the VWU, unfortunately, with due respect. This, I'm just looking at the
20 reports, and nothing in this report gives any indication that this witness was
21 threatened. There is nothing in this report that would actually justify imposing any
22 exceptional measure with respect to this witness, in particular, as Mr Khan pointed
23 out, because he himself stated he had no problem testifying in public.
24 So unless there is some exception that can be pointed out, I'm looking at the
25 Prosecution's submission. Of course, there is some redactions. I cannot comment

1 on that. If there is something in there that you are aware of that would justify, first
2 of all, his perceived and objectively justified risk, and that it's still proportionate to the
3 measures sought, this is something that is in your hands, because we cannot comment.
4 But whatever is disclosed to us doesn't justify this, Mr President.

5 We see at paragraph 20 of the Prosecution's submission, this is 1129, this was the one
6 that they submitted on the 24 of December 2013. We see that (Redacted)
7 (Redacted), but there is no suggestion that he has been threatened since or there has
8 been any consequences because of it. And we do know that he's (Redacted)
9 (Redacted), and he's well taken care of.

10 So in these circumstances, we request that he shall be testifying in public. Thank
11 you.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, if the witness had said before that he
13 was prepared to testify in public before the camera, why are we seeking to protect his
14 identity?

15 MR GARCIA: Your Honour, on that point actually, when Defence counsel read out
16 to you or explained what the witness had said, he didn't read out the whole transcript
17 actually, the entirety of it. It's transcript KEN-OTP-00920454. And when you do
18 read it, it gives you a totally different idea of what the witness meant. You have to
19 read it in context.

20 And I'm reading from lines 231 to 253. What happens is that the investigators that
21 are present are explaining to the witness what in-court protective measures can be
22 applied or implemented so that he can testify.

23 At one point the interviewer asked him, "Okay, perfect. Are you willing to come
24 and testify if you are requested one day?"

25 And the witness states, and this is quite important and this explains his answer, "I am

1 willing to so long as I am assured of the security of me and my children." It's after
2 that that the interviewer says, "Okay," and the witness adds, "I'm willing to testify
3 even in front of all the cameras."
4 So you have to take into consideration the context and what the witness means. The
5 witness is basically saying I'm ready to come and testify, but you need to have these
6 security measures implemented, the ones that you've spoken about.
7 So when we do read or when we do refer to a witness's statement or something he's
8 said, I think that we should put it in context for the Chamber. If not, it's misleading.
9 So that's my point about that claim. The witness has never basically stated that.
10 The witness is, from what I understand, the VWU wants protective measures, and
11 that's what we need to concentrate on, because his identity could be disclosed, and
12 there could be -- there is a reasonable cause on the witness's behalf that if this is the
13 fact, there could be retribution on him or his family members.
14 There has also been and I think every time I do speak about what I've told a witness
15 in a preparation session, there is a request by Mr Khan for disclosure of this, of the
16 witness preparation session or the recording. And I'd just like to refer Defence
17 counsel to the decision that was made by the Chamber on witness preparation.
18 That's decision 524. And in Section 6, which is required and permissible conduct,
19 paragraphs 20 and 21 I think are quite relevant.
20 20 reads, "Explain in general terms the topics that the calling party intends to cover in
21 examination in-chief," and 21 is, "Explain in general and neutral terms the topics on
22 which in the calling party's opinion the witness may be questioned during
23 cross-examination."
24 So what I mean to say by this is when I have intervened with, participated in the
25 witness preparation session with my colleague, Mr Lorenzo Pugliatti, we have

1 followed these instructions from the Chamber to a tee.

2 So Mr Khan's request is baseless, because the conduct that he's reproaching the

3 Prosecution is explicitly provided for and provided for in the decision by the

4 Chamber on this matter 524. So I think there is no basis on that matter for Mr Khan's

5 request and it should be denied.

6 PRESIDING JUDGE EBOE-OSUJI: Six minutes left on the tape, I've been told now.

7 Mr Garcia, the Defence counsel, both of them argue that, and of course the VWU will

8 need to be here and speak for themselves as well, but they argue that the Hollis report

9 has effectively destroyed any basis from margin of deference to the VWU. What do

10 you say to that?

11 MR GARCIA: I think, your Honour, without getting into the basis of the Hollis

12 report, we shouldn't be importing the conclusions of Ms Hollis in that report to this

13 case and in the question of Witness 356.

14 VWU is recognised as the professionals in the question of assessing witnesses, and I

15 don't think there is any reason for the Chamber to doubt in that professionalism.

16 I don't think we should be wasting time on that issue. The Chamber -- the

17 professionals from VWU have met with the witness. There are psychologists for that,

18 accredited psychologists who have this function of meeting witnesses, and these

19 people have and have indicated their conclusions.

20 I fail to see, unless Defence counsel indicate the relationship between the people, and

21 I don't think there are people mentioned in that report of Ms Hollis, and the

22 psychologist or the people who would have taken down or made observations

23 regarding our witnesses and submitted conclusions to the Chamber, I don't think we

24 should go down that road.

25 I think that the Chamber's views on the VWU has always been to accord them a

1 certain amount of deference since they are the professionals. I don't think anything
2 has been stated or mentioned apart from this report which in my opinion shouldn't
3 affect what the psychologist has stated in this case. I don't think anything else has
4 been stated as a base for the Court to doubt in their evaluation of the witness.

5 MR NARANTSETSEG: Your Honour, in the victims' view the Prosecution request
6 for in-court protective measures should be accorded. And based on the
7 recommendation made by the Victims and Witness Unit, we believe the Court should

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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

21 MS. BUISMAN: Mr President, just one second, if I may?

22 PRESIDING JUDGE EBOE-OSUJI: We will leave it at that for now. I think we've
23 had all the submissions.

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: The Chamber will rise and we will reconvene at

1 2.30. We'll take up the remaining issues on our agenda for the status conference that
2 we began yesterday, including Mr Kigen-Katwa's request.

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

4 PRESIDING JUDGE EBOE-OSUJI: The Chamber will now rise.

5 MR KIGEN-KATWA: With your permission, Mr President, I really must apologise,
6 Mr President. That request was meant for access of that video. Just in case you
7 make an order on that issue, Mr President, we would also like to have access to that
8 same video for proofing. Thank you, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you. The Chamber will adjourn.

10 THE COURT USHER: All rise.

11 (Recess taken at 12.52)

12 (The hearing resumes in closed session at 2.39 p.m.) Reclassified into open session.

13 THE COURT USHER: All rise.

14 Please be seated.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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10 The Chamber renders the following ruling on the Prosecution's request for protection
11 measures in the courtroom for Witness 356. On 24 December 2014, the Prosecution
12 requested the protective measures in the form of image and voice distortion, use of
13 pseudonym during testimony, limited in camera sessions to prevent identification,
14 and redaction to the public records where necessary.

15 On 15 January 2014, the VWU provided its assessment for in-court protective
16 measures recommending that a witness be given the measures of protection
17 requested by the Prosecution.

18 As requested by the Chamber, the Defence of Mr Ruto and Mr Sang, as well as the
19 legal representatives for victims have made oral submissions this morning. Having
20 considered the requests by the Prosecution and the assessment provided by the VWU,
21 as well as oral submissions made this morning in private session and without
22 prejudice to any prior ruling this Chamber has made regarding protective measures
23 to be applied for this witness, the Chamber hereby grants the following protective
24 measures:

25 Image and voice distortion will be applied, the use of a pseudonym for the duration

1 of the trial will be in place, and there will be limited use of private sessions and
2 redactions of transcript as necessary where there is a risk that the testimony may be of
3 a nature which could reveal the identity of the witness to the wider public.

4 That concludes the ruling of the Chamber.

5 That part should have been rendered in open session, but we've done it in private
6 session.

7 MS BUISMAN: Mr President, I think both the Defence teams would like to make a
8 joint application for leave to appeal. And I'm wondering, given the urgency of the
9 situation –

10 PRESIDING JUDGE EBOE-OSUJI: We go in open session now.

11 (Open session at 2.56 p.m.)

12 THE COURT OFFICER: We're in open session, your Honour.

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

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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16 PRESIDING JUDGE EBOE-OSUJI: Okay. So we will now proceed with our status
17 conference.

18 And, Mr Kigen-Katwa, you have the floor.

19 MR KIGEN-KATWA: Mr President, thank you for the opportunity. We had
20 proposed and requested that we be heard on the issue of the scheduling for the
21 hearings, and in our request, your Honours, we have requested that considering that
22 case II, which was supposed to alternate to this case, its hearings are uncertain. We
23 are aware that that ruling has not been made yet as to whether it will commence in
24 February or not.

25 We are also aware that previously an adjournment that obtained in that case affected

1 our programme in a situation that put the Defence in an uncertain situation, I think
2 also the Prosecution.

3 In view of all those circumstances, your Honours, we have requested that an
4 arrangement be made that the scheduling of the hearings will be that we will be heard
5 in our case one month on, and then we take a break for a month, and resume after a
6 month.

7 Mr President and your Honours, we make this because it has been the experience
8 we've had in this trial that sometimes in the course of proofing session or otherwise in
9 evidence in chief or otherwise in the course of cross-examination, the nature of the
10 evidence of the witness that we had anticipated has changed. In consequence, we
11 need the break for investigations.

12 It has also been our experience that the Prosecution's order of witnesses has kept on
13 muting. And each time it changes, it affects our plans in terms of preparations for
14 the hearings. And a certain programme, a programme that we are sure and we can
15 predict in terms of when we will resume would be helpful in us planning our
16 programmes.

17 And for all those reasons, your Honours, we pray that an order to issue determining
18 clearly our sitting schedules, and on our part we would propose one month, one
19 month on, one month off.

20 Mr President and your Honours, may I indicate that I have consulted the Prosecution,
21 the victims, and Ruto's team, and their approbance was subject to the Court's
22 accommodation, we could adjust that to conducting the hearings for three weeks
23 continuously and taking a break for three weeks. And I thought I should mention
24 that before they're heard. Those are my submissions, your Honours. Thank you.

25 MR KHAN: Mr President, I fully support those submissions. As my learned friend

1 mentioned, we've had conversations and discussions with my learned friend for the
2 Prosecution, and I think I don't think I misstate matters when I say that there was a
3 consensus that it would be helpful to have, of course, certainty or clarity regarding
4 the calendar; and, secondly, that it would be very useful for all parties to have sort of
5 a continuous schedule, breaks.

6 The Prosecution have previously said, and I refer to their filing of 23 August of last
7 year, on the observations on a previous application to vary the court schedule, that
8 they had no objection in principle to the fragmentation of the hearing schedule in
9 blocks of sessions and breaks provided that the proper conduct of proceedings is not
10 adversely affected and the witnesses are afforded the opportunity to provide their
11 testimony continuously without lengthy interruptions. I believe that's all parties
12 would prefer not to curtail or guillotine a witness unnecessarily.

13 Your Honours, we do say it is necessary not just for the reasons given by my friend,
14 but we've previously stated investigations are ongoing. The Court in relation to
15 issues of disclosure have previously alerted the parties to the possibility of doing
16 investigations in the course of the trial, and in fact, the order of witnesses was said to
17 be some relief. Your Honours, breaks would help us do very necessary
18 investigations.

19 Your Honours, the time is needed that the breaks would afford. The Bench, of
20 course, not sitting idly by, we saw in the Regulation 55 decision, the Bench also has its
21 own duties to review the evidence, to give various decisions, and with respect, it may
22 be helpful even to the Bench to have some periods between testimony where certain
23 written decisions could be given and the like.

24 Your Honour, the final point I'll make is that it's linked, although it's separate. In
25 your Honours' decision on Regulation 55, of course, the Bench made it clear that the

1 Defence to the extent of prejudice could mitigate that by seeking an adjournment to
2 do investigations in light of the decision that was rendered by the Bench on that issue.
3 Your Honours, I'm not waiving any rights. I'm keeping matters under review. But,
4 your Honours, if we get a workable schedule, hopefully it will prevent or obviate the
5 need of any adjournment under that head, because during the breaks that we get,
6 we'll investigate both the substantive case that we're doing as well as any issues that
7 arise from the Regulation 55 decision.

8 Sir, those are my submissions, and I would ask that the Bench view them kindly. I'm
9 most grateful.

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

11 Prosecutor?

12 MR STEYNBERG: Thank you, your Honour. I confirmed that what both my
13 learned friends have said, we have had discussions, and, indeed, I can tell the Court
14 that the Prosecution does, in fact, support a certain, a certainty in the scheduling of
15 the hearings and appropriate scheduling of blocks of hearings and blocks out of court.
16 From the Prosecution's perspective, the reason for this is that as the Chamber is aware,
17 there has been difficulty in scheduling certain witnesses. And when a witness falls
18 out at the last minute for one or another reason and the Prosecution is required to fill
19 that space, it becomes sometimes very difficult to keep the Court running for,
20 continuously for long periods of time.

21 The regular interruption of the hearings for a matter of anything from two to three
22 weeks would greatly facilitate our ability to make the necessary logistical
23 arrangements in consultation also with the Victims and Witnesses Unit to keep the
24 Court busy productively for the scheduled hearings.

25 In addition, a programme which would allow us to plan not just for the next block of

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1 hearings, but for successive hearings for preferably the rest of this semester would
2 greatly facilitate our planning. One knows, of course, and this case has amply
3 demonstrated it, that the best laid plans do not necessarily come to fruition. But the
4 greatest notice we have, the better our planning is able to be, which will facilitate in
5 my submission both our planning as well as the Defence's planning and indeed also
6 the Court's.

7 Those are my submissions. Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa spoke about three weeks on,
9 three weeks off.

10 Was that your submission, Mr Kigen-Katwa?

11 MR KIGEN-KATWA: Yes, Mr President. Following consultations, that was the
12 consensus we had.

13 PRESIDING JUDGE EBOE-OSUJI: And the Prosecution, is that also your view of the
14 rhythm?

15 MR STEYNBERG: Your Honour, from the Prosecution's perspective, we would like
16 at least two weeks off, because 14 days is the minimum turn-around period for a new
17 witness which the VW has indicated to us. However, we certainly have no objection
18 with the proposal by the Defence of three weeks on and three weeks off.

19 PRESIDING JUDGE EBOE-OSUJI: So you seek a minimum of two weeks off?

20 MR STEYNBERG: Indeed, your Honours, but as --

21 PRESIDING JUDGE EBOE-OSUJI: What about on?

22 MR STEYNBERG: Three weeks on, two weeks off as a minimum, but we're quite
23 happy with the suggestion of three weeks on and three weeks off as well if that suits
24 all the parties before the Court.

25 PRESIDING JUDGE EBOE-OSUJI: How about one week off?

1 MR STEYNBERG: Your Honour, that would obviously put greater pressure on us
2 and on the VWU to turn around witnesses, especially witnesses that need travel
3 documents, et cetera. Certain of the witnesses or many of the witnesses have now
4 obtained their travel documents, and that would make things a bit quicker.
5 But many of the witnesses have also informed us that they require up to two, one to
6 two weeks' notice before they're called. Now, one knows that in the national system,
7 such notice is not necessarily -- it's a courtesy, but not a requirement, because one can
8 simply send around the police with a subpoena. Unfortunately as presently advised
9 we don't have that luxury.
10 So one week could be difficult. It would be better than no break at all. But the
11 Prosecution would request two weeks, if at all possible.
12 MR KHAN: Your Honour, can I say for the Defence, of course, our resources are
13 quite different, but on that issue I agree with the Prosecution's preference for a
14 minimum of two weeks. It's not practicable if we only get a week to travel to Kenya
15 to do anything meaningful and to come back in time. So, your Honour, I would ask
16 that, in fact, my preference would be three weeks on, three weeks off. The reason
17 being that if the minimum turn-around is two weeks, if a problem is or comes to light,
18 VWU may well then not be able to bring a replacement witness if we only get two
19 weeks, whereas if we get three weeks, we have a bit of a buffer where we can make
20 sure that the three weeks we have in court are effective, and that in the long run will
21 be a more efficient way of proceeding in my respectful submission. I'm grateful.
22 JUDGE FREMR: I have one question to Mr Steynberg. Just hypothetically, if the
23 first block would start tomorrow by your witness, what time are you ready to cover
24 by this first block? How many witnesses do you have ready for the first block, for
25 what time?

1 MR STEYNBERG: Your Honours, at the moment we have three witnesses lined up.
2 The present witness following, followed by a crime-base witness, Witness P-128,
3 followed by the expert P-464. We anticipate that that evidence, if we start tomorrow,
4 we would be able to finish within, I imagine that would take us the better part of
5 two-and-a-half to three weeks.

6 JUDGE FREMR: Thank you very much.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Narantsetseg?

8 MR NARANTSETSEG: Thank you, your Honour. We are alive to the concerns
9 raised by the parties, the Prosecution and the Defence, but our position is slightly
10 different, your Honours. We do agree with the fact that both Prosecution and
11 Defence teams do need time to prepare for the questioning, et cetera, during a three
12 week off period.

13 But what we don't agree is that Mr Nderitu asked me to insist on the fact that we
14 should proceed at least five to six weeks on programme, during which we can assess
15 approximately six to eight witnesses in one block in one session. Therefore, your
16 Honour, our position would be five to six weeks on and three weeks off. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: I take it also a minimum of two weeks off as long
18 as it's five to six weeks, that's what you are saying? Your interest is in how
19 many -- the block of time alone isn't enough?

20 MR NARANTSETSEG: Yes, that would be the correct understanding, yes. Thank
21 you.

22 PRESIDING JUDGE EBOE-OSUJI: Can you react to that, counsel, the equation, what
23 the submissions of the victims' counsel has introduced into the equation now in terms
24 of should it be four weeks on, five weeks, six weeks minimum? What is tolerable to
25 you or at a maximum, I should say?

1 MR KHAN: Your Honour, I think all parties want efficiency of proceedings. From
2 what my learned friend, the Prosecution, senior trial attorney for the Prosecution has
3 stated, there are various logistical challenges that will run, will run the risk that if we
4 have a six-week block fixed, we may have empty time.

5 It seems to me that over the period, the most efficient way of doing it is to have a
6 schedule that is three weeks on, and I would ask for three weeks off. Your Honours,
7 if your Honours wish to make it four weeks on and three weeks off I wouldn't have a
8 problem with that, but it's the timing in particular --

9 PRESIDING JUDGE EBOE-OSUJI: You will not have a problem?

10 MR KHAN: I wouldn't have a problem. If you wanted four weeks on and three
11 weeks off, your Honour, that would be something that we would could accommodate
12 at least for Mr Ruto.

13 Of course, Mr Katwa-Kigen will speak for Mr Sang.

14 PRESIDING JUDGE EBOE-OSUJI: What about four weeks on and your two weeks
15 off request minimum?

16 MR KHAN: Well, your Honour, a lot of it depends upon the witnesses to be quite
17 frank about it. I could accept that if the Prosecution would be -- and so far I'm
18 grateful, I'll note Mr Steynberg has been very kind and accommodating to the
19 interests of the Defence -- there would be some flexibility in having discussions and
20 saying, "Well, this witness, can you put it back until certain further investigations are
21 done."

22 If the Prosecution would proceed on that basis, that could work. But if there was a
23 change, and they were very strict, "No, the witness must come now," and
24 investigations had not matured to the point that we say are necessary, it may be that I
25 would have to bother the Bench to ask for the witness formally to be put back to give

1 us more time.

2 So, your Honours, I think between us we'll try in good faith to work. I think we

3 could do a longer period with the three weeks off with that caveat, that the

4 Prosecution would be somewhat accommodating regarding the order of witnesses.

5 And it may be in that certain discussions could be had between us, and of course then

6 the witness's own programme and diaries could be consulted, and we could come

7 with a workable solution.

8 The safe option, of course, would be three weeks on, three weeks off, four weeks on,

9 three weeks off, a longer period, but with the caveat that we would require some

10 flexibility from the Prosecution as well.

11 I hope that answers the question, your Honour?

12 PRESIDING JUDGE EBOE-OSUJI: It does.

13 MR KHAN: I'm grateful.

14 PRESIDING JUDGE EBOE-OSUJI: It's not, of course, entirely up to the parties to

15 doing it at your convenience entirely.

16 MR KHAN: Of course. Of course.

17 PRESIDING JUDGE EBOE-OSUJI: The Chamber is interested in having this trial

18 concluded as quickly as possible.

19 MR KHAN: Of course, your Honour. I apologise for that. The main point was

20 this, that over the period of a trial, very often we find that from an outsider, they may

21 think a two-week break or a three-week break is wasted period, but actually it's not.

22 It actually allows the trial proceedings to be far more focused, which actually lets us

23 get to the finish line quicker than we would by having it, you know, a diary filled

24 from the beginning, and all the time there will be applications to adjourn from one

25 side or the other, which leads to not only a waste of time, but inordinate costs. They

1 have cost implications with travel and so many other issues.

2 So, your Honours, in that spirit the application is made in support of my learned
3 friend Mr Katwa-Kigen.

4 MR KIGEN-KATWA: Your Honours, my instructions initially were exactly as the
5 victims may have said, being that we could have sessions of four weeks and a break
6 of two weeks. Those were initially my instructions. And so we would not be too
7 adverse to that option. It is our fear though that two weeks off might be very short, a
8 break of two weeks. But we can live with it.

9 I should also put the rider that on our part if we were given a session of a hearing for
10 three weeks or even four weeks, and it turns out that at the end of that session our
11 witness is still testifying, we wouldn't mind adjusting so that we finish the witness
12 who is testifying.

13 And so whatever order, whatever scheduling is given, it is not intended on our part
14 that it must be stayed to that. It can be adjusted from time to time depending on the
15 contingencies that obtain through the course of trial.

16 Thank you, Mr President and your Honours.

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

18 Mr Steynberg, you're on your feet?

19 MR STEYNBERG: Sorry, your Honour, but I'd just like to endorse what my learned
20 friends have said in respect of the Common Legal Representative's request for a
21 longer period on. The concern I have is that we've seen in prior proceedings that
22 when a witness falls out, and a new witness has to be brought on short notice or
23 witnesses to fill, to fill the gap of the session, it is often very difficult to find witnesses
24 that are both available and that the Defence are prepared to hear on short notice.
25 And the longer the sessions in court, the more difficult it is going to be to fill those

1 gaps, which is why the Prosecution submits that a shorter period, a scheduled period
2 will be more efficient in that if a witness falls out halfway through, we'll only have a
3 week and a half to fill, we might be able to fill that with one or two witnesses;
4 whereas if that happened in a longer session, it may require a much larger and more
5 complicated readjustment.

6 But I also endorse my learned friend for Mr Sang's suggestion that some flexibility
7 will be required. And I note that on previous occasions the Chamber has scheduled
8 a buffer day or buffer days following the -- that's a term I believe one of the legal
9 officers used, I don't think it's an official term -- but the fact that parties should be
10 prepared if a witness does not finish on the Friday, say, to finish that witness on the
11 Monday and Tuesday of the following week.

12 But subject to that we think that five to six weeks is certainly too long, even one
13 month would not be our preference, but if the Chamber so orders obviously we will
14 do our best to keep the Chamber occupied.

15 PRESIDING JUDGE EBOE-OSUJI: Whatever the Chamber resolves on this thing or
16 however it is determined, it should be the case that the Prosecution should be on
17 constant alert to fill those sorts of gaps. So we do not want to operate on the basis of
18 comfort that if a witness drops out, that that should result in gaps in the court
19 schedule. If a witness drops out, these things happen in criminal cases, efforts
20 should be made, all efforts should be made to fill the gaps so that proceedings
21 continue without interruption. That is the idea that we should follow. We intend
22 to keep everyone focused on that target, that idea.

23 That's it on this agenda item. We'll move on now to Mr Narantsetseg.

24 MR NARANTSETSEG: Your Honour, our request is that we wish, we would
25 appreciate if the Prosecution would provide us the running order of the next 10

1 witnesses and the time that is required for the parties to conduct their examination
2 and cross-examination. Your Honour, the reason is that there is some dual status
3 witnesses who are still in the list of the Prosecution witnesses. And, as your
4 Honours have ordered, when the dual status witness appeared, the legal
5 representative is entitled to be in the courtroom and he might apply for -- apply for
6 conduct his questioning.

7 And, your Honours, we don't want to tire you with small details, but the fact is that
8 Mr Nderitu, the legal representative, is based in Kenya and he needs to know -- he
9 needs to have this information in his possession in order to organise his travel, your
10 Honours.

11 Because he's based in Kenya he would have to make a request with the Court's
12 Counsel Support Section and, in order to have them approve the relevant tickets and
13 receive all the logistical support that he needs, he does need this information and we
14 would appreciate if your Honours would provide us relevant guidance in this regard.
15 Thank you.

16 PRESIDING JUDGE EBOE-OSUJI: Because the Prosecution will be responding, we
17 might as well receive the reaction of the Defence before the Prosecution takes up the
18 matter.

19 Mr Kigen-Katwa, do you have any comments on -- any reaction to Mr Narantsetseg's
20 submission?

21 MR KIGEN-KATWA: We definitely would like to have at least an updated list from
22 the Prosecution. We would probably pray also that the Prosecution should give an
23 indication at the close or toward the close of every witness if their witness list changes
24 so that we do not have to bring this motion before you every other time.

25 Thank you, Mr President and your Honours.

1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

2 MR KHAN: Your Honour, I would endorse what's been said so far by both my
3 friend and Mr Kigen.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, do you have any problem with
5 that, any difficulties?

6 MR STEYNBERG: Your Honour, I've got no difficulty providing my learned friends
7 with the Prosecution's estimate of who the next ten witnesses are going to be, but of
8 course as this case has amply demonstrated I can give no assurances. We are at
9 the -- well, put it this way, witnesses have different views at different times. And it's
10 not always within the Prosecution's power to bring the witness which we had hoped
11 to bring.

12 But having said that, I've already provided a list of the order for the remainder of all
13 of the Prosecution's witnesses. We will endeavour to stick to that order. I don't
14 intend to in public session discuss difficulties which we may have had with certain of
15 these witnesses. I think the best way to do it would be to send an e-mail to the
16 parties concerned and copy to the Chamber of the changes to the order which might
17 be anticipated by the Prosecution at present for the next 10 witnesses.

18 PRESIDING JUDGE EBOE-OSUJI: When did you give that list? You said you've
19 already provided a list of the order for the witnesses before.

20 MR STEYNBERG: Your Honour, this was last year already. I don't have the exact
21 date. In fact, I see it's dated 28 November last year.

22 PRESIDING JUDGE EBOE-OSUJI: So there is no need to refresh that list?

23 MR STEYNBERG: Yes, your Honour, there may be. There within the first ten
24 witnesses, there are two or three who may well change. So I can do that. As I say,
25 all I can do is give my best estimate of where changes may be and my undertaking

1 that we will endeavour to stick to the order as best as possible.

2 MR KHAN: Your Honour, the other aspect that would be very helpful, if the Court
3 so minded, is when there is a change to the witness order, some explanation as to why
4 there is a change, because I think it goes to issues of credibility and a whole variety of
5 other issues. If a witness is sick, it's one matter, but if there is some other reason why
6 a witness is not coming, I think the Defence should be notified of it. There is no
7 prejudice to the Prosecution if that is, if we're informed, because we've said
8 repeatedly that many witnesses who tell the truth, you know, we applaud, but certain
9 witnesses in this case may well be part of a deliberate plan to mislead, and if those
10 witnesses are expressing certain misgivings, they are matters that may fall for proper
11 inquiry by the Defence.

12 So, your Honours, what I would ask is not only the order, but if there is a change,
13 why is there a change in that order. That would be very helpful to the Defence, and I
14 would ask that an order be given to that effect.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, I take it you agree?

16 MR KIGEN-KATWA: I very much agree, Mr President and your Honours.

17 MR KHAN: And, your Honour, specifically, the first witness, 452, has not turned up
18 for this session. Why?

19 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, why don't you consult with your
20 colleagues and we'll get back to you?

21 Prosecutor?

22 MR STEYNBERG: Your Honours, insofar as reasons given by the witness for
23 non-travelling may be disclosable, the Prosecution obviously has no reasons not to
24 disclose them. But in many instances it would just be witness management issues,
25 for instance, the witness may have a sick child or may have to prepare for the start of

1 the school year and, therefore, is unwilling to travel at the moment. In those cases
2 we submit the Prosecution should not be ordered to, ordered to disclose that
3 information.

4 Another issue we have and we've had in the past is that sometimes the witnesses
5 simply don't travel and are incommunicado, and we are able to actually ascertain the
6 reasons why they haven't travelled, which makes it very difficult to give any sort of
7 reason for that.

8 PRESIDING JUDGE EBOE-OSUJI: But that -- do you have any difficulty with giving
9 that particular reason?

10 MR STEYNBERG: Your Honours, that we have not been able to communicate with
11 them, no.

12 PRESIDING JUDGE EBOE-OSUJI: So your concern would be only as regards
13 information of a very private nature, if that is the reason that the list or the witnesses
14 is not turning up?

15 MR STEYNBERG: Yes, your Honours. But just on the basis of basic principles, if
16 the information is disclosable, then we are obviously quite happy to disclose it, if it's
17 not disclosable --

18 PRESIDING JUDGE EBOE-OSUJI: The question -- the question is: What do you
19 mean by "disclosable" and what is disclosable and what is not?

20 MR STEYNBERG: Your Honours, disclosable information would be information we
21 would be required to disclose under Rule 77 or Article 67(2).

22 PRESIDING JUDGE EBOE-OSUJI: So if the reason for the witness not showing up
23 has some forensic significance to the case, you will indicate?

24 MR STEYNBERG: Indeed, your Honour. So to take a hypothetical example, and I
25 stress this is a hypothetical one, if the witness doesn't turn up, and we receive

1 information that the witness has taken a bribe from somebody not to come to court,
2 then that would clearly be disclosable, because it would reflect upon the witness's
3 credibility.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

5 MR KHAN: Your Honour, there is no prejudice to the Prosecution in letting us
6 know why a witness who has been warned to attend, who has agreed to attend, who
7 has been scheduled to attend does not attend.

8 Now, your Honour, if a witness, for example, says it has a sick child, what's the harm
9 in telling the Defence that? Because we can also do inquiries, does the person have a
10 child at all?

11 An example is given, your Honour. I see no harm in talking about witness numbers,
12 P-185. We're told by Melinda Friend that this person is not answering the phone.

13 What does that mean? What does that mean? I think the Defence shouldn't be
14 required either to prepare for witnesses that there is no expectation they're going to
15 turn up, or in relation to witnesses that we've prepared for who don't turn up, we
16 should know why, because if later on they do, perhaps we will want to ask what's
17 changed their mind, has anything changed their mind?

18 It can't be for the Prosecution only to reveal evidence of what they say is -- if there is
19 evidence of bribery, of course that should be disclosed, but other aspects, whether it's
20 inducements or others that may affect the credibility of a witness but are certainly
21 material to the preparation of the Defence.

22 PRESIDING JUDGE EBOE-OSUJI: Could the Prosecution have told you more than
23 the witness was not answering the phone?

24 MR KHAN: Well, your Honour, what does that mean? Is it one phone call? Is it
25 several phone calls? Is it over a period of two weeks, or is it one day?

1 That actually, I mean if somebody tries to call me today, I'm in court. There is an
2 innocent explanation. But if somebody can't contact me over two weeks, and I don't
3 return the calls, it may give rise to some other speculation or inferences of possibilities.
4 And if there is a possibility, it may be that that's material to the preparation of the
5 Defence.

6 Your Honour, another way of looking at it, what is the harm of telling the Defence,
7 letting us know as much out of professional respect as much as anything else what is
8 going on and why is it going on. I'm not asking for if there is an operation, the exact
9 details of the operation or things that are intrusive. But issues that affect the court
10 calendar and the efforts we've expended in preparing for a witness, I think we should
11 be told about it. There is no harm.

12 I'm grateful.

13 PRESIDING JUDGE EBOE-OSUJI: Last round, Mr Kigen-Katwa, and then back to
14 the Prosecution and we'll end it there.

15 MR KIGEN-KATWA: Mr President, it is our fear that an explanation as to why a
16 witness has not come is an issue that we should be given an explanation of, not
17 necessarily an explanation, but a communication as to why probably the Prosecution
18 are unable to procure his or her attendance.

19 And I have in mind, for instance, the witness who we're expecting to deal with in this
20 session, number 452. We are aware that that witness was supposed to have come up
21 in the previous session. He or she didn't turn up. This session again, it would seem
22 from the Prosecution's schedule of witnesses it's not expected that he or she will come.
23 And we would want to know whether we should still expend our time and effort
24 expecting to -- expecting his testimony, and if it is to expect, whether the delay, the
25 reasons for his delay or her delay to come is anything that is relevant to the credibility

1 of his testimony.

2 And, Mr President and your Honours, we would very much maintain that that is an
3 information that we should be given. And the Prosecution has absolutely no
4 prejudice if that information is communicated to us.

5 Thank you, Mr President and your Honours.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Last to you, Mr Steynberg, and then we will wrap it up on this or rather close it and
8 return to Ms Buisman's earlier request.

9 You talk about information that is disclosable, and you defined what you mean by
10 that. Beyond that as a basic, at least, a basic professional courtesy, isn't it to be
11 expected that if counsel have been told to prepare for a witness to be examined, and
12 the witness doesn't show up for any reason, why does it have to be something in the
13 order of definition of disclosability within the Rules of the Statute for that sort of
14 information to be given to opposing counsel, who are expecting to meet a witness and
15 the witness doesn't show up?

16 MR STEYNBERG: Your Honours, I don't maintain my objection to this. We have
17 in the past on I think nearly all occasions given reasons to counsel for witnesses'
18 non-appearance. I think that the latest witness was one of the few that we haven't
19 gone into details simply because we've not been able to verify directly with the
20 witness what the reasons are. But we will endeavour to give as much information as
21 we believe can be given and can safely be given without jeopardizing privacy or
22 security of witnesses.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: The Chamber will not be making any separate

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1 order on that. We will leave it on the basis that the Prosecution left it, which is they
2 will make every effort to provide Defence counsel with information. If they don't do
3 that, and that remains an issue, we'll take up those issues on a case-by-case basis as it
4 proceeds.

5 Right. Now we will go into -- Mr Kigen-Katwa, we want to go into private session
6 so that you or your colleague can argue your earlier request. We will be rising at 4
7 o'clock today.

8 MR KIGEN-KATWA: Mr President, I just wanted to correct something that came up
9 yesterday in public session, where the chambers said in two instances that Mr Sang
10 did not file anything in response to Mr Ruto's excusal application.

11 The truth of it is that we actually did file it and on time. It is filing number 1127,
12 which was filed on 20 December 2013, and I --

13 PRESIDING JUDGE EBOE-OSUJI: But you got what you supported, didn't you?
14 Just for the record, you're trying to say?

15 MR KIGEN-KATWA: Absolutely, Mr President. Thank you. Yes, yes.

16 PRESIDING JUDGE EBOE-OSUJI: Very well. Duly noted.

17 MR NARANTSETSEG: Your Honour, pardon me, just small piece of information.

18 One of the three witnesses that Mr Steynberg said who are ready to testify, one of
19 them is Witness 128, who is dual status witness. So we would like to renew our
20 application to question this dual status witness. And the written application was
21 filed 3 January of this year, and it's the record number 1133 confidential, your Honour.
22 Thank you.

23 PRESIDING JUDGE EBOE-OSUJI: We will now go into private session.

24 (Private session at 3.37 p.m.) Reclassified into open session.

25 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

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

22 We have to adjourn now, and we will thank the court reporters and interpreters and
23 of course the court staff for remaining with us past our announced time of 4 o'clock.

24 The proceedings will now be adjourned. We will reconvene tomorrow at 9.30.

25 THE COURT USHER: All rise.

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- 1 (The hearing ends in private session at 4.12 p.m.) Reclassified into open session.
- 2 RECLASSIFICATION REPORT
- 3 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 4 2013, and the instructions in the email dated 9 May 2014, the version of the transcript
- 5 with its redactions becomes Public.