

Trial Hearing
Witness: KEN-OTP-P-0356

(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
5 and Joshua Arap 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 Friday, 17 January 2014
10 (The hearing starts in open session at 9.37 a.m.)
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. The situation
17 in the Republic of Kenya, in the case of The Prosecutor against William Samoei Ruto
18 and Joshua Arap Sang, ICC-01/09-01/11. We are in open session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 I think it will be in order to refresh appearances since we are in a different phase of
21 the proceedings.
22 MR STEYNBERG: Good morning, your Honours. For the Prosecution appearances
23 are the same as yesterday afternoon.
24 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?
25 MR KHAN: Your Honours, Mr Ruto is represented by: David Hooper of Queen's
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1 Counsel; Mr Essa Faal; Ms Shyamala Alagendra to my right; Ms Leigh Lawrie, our
2 legal assistant; Ms Grace Sullivan and Ms Shalini Jayaraj. Your Honours, my name
3 is Karim Khan.

4 PRESIDING JUDGE EBOE-OSUJI: And it will be noted that your client is not
5 present today.

6 MR KHAN: Indeed, your Honours, and we're grateful. Pursuant to the order of
7 the Court, Mr Ruto's attendance has been excused.

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

9 MR KIGEN-KATWA: Morning, your Honours. Mr Sang is represented by myself,
10 Caroline Buisman, Honor Lanham, Philemon Koech and Mr Sang is present himself.
11 Logan Hambrick, our legal assistant, is not present but will join us a little later.
12 Thank you, Mr President and your Honours.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Mr Narantsetseg?

15 MR NARANTSETSEG: Good morning, Mr President and your Honours. For
16 victims, Orchlón Narantsetseg and Caroline Herzig. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Bourgon?

18 MR BOURGON: Good morning, Mr President. Representing Witness 356,
19 Stéphane Bourgon.

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

21 We will briefly go into private session for just a minute or so and then we'll come
22 back out.

23 (Private session at 9.40 a.m.) Reclassified into open session

24 THE COURT OFFICER: (Interpretation) Mr President, we are in private session.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We are in private

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1 (Redacted)

2 (Redacted)

3 The Chamber denies the request for leave to appeal. Reasons will be elaborated
4 upon later on in the course of the day. That is the announcement.

5 We will now go into public session again.

6 (Open session at 9.41 a.m.)

7 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.

8 PRESIDING JUDGE EBOE-OSUJI: We will be inviting the witness into the
9 courtroom, but before we do that we want to -- we want to inform the state of affairs
10 in relation to the request of Mr Kigen-Katwa relating to the calendar.

11 We've heard the arguments or the concerns expressed by counsel yesterday on both
12 sides and their requests about the schedule.

13 At the moment, as everyone knows, there is a request pending in the second case, in
14 the companion case, the Kenyatta case for an adjournment of that case, to put it off
15 from commencing as currently announced.

16 No decision has been rendered yet by Trial Chamber V(b) on that request. So we
17 cannot pre-empt what will happen then, but it's obvious that, depending on the
18 decision on that request, there may be -- there will be an effect on how we proceed in
19 our case depending on what is announced in that case.

20 So far we're only able to advise that the current session of this Trial Chamber of this
21 case will end on 31 January 2014, on 31 January 2014, and we're not looking at the
22 following week as a buffer week for present purposes. This is not to say that in the
23 future we will not be using the following week after a break as a buffer week, but
24 we're saying for the present announcement -- purposes of the present announcement
25 31 January will be it and then we will be adjourning at that time. We will be

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1 announcing later on the further schedule in the case.

2 MR KIGEN-KATWA: We are most obliged, your Honours. Thank you.

3 MR KHAN: Mr President --

4 PRESIDING JUDGE EBOE-OSUJI: I do not know if it's the same thing, but I

5 understand there are some technical difficulties with the transcript. That's not what

6 you wanted to speak to?

7 MR KHAN: No, it wasn't, Mr President.

8 The request was -- I'm grateful for that clarification as far as when we're due to end.

9 We of course appreciate there's a pending matter in the other pending case, but

10 could -- would the Court be inclined to let us know when we are due to come back,

11 because for planning purposes it would be very useful, for example, that we will not

12 come back before a certain date? So if we would have at least the two or three weeks

13 after the 31st, we can schedule work. We can't do it at the last minute. So

14 irrespective of a decision in the -- in the other case, it will be helpful to know that

15 we're not due back until a certain date so that activities can be properly planned.

16 PRESIDING JUDGE EBOE-OSUJI: It would be best to -- of course, in an ideal world

17 it would be best to have the decision in the other case rendered before we can really

18 deal with that issue. But let's -- we will think about it.

19 MR KHAN: Most grateful.

20 PRESIDING JUDGE EBOE-OSUJI: The Chamber will think about it --

21 MR KHAN: Thank you so much.

22 PRESIDING JUDGE EBOE-OSUJI: -- and see if we can answer that question for you.

23 Just one moment so we can have our own transcript working as well.

24 THE COURT OFFICER: (Interpretation) Ladies and gentlemen, I request that you

25 all reconnect to your systems in order to be able to view the real-time transcripts.

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1 Thank you.

2 PRESIDING JUDGE EBOE-OSUJI: Is everyone's transcripts working? Prosecution?

3 Mr Bourgon?

4 Mr Bourgon, you made a request for you to be accompanied by your internal staff
5 member.

6 MR BOURGON: I did, Mr President. I did get the decision from the Trial Chamber
7 and I perfectly understand.

8 PRESIDING JUDGE EBOE-OSUJI: You -- there was some concern as to
9 space -- sitting space, but seeing that there's enough space, you may bring your intern
10 along with you to assist you.

11 MR BOURGON: Thank you very much, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: You're welcome.

13 We will now bring in the witness. So we'll bring down the blinds.

14 (Closed session at 9.49 a.m.) Reclassified into open session

15 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you will be leading the witness.

17 MR GARCIA: Morning, Mr President. Yes, indeed. I will be leading the witness.

18 PRESIDING JUDGE EBOE-OSUJI: Perhaps this will be a good time to put on record
19 whether the usual cautions have been given, 66(3) in particular.

20 MR GARCIA: Indeed, your Honour. We did give the usual cautions during the
21 witness preparation session with the witness.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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2 (Redacted)

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5 (Redacted)

6 (The witness enters the courtroom)

7 PRESIDING JUDGE EBOE-OSUJI: We can now go back into open session.

8 (Open session at 9.54 a.m.)

9 THE COURT OFFICER: (Interpretation) Mr President, we are in open session.

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

11 WITNESS: KEN-OTP-P-0356

12 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome to the courtroom and thank
13 you for joining us in our search for the truth.

14 This courtroom belongs to you. It belongs to the international community of which
15 you're a member. That is why it belongs to you as much as it belongs to us. The
16 reason I tell you that is that it's important for you to feel entirely comfortable and at
17 ease when you answer your questions. I talk about answering questions because
18 that is what will be happening. That is how we get to the search for the truth.

19 The lawyers in the courtroom will be taking their turns in asking you questions,
20 beginning with the Prosecution lawyers and then the Defence lawyers would also
21 take their turn in asking you questions. It may also be the case that the victims'
22 lawyer may ask you questions as well if we give him permission to ask you questions
23 if he requests it.

24 In all of this, the central matter is questions are the means by which we get at the truth.

25 And in asking you the questions, the lawyers are doing their work. Sometimes the

1 questions may appear difficult. They may appear to go to personal issues. At times
2 the questions may seem to you quite pointless. You may also think that the
3 questions are being unfair.
4 In all of this we will ask you to exercise patience. Answer the questions. In
5 particular, you need not concern yourself overly with whether or not the questions
6 are being fair or unfair. The reason I say that is because the three Judges sitting up
7 here, we have a very important work of making sure that questions asked of you are
8 not unfair to you. So do your best to answer those questions without worrying
9 about their fairness.
10 And how you -- the best to assist us in getting at the truth is by listening carefully,
11 listening carefully to those questions, understanding the questions and then
12 answering them to the best of your ability.
13 We're more interested in what you perceived directly, either perceive it by hearing it
14 or perceived it by seeing what you're telling us about, more directly, or what you
15 sensed yourself. So those are the more important areas of information that we will
16 be interested in coming from you.
17 So make sure you understand the questions and then answer them to the best of your
18 ability and truthfully. We're interested only in the truth.
19 If you do not understand the questions, please do not hesitate to indicate that. You
20 indicate that you do not understand the questions. The lawyer asking you the
21 questions will repeat or reformulate the question in a manner that you will
22 understand.
23 Now, there is a practical matter of making sure that your evidence is also completely
24 captured. We are assisted in our work by some very important colleagues who do
25 the interpretation if you are speaking in Swahili and also who will -- who are the

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1 court reporters sitting up there who will be recording what you say.
2 It is important that they are also assisted while in doing their work and you can help
3 us in that. That means speak at a moderate speed, not too fast, not too slow either.
4 Just pace yourself comfortably and I will be reminding you from time to time if you
5 are doing it right in that regard.
6 There's also an important matter of observing what we call a pause between the
7 person who is asking you a question and before you start answering it. The reason is
8 the interpreters and court reporters are hearing you only through the
9 microphone -- only through their headphone, and when we have overlapping
10 speakers, somebody hasn't finished asking the question, you know what question the
11 person is asking and then you start answering immediately, there's a risk of overlap,
12 and during that overlap what you are saying may not be captured and what they're
13 asking you may also not be captured. That's why it's important to wait until they
14 finish and then you start so that there's that pause that enables all the information to
15 come in, the question, the end of it, and the beginning of your answer.
16 Those are the introductory comments I have for you. I will now welcome you again
17 to the courtroom and I will have the court officer administer your oath. Thank you.
18 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and
19 nothing but the truth.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Now, before you start your
21 testimony there's one more matter I thought I should mention to you. You have
22 been given protected status. That means your -- the information concerning you,
23 your personal identity, is not exposed to the public. You are testifying under a
24 pseudonym. You are -- we know you as Witness 356, or the public will know you as
25 Witness 356.

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1 It's important to keep this in mind. In your testimony when we are in the public
2 session -- because some of your testimony will be in public session. For instance, we
3 are now in the public session. And when we're in public session there's a button
4 there. Do you see that button beyond your microphone --

5 THE WITNESS: Yes, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: -- that has a red light on?

7 THE WITNESS: Yes, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: And the next one is green. So when we are in
9 the public session the red light -- the red light will come on on the button and when
10 we're in the private session the green light will be on.

11 When we're in the public session it's important for you not to insert into your answers
12 information that may identify you, not only in terms of your name or names of your
13 relatives and friends, but also answers that contain unique events that only you
14 would have observed in the company of a few people who would -- hearing that
15 information in the public will connect that it is you that is testifying.

16 Be careful not to give out that sort of information in the public session. We are still
17 interested in those sorts of information, if they're interest -- if they're relevant to the
18 story, but we will receive them in the private session. That's when the light is green.
19 So when the light is red, be mindful of what information you give in your answer.

20 All right?

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Mr Garcia?

24 MR GARCIA: Good morning, your Honours.

25 QUESTIONED BY MR GARCIA:

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1 Q. Mr Witness, morning.

2 A. Morning, your Honour.

3 MR GARCIA: Your Honours, I ask for the next session to be done in private session
4 in light of the type of evidence that I'll be eliciting from the witness.

5 PRESIDING JUDGE EBOE-OSUJI: How long do you think that might take?

6 MR GARCIA: There will be two blocks of evidence, your Honour. The first one
7 will be evidence relating to the witness, intimate information, and the second block of
8 evidence that we've been speaking about. So that will have to be a private session,
9 well, which might take a good part of the day.

10 PRESIDING JUDGE EBOE-OSUJI: A good part of the day in private session?

11 MR GARCIA: Yes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Well, let's go --

13 MR GARCIA: If we go into private session, your Honour, maybe I can explain
14 further on that -- on that point?

15 MR KHAN: While that's done, can I just raise also we haven't got, as usual -- as is
16 usual, a PIS form. So I just raise that for my learned friend.

17 MR GARCIA: I have the PISs here on my desk and I'm going to be soliciting the
18 help of the court officer to distribute those in a minute.

19 PRESIDING JUDGE EBOE-OSUJI: Let us go into private session then so you can tell
20 us why we will need a good part of the day.

21 (Private session at 10.06 a.m.) Reclassified into open session

22 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Garcia?

25 MR GARCIA: So, your Honours, as I explained yesterday, what I intend to do is

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1 start out today with all the biographical information regarding the witness. We sent
2 out an email obviously to the Defence -- both Defence teams regarding an admission
3 in regards to the CV of the witness. Defence team have only admitted three or four
4 items on that CV, so we're going to have go through it obviously with normal
5 questions not being suggestive. That's one thing.

6 (Redacted)

7 (Redacted)

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 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: So you mentioned two blocks of testimony that
23 may need to be led in private session. And when you say "a good part of the day in
24 private session," that means dealing with those two blocks?

25 MR GARCIA: That's correct, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Well, let's proceed then.
- 2 MR GARCIA:
- 3 Q. Morning, Mr Witness.
- 4 A. Morning, your Honour.
- 5 Q. Now, Mr Witness, I understand that your full name is Mr (Redacted)
- 6 (Redacted). Is that exact?
- 7 A. Yes, your Honour.
- 8 Q. And your ethnicity is that of a Kalenjin? You're a Kalenjin and you're of the
- 9 Nandi subgroup; is that correct as well?
- 10 A. Yes, your Honour.
- 11 Q. Now, could you please tell the Court when you were born and where?
- 12 A. Your Honour, I was born in (Redacted) at (Redacted)
- 13 (Redacted).
- 14 Q. And can you tell the Court what is your present status? Are you married?
- 15 A. Your Honour, I'm (Redacted).
- 16 Q. Now, Mr Witness, I'd like to just briefly speak about your education. Could
- 17 you tell us what primary school you attended.
- 18 A. Your Honour, I attended (Redacted).
- 19 Q. Did you attend secondary school as well, Mr Witness?
- 20 A. I attended, (Redacted), your Honour.
- 21 Q. Could you tell us what secondary school you attended and until what year?
- 22 A. I attended -- I attended (Redacted).
- 23 (Redacted).
- 24 Q. And (Redacted) secondary school?
- 25 A. (Redacted), your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. You need to repeat that answer,
2 Witness.

3 THE WITNESS: (Redacted), your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: (Redacted). Now, this is the thing I talked about
5 earlier, the need to observe the pause between the completion of the question and the
6 commencement of your answer. Try and see if you can observe anywhere
7 between -- no less than three seconds, but five seconds will be ideal. If you can
8 count up to five in your mind before starting, that will be helpful, not slowly, but
9 quickly count to five.

10 MR KHAN: And, your Honour, can I also say that at page 15 line 20 a spelling is not
11 given for the name of the secondary school. It's helpful if spellings are included for
12 the transcript.

13 MR GARCIA: I can provide the spelling.

14 Q. Mr Witness, and you can correct me if I'm wrong. (Redacted),
15 (Redacted) that you attended? Is that correct?

16 A. Yes, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, where is the PIS? Did you already
18 distribute it?

19 MR GARCIA: I'd ask the help of the court officer, and I'm going to be distributing
20 the PIS at this moment. Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: We are still recovering from the Christmas break,
22 so a little rusty at times but -- all of us.

23 MR GARCIA: We also have bundles, your Honour, for the Court and for Defence
24 counsel and we'll be distributing those soon as well.

25 PRESIDING JUDGE EBOE-OSUJI: When?

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1 MR GARCIA: Within a couple of minutes. We're just waiting for one document
2 that was missing in the bundles.

3 MR GARCIA:

4 Q. Now, Mr Witness, I'd like us to speak about your work experience. I
5 understand that you are from (Redacted), that your (Redacted); is
6 that correct?

7 A. Yes, your Honour.

8 Q. Now, did you (Redacted) at any time?

9 A. Yes, your Honour.

10 Q. Now, do you recall, Mr Witness, from what year to what year you (Redacted)
11 (Redacted)?

12 A. Your Honour, I recall it was (Redacted), your Honour.

13 Q. Now, Mr Witness, do you recall what you did after this (Redacted), what
14 kind of work you did?

15 A. Your Honour, I engaged myself in (Redacted)
16 (Redacted), your Honour.

17 Q. Where did you (Redacted) exactly?

18 A. At (Redacted), your Honour.

19 Q. Now, only if you recall, Mr Witness. Do you remember the years in which you
20 will have done this work of (Redacted)?

21 A. Your Honour, it was (Redacted), your Honour.

22 Q. Did you ever work (Redacted), Mr Witness?

23 A. Your Honour, since (Redacted), your Honour.

24 Q. Now, if we come up to the year (Redacted), Mr Witness, what exactly – what line of
25 work were you doing then?

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1 A. Your Honour, I was a (Redacted)

2 (Redacted), your Honour.

3 Q. And just so that we understand well, in (Redacted) where were you residing? Where
4 was your home?

5 A. (Redacted), your Honour.

6 Q. Now, just so we get an idea, Mr Witness, (Redacted), is that (Redacted)?

7 A. It's (Redacted), your Honour.

8 Q. And where exactly would you (Redacted)?

9 A. Your Honour, in (Redacted)

10 (Redacted)

11 (Redacted), your Honour.

12 MR GARCIA: I understand that there is a lack of interpretation on the place that
13 has been mentioned by the witness. I've given a PIS form as well to the interpreters.
14 And the place that the witness is indicating it (Redacted), and it's indicated as
15 number 3 of the locations (Redacted).

16 Q. Is that correct, Mr Witness?

17 A. That's correct, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: And when you said you were (Redacted)
19 (Redacted), is it?

20 THE WITNESS: Yes, your Honour.

21 MR GARCIA:

22 Q. Now, Mr Witness, just for our information, (Redacted) is a district -- was a
23 district, I think now it's a county, and it's (Redacted); is that correct?

24 A. Yes, your Honour.

25 Q. And am I also correct in stating, Mr Witness, that the administrative centre of

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1 (Redacted)? Is that correct?

2 A. Yes, your Honour.

3 Q. Thank you for those clarifications, Mr Witness. Now, were you doing any
4 other type of work in (Redacted)?

5 A. I was (Redacted), your Honour.

6 Q. And where exactly were you (Redacted)?

7 A. (Redacted), your Honour.

8 Q. Now, Mr Witness, I'd like to switch topics for the moment. Do you have any
9 siblings, any brothers?

10 A. Yes, your Honour. I have (Redacted), your
11 Honour.

12 Q. Could you give the name of (Redacted) to the Court, please.

13 A. (Redacted).

14 Q. (Redacted) being spelled (Redacted)
15 (Redacted); is that correct?

16 A. Yes, your Honour.

17 Q. Now, Mr Witness, I'd like to know, (Redacted)
18 (Redacted)?

19 A. Yes, your Honour.

20 Q. Now, could you just explain to the Court, taking your time obviously, and
21 explain (Redacted).

22 A. Your Honour, (Redacted)
23 (Redacted).

24 Q. So the name is (Redacted). Now Mr Witness, from what I
25 understand is that (Redacted)

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- 1 (Redacted); is that correct?
- 2 A. Yes, your Honour.
- 3 Q. So (Redacted); is that correct?
- 4 A. Yes, your Honour.
- 5 Q. Now, you say that (Redacted).
- 6 Could you give us the name of this person?
- 7 A. (Redacted), your Honour.
- 8 MR GARCIA: It's found at number 13, your Honours, of the PIS.
- 9 Q. So (Redacted). And you've
- 10 also said (Redacted); is that correct?
- 11 A. Yes, your Honour.
- 12 Q. And what is the name of your mother, Mr Witness?
- 13 A. My mother's name is (Redacted), your Honour.
- 14 Q. And (Redacted) mother?
- 15 A. The name of (Redacted) mother is (Redacted), your Honour.
- 16 Q. Can you please spell that for us, Mr Witness?
- 17 A. (Redacted), your Honour.
- 18 Q. Now, Mr Witness, I'd like to ask just a couple of questions in regards to
- 19 (Redacted). Can you tell many -- can you tell us (Redacted)
- 20 (Redacted)?
- 21 A. (Redacted), your Honour.
- 22 Q. From what I understand, Mr Witness, (Redacted); is
- 23 that correct?
- 24 A. Yes, your Honour.
- 25 MR KHAN: Your Honour, the (Redacted) at line 8 has not been recorded. I

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1 wonder if it could be recorded.

2 MR GARCIA:

3 Q. Mr Witness, I understand that you mentioned (Redacted), is that correct, for
4 (Redacted)?

5 A. Yes, your Honour.

6 Q. Would you be able to give us (Redacted)?

7 A. (Redacted), your Honour.

8 Q. Just for the interpretation, the name is (Redacted), is that correct,
9 the second name, (Redacted)? Is that correct, Mr Witness?

10 A. Yes, your Honour.

11 Q. Now, how many children, Mr Witness, did (Redacted) have?

12 A. Your Honour, I'm not sure of the number, but (Redacted) children.

13 MR GARCIA: I would ask for the help of the court officer to distribute the bundles
14 at this point, your Honour, before I continue in the questioning.

15 Q. Now, Mr Witness, I understand that when you did meet the Prosecution in the
16 month of (Redacted) you brought with you some photographs with (Redacted);
17 is that correct?

18 A. Yes, your Honour.

19 MR GARCIA: I'd like the court officer to bring up on the screen of the witness, and
20 this is at tab 10 of the bundle, KEN-OTP-0073-0315.

21 Q. Now, Mr Witness, do you see an image before you on the screen?

22 A. Yes, your Honour.

23 Q. Can you tell us what that -- when that photo was taken?

24 A. It was taken during (Redacted), your Honour.

25 Q. Could you tell us approximately at what date it would have been taken?

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1 A. I don't remember the date, your Honour, but it was (Redacted), your Honour.

2 Q. Now, I understand when you gave this photo to the OTP you also wrote down a
3 list of the people who are in that photo; is that correct?

4 A. Yes, your Honour.

5 MR GARCIA: I just ask for the help of the court officer. I'd like to give a paper
6 copy of 0073-0317 to the witness. And it's Exhibit I bis and it's found at the same tab
7 10.

8 MR KHAN: Your Honour, in my respectful submission, the appropriate form or
9 way of doing this is the photograph is there on the screen. The witness can mark it
10 with the pen. It's very easy. And the Bench then can see who's who according to
11 the witness. But, your Honour, I'm -- as the Bench is aware, I'm against this "I've
12 prepared one before" approach to leading evidence in chief.

13 MR GARCIA: Your Honour, I didn't think that this would be in dispute.
14 Obviously the witness has already indicated in the past the people that are in the
15 photo. I think it would be much more efficient if the witness could just confirm the
16 names that are on there and maybe he can spell some of them that are incorrectly
17 spelled or that are not legible, but apart from that, I don't see the use of going through
18 that exercise. It's just taking --

19 PRESIDING JUDGE EBOE-OSUJI: The objection, if that was an objection, it's
20 overruled.

21 MR KHAN: Just for the record, so there's no misapprehension from my learned
22 friend, these issues are in dispute. So that one shouldn't labour under any other
23 apprehension.

24 PRESIDING JUDGE EBOE-OSUJI: Well, that was clear or implied from your last
25 intervention.

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1 MR GARCIA:

2 Q. Now, Mr Witness, the document that you have before you that I've just -- the
3 paper copy, that is indeed your handwriting?

4 A. Yes, your Honour.

5 Q. Now, do the names that are on there correctly identify the people that are on the
6 photo that you have on your screen?

7 A. Yes, your Honour.

8 Q. Now, I'd like you to just tell us one by one who are these people, starting at the
9 far left. There's a gentleman with a cane. Who is this person?

10 A. (Redacted), your Honour.

11 Q. Now, you've also indicated that there's -- number 2 you've indicated (Redacted)
12 (Redacted); is that correct?

13 A. Yes, your Honour.

14 Q. Is that the lady who is right immediately next to the gentleman, to (Redacted)
15 (Redacted)?

16 A. I can't see the photo clearly, but it's me who arrange how it is in this photo, your
17 Honour.

18 Q. I just want to understand, you can't see her clearly in the photo before you?

19 A. Yes, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: And there was something you said. You said
21 it's you who did what with the photo?

22 THE WITNESS: It's me -- when I met the Prosecution, your Honour, it is me who
23 recorded in order how the photo was, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: You mean you were the one who wrote out the
25 names --

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- 1 THE WITNESS: Yes, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: -- of the people in the photo?
- 3 THE WITNESS: Yes, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Were you the one who took the photo also?
- 5 THE WITNESS: No, your Honour.
- 6 PRESIDING JUDGE EBOE-OSUJI: You were not the photographer?
- 7 THE WITNESS: Yes, your Honour.
- 8 MR GARCIA:
- 9 Q. I understand, Mr Witness, that you (Redacted); that is correct?
- 10 A. Yes, your Honour.
- 11 Q. Can you just indicate, (Redacted)
- 12 (Redacted)? Is that correct?
- 13 A. Yes, your Honour.
- 14 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, do you have a hard copy maybe of
- 15 the photo, either the copy or the original?
- 16 MR GARCIA: If I could ask for the help of the court officer, I'll give him a copy of it.
- 17 PRESIDING JUDGE EBOE-OSUJI: For the witness. Thank you.
- 18 Sir, is that better than what is on the screen?
- 19 THE WITNESS: Yes, your Honour.
- 20 MR GARCIA: Thank you for that, your Honour.
- 21 Q. Now, Mr Witness, you've indicated as person number 2 (Redacted). Do you
- 22 see that person now on the photo before you?
- 23 A. Yes, your Honour.
- 24 Q. Can you tell us where this person is?
- 25 A. She is next to (Redacted), your Honour.

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1 Q. All right. Perhaps if you have a pen with you, you can just put the initials "(Redacted)"
2 next to the person. Do you have a pen on your table?

3 A. I don't have, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: The witness has now been given a pen. Thank
5 you, court officer, for assisting there. Mr Garcia, what did you say the witness is to
6 do? Refresh his memory.

7 MR GARCIA: I think the witness has already done it, but it's put the initials "(Redacted)" of
8 the person that he's identified as number 2 on the photo.

9 PRESIDING JUDGE EBOE-OSUJI: Why don't we do --

10 MR GARCIA: Or number 2 simply.

11 PRESIDING JUDGE EBOE-OSUJI: Okay. May I suggest something, see if this will
12 work. Since we have your exhibit -- is that 1 bis or I bis?

13 MR GARCIA: I bis.

14 PRESIDING JUDGE EBOE-OSUJI: I bis. And we have numbers 1 to -- all the way
15 to 15. It may be easily done that he just indicates the numbers.

16 MR GARCIA: Certainly, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: And that will correspond -- that will correspond
18 to the list.

19 MR GARCIA:

20 Q. Now, Mr Witness, if you could just put a number 2 then on the person that you
21 identify as (Redacted).

22 PRESIDING JUDGE EBOE-OSUJI: And we might as well begin with number 1. So
23 he just -- we're using the document you have as a working document. Just circle
24 who is number 1, number 2 and so on and so forth.

25 MR GARCIA:

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1 Q. So, Mr Witness, just in case, number 1 you've identified as (Redacted).
2 Just put a number 1 anywhere on his -- on the -- on the photo where he is. Is that all
3 right?

4 MR KHAN: Your Honour, can I just suggest, because I have no objections, but it
5 would be helpful if all parties can see what's being done at the time it's being done.
6 I've got no problem with the witness being given a hard copy. It's helpful for him,
7 but your Honour, there is something on the screen. Can the witness not just mark 1,
8 2, 3 on the screen and we can all see it as it's being done in real time?

9 PRESIDING JUDGE EBOE-OSUJI: Yes, you see, what will happen -- I see what
10 you're -- you're getting at, but sometimes we have to do this the old-fashioned way
11 for things to move faster. And after the witness has done it, it will be shown around.
12 That's why we are using the legend that has already been provided.

13 So when he's done and then we will circulate the thing around the courtroom. It
14 may sometimes be faster than the difficulty we've had with the screen the last time.
15 And I've also been informed that there's also the option of showing it on the ELMO
16 when he's done with the exercise.

17 MR GARCIA: So what I will do, your Honour, is just go through the names of the
18 people for the moment and then we'll show it to everyone in the room and then I'll
19 ask further questions on it, simplify matters. Thank you.

20 Q. Now, Mr Witness, you've also indicated person number 3, and I just want to get
21 the spelling correct. Can you -- I think the name is (Redacted), but I'm not so sure.
22 Is that (Redacted) -- can you give us the letters in that first name, number 3?

23 A. (Redacted).

24 Q. Thank you. Now, once again, Mr Witness, can you just indicate with the
25 number 3 where that person is on the photo?

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1 A. He's standing third to Mr (Redacted).

2 Q. Actually, if you could just put a number 3 actually on the paper copy that you
3 have, because afterwards we're going to show it to everyone. Mr Witness, have you
4 already put the number 3 on the -- on the person?

5 A. Yes, your Honour.

6 Q. Thank you for that. Now, number 4 you've indicated as Mr (Redacted).
7 (Redacted). Can you just put a 4 (Redacted). Now, could you do the
8 same -- number 5 you've indicated (Redacted). Can you put a 5 on where she is.
9 You've also indicated (Redacted) as number 6. Can you please put a number 6?
10 Now, as number 7 you've put (Redacted) -- and just correct me if I'm wrong, but it's
11 (Redacted); is that correct?

12 A. Yes, your Honour.

13 Q. You've also indicated on your document number 8 (Redacted). Can you
14 please indicate with a number 8 where she is.
15 You've indicated number 9 (Redacted). It's (Redacted). Can you please
16 indicate where he is. As number 10 you've indicated (Redacted) -- maybe we need a
17 spelling for this. Is it (Redacted)? Is that correct?

18 A. Yes, your Honour.

19 Q. Could you please indicate where that person is, number 10. Number 11, (Redacted)
20 (Redacted), could you please with number 11 where this person is. Now, number 12
21 you mentioned (Redacted). Please indicate with a 12. Number 13, (Redacted).
22 Number 14, (Redacted). And number 15 (Redacted).

23 At the top of the hard copy that you've given us there's a number 16, and it indicates
24 (Redacted). Can you please indicated number 16 if you can see him on the
25 photo.

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1 MR GARCIA: Just a correction to the transcript. Line 15 transcript 29. (Redacted) is
2 with a (Redacted) and not a (Redacted).

3 So perhaps I could ask for the help of the court officer and maybe that can be either
4 passed around or shown on the projector. I'm not sure which one would be more
5 efficient.

6 PRESIDING JUDGE EBOE-OSUJI: Let's do the projector first and see.

7 THE COURT OFFICER: (Interpretation) To be able to view the annotated version
8 of the document please press "Web Witness Cam" on the little box available to
9 you -- or rather, "Document Witness Cam" is the button you should press. Thank
10 you.

11 PRESIDING JUDGE EBOE-OSUJI: Witness, let's try one more thing. If you
12 look -- can you see now on the screen there's a slight difficulty, not your fault, of
13 course. The ones that are clearly indicated are 3, 5, 8, 9, 12 and 14. The others do
14 not appear as clearly, although we can try and -- we can see, if we strained our eyes,
15 what you're trying to do. The difficulty with this is if in future there is a need to
16 photocopy this document, either for purposes of an appeal or what, we will lose that
17 information.

18 So what I would suggest you do is this: If you look below that sheet of paper you've
19 marked these things on there's a lot of space. You can just draw an arrow on the
20 ones that are not as clear, draw an arrow, for instance, number 1, you circle 1 and
21 bring it down to a space and mark 1 again so it's all clear. Do you understand what
22 I'm trying to say?

23 THE WITNESS: I don't understand, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: All right. There is below number 1 -- you see
25 lower down on the sheet of paper that you marked up there's a lot of space on which

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1 we can write -- you can write. Now, let's try and repeat the exercise on that space,
2 the white space. Can you look at the document. On that document the court officer
3 has pointed out to you the space underneath.
4 What you will need to do is, for instance, number 1 you encircle 1 and then draw a
5 line down to the space beneath and do 1 again and circle it so that for all the other
6 persons whose numbers do not appear as clearly we will just do that and draw a line
7 down to the space beneath and write their number again. Write a 1 -- sorry, encircle
8 1 on witness number 1 -- person number 1 and draw a line straight down underneath
9 and do 1 again. Just repeat that process for all the others whose numbers do not
10 appear as clearly on what you've just marked up. Do you understand?
11 THE WITNESS: I understand, your Honour.
12 PRESIDING JUDGE EBOE-OSUJI: Thank you. Try that. Let's see.
13 That looks better. Thank you very much.
14 MR GARCIA:
15 Q. Thank you, Mr Witness. Now, I'd just like to go through the people that
16 you've indicated on this photo, and I want you to just give us a little bit of
17 background on who they are.
18 Now, you've already spoken to us about Mr -- number -- number 1, (Redacted).
19 Number 2, (Redacted). Who is that exactly?
20 A. (Redacted), your Honour.
21 Q. And you explained to the Court that (Redacted); is
22 that correct?
23 A. Yes, your Honour.
24 Q. Now, when you're saying that (Redacted), which (Redacted)
25 (Redacted) are you speaking about?

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- 1 A. (Redacted), your Honour.
- 2 Q. Can you give us the name of this person?
- 3 A. (Redacted), your Honour.
- 4 Q. Now (Redacted), is that (Redacted)? Is that correct?
- 5 A. Yes, your Honour.
- 6 Q. Can you spell (Redacted) for us?
- 7 A. (Redacted), your Honour.
- 8 Q. Now, you've mentioned at number 3 (Redacted). Who is this person?
- 9 A. (Redacted), your Honour.
- 10 Q. (Redacted). That's fine, but who is (Redacted)?
- 11 A. (Redacted), your Honour.
- 12 MR GARCIA: Just for the record, it's (Redacted). (Redacted)
- 13 (Redacted).
- 14 Q. You've also indicated at number 5 (Redacted). Who is this person?
- 15 A. (Redacted), your Honour.
- 16 Q. Is that the (Redacted)?
- 17 A. Yes, your Honour.
- 18 Q. Now, you've also -- now in regards to number 6, (Redacted), you've already
- 19 indicated to us that this was (Redacted); is that correct?
- 20 A. Yes, your Honour.
- 21 Q. We also see the mention at number 7 of (Redacted). Can you tell us who
- 22 this person is?
- 23 A. (Redacted), your Honour.
- 24 Q. Am I correct in stating that it is -- (Redacted)?
- 25 Is that correct?

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- 1 A. Yes, your Honour.
- 2 Q. Now, you've also indicated for us at number 8 (Redacted). Can you tell us
- 3 who this person is?
- 4 A. (Redacted), your Honour.
- 5 Q. You've also indicated (Redacted). Can you please tell us who this
- 6 person is?
- 7 A. (Redacted), your Honour.
- 8 Q. Also at number 10 (Redacted). I'm sorry about my pronunciation.
- 9 Can you please tell us who this person is?
- 10 A. (Redacted), your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, can you spell the word you weren't
- 12 sure of the pronunciation of.
- 13 MR GARCIA: The spelling I have -- and the witness is going to listen and see if he is
- 14 in agreement. It's (Redacted).
- 15 Q. Is that correct, Mr Witness.
- 16 A. No, your Honour. It is (Redacted).
- 17 Q. Thank you for that, Mr Witness. Now, Mr Witness, you've also indicated at
- 18 number 11 (Redacted). Who is this person?
- 19 A. (Redacted), your Honour.
- 20 Q. Just to be clear on that matter, Mr Witness, he is -- (Redacted)
- 21 (Redacted); is that correct?
- 22 A. Yes, your Honour.
- 23 Q. Now, you've also indicated (Redacted). Is this the same as (Redacted)
- 24 (Redacted)?
- 25 A. Yes, your Honour.

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1 Q. I just noticed that in the way you've spelled it here is with an (Redacted). It's with an (Redacted),
2 (Redacted), not just (Redacted)?

3 A. With an (Redacted), your Honour.

4 Q. Thank you, Mr Witness. You've also indicated at number 13 (Redacted).
5 Can you tell us who this person is?

6 A. (Redacted), your Honour.

7 Q. Can you tell us who (Redacted)?

8 A. (Redacted), your Honour.

9 Q. Number 14 we see (Redacted). Who is this person?

10 A. (Redacted), your Honour.

11 Q. Number 15, (Redacted)?

12 A. (Redacted), your Honour.

13 Q. And finally number 16, (Redacted). Who is this person?

14 A. (Redacted), your Honour.

15 MR GARCIA: I see the time, your Honour. I'm not sure if this is the time we were
16 scheduled to take a break. I'd suggest that we stop at this point.

17 PRESIDING JUDGE EBOE-OSUJI: It is indeed. We will bring down the blinds.

18 Witness, we will be taking a break for 30 minutes and we will return in 30 minutes'
19 time, but the blinds will come down first for you to be escorted out of the courtroom.

20 (Closed session at 10.59 a.m.) Reclassified into open session

21 THE COURT OFFICER: (Interpretation) Mr President, we are in closed session.

22 (The witness stands down)

23 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

24 THE COURT USHER: All rise.

25 (Recess taken at 11.00 a.m.)

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- 1 (Upon resuming in private session at 11.38 a.m.) Reclassified into open session
- 2 THE COURT USHER: All rise.
- 3 Please be seated.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 5 Mr Garcia, please continue.
- 6 MR GARCIA:
- 7 Q. Now, Mr Witness, when we left off you had kindly indicated for us all the
- 8 people on the photo that you have I think still before you on the screen. Now, I've
- 9 taken note of the fact that you've mentioned obviously Ms (Redacted) is in the
- 10 photo. That's (Redacted). And you've mentioned (Redacted)
- 11 (Redacted) that you've mentioned who are on the photo are (Redacted) at
- 12 number 5, and (Redacted) at and number 7.
- 13 Now, do you know what are the names (Redacted)
- 14 (Redacted)?
- 15 A. Yes, your Honour.
- 16 Q. Could you just please give us the other names?
- 17 A. (Redacted).
- 18 Q. Please continue.
- 19 A. (Redacted).
- 20 Q. Now, just for the record, (Redacted); is that correct, Mr Witness?
- 21 A. Yes, your Honour.
- 22 Q. Is there anyone else?
- 23 A. I can't remember now, your Honour.
- 24 Q. That's fine. If at any other time you do remember, then perhaps we can
- 25 complete that exercise.

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1 Now, I understand that when you came and met the Prosecution, you also provided
2 us with other photos; is that correct?

3 A. Yes, your Honour.

4 MR GARCIA: So there is two other photos and if we could just show to the witness
5 or bring up on his screen, and it's at tab 11, KEN-OTP-0073-0318, please?

6 Q. Now, Mr Witness, now the photo that you see before you on the screen, was this
7 photo taken at the same (Redacted) -- at the same (Redacted);
8 is that correct?

9 A. Yes, your Honour.

10 Q. And who do we see on this photo exactly?

11 A. (Redacted), your Honour.

12 MR GARCIA: Thank you, Mr Witness. One last photo that you provided to the
13 Prosecution during our meeting with you. And I'd like to just ask you one question
14 on it. KEN-OTP-0073-0320 and that is at tab 12, your Honours, in the bundle. If
15 that could be brought up on the screen before the witness, please?

16 Q. Now, Mr Witness, am I correct in stating that once again this is a photo that was
17 taken during the same (Redacted), is that correct?

18 A. Yes, your Honour.

19 Q. Now, can you please tell the Court who is it that we see on this photo?

20 A. (Redacted), your Honour.

21 Q. Thank you, Mr Witness. Just to be clear on the matter, Mr Witness, you
22 mentioned before Mr -- that Mr (Redacted). We are
23 speaking, just I want you to confirm that, about the Mr (Redacted)
24 (Redacted), is that correct?

25 A. Yes, your Honour.

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1 Q. Thank you for that clarification.

2 MR GARCIA: Your Honours, I'd ask that the items of evidence that have been put
3 to the witness, and one of them that has been, that the witness has written things on
4 them, if they could be tendered into evidence at this point so we don't have to do that
5 later on. I will give out the ERNs of those. That's KEN-OTP-0073-0315.

6 PRESIDING JUDGE EBOE-OSUJI: That is the annotated version of that document --

7 MR GARCIA: That's correct.

8 PRESIDING JUDGE EBOE-OSUJI: -- that the witness annotated on the stand?

9 MR GARCIA: That's correct, your Honour, the annotated version of it.

10 PRESIDING JUDGE EBOE-OSUJI: Any objection? Mr Kigen-Katwa, Mr Khan does
11 not object. Do you object?

12 MR KIGEN-KATWA: I don't, Mr President and your Honours.

13 MR GARCIA: I'd also ask for document KEN-OTP-0073-0317 to be tendered into
14 evidence and this is the Exhibit I bis with the names on it.

15 PRESIDING JUDGE EBOE-OSUJI: Any objection?

16 MR KHAN: No objection, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: No objection from both counsel. The two items
18 will go in as the next in the Prosecution exhibits.

19 MR GARCIA: I'd also ask for the documents at tab 11 and tab 12 to be entered into
20 evidence. That's KEN-OTP-0073-0318 and 0073-0320.

21 PRESIDING JUDGE EBOE-OSUJI: Any objections?

22 MR KHAN: I'm sorry, tab 3?

23 PRESIDING JUDGE EBOE-OSUJI: Tabs 11 and 12.

24 MR GARCIA: Tab 11 and 12, exactly.

25 MR KHAN: No objection, your Honour.

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1 MR KIGEN-KATWA: No.

2 PRESIDING JUDGE EBOE-OSUJI: No objection from both counsel to both
3 documents going in as well. So the documents also ending with KEN-OTP-0318 and
4 KEN-OTP-0320, ending, will also go in, court officer.

5 THE COURT OFFICER: (Interpretation) The annotated version of the document
6 KEN-OTP-0073-0315 will have the number EVD -- excuse me -- - will have the
7 number KEN-ICC-0001-00012. Document KEN-OTP-0073-0317 will have the
8 number EVD-T-OTP.

9 PRESIDING JUDGE EBOE-OSUJI: Before we do 0317 -- did you say 317? What we
10 will try to do so it's in order is 315 has gone in in its copy -- in its state. But 315
11 annotated should come in next, court officer. The version that the officer -- that the
12 witness annotated, let's bring that in now please. And then 317 comes last. Thank
13 you.

14 THE COURT OFFICER: (Interpretation) Thank you, your Honour. I would
15 repeat the annotated version of the document KEN-OTP-0073-0315 will have the
16 number EVD-T-OTP-00032, and it will also have the number for the Prosecution piece,
17 item 32, the document KEN-OTP-0073-0317 will have the number EVD-T-OTP-00033,
18 and it will also have the number Prosecution Piece, Prosecution Item 33. Document
19 KEN-OTP-0073-0315 will have the EVD number EVD-T-OTP-00034, and it will also be
20 called Prosecution Exhibit 34.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you. Just so we are clear on what has
22 happened, the marked-up version of 315, the version that the witness annotated on
23 the stand has been admitted as Exhibit 32, and the list that appears as, ends with 317,
24 KEN-OTP-0073-0317 has been admitted as Exhibit 33. And the clean version of
25 KEN-OTP-0073-0315 has been admitted as Exhibit 34. It should have been in a

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1 different order, but I believe we understand where we are with the material. So we
2 can proceed.

3 MR GARCIA: Just for the record, your Honours, I see that there is a mistake that has
4 slipped into the transcript. Page 37, 7, the witness identified (Redacted) and not
5 (Redacted) as is indicated on the record.

6 PRESIDING JUDGE EBOE-OSUJI: Noted. We'll proceed.

7 MR GARCIA:

8 Q. Now, Mr Witness, I understand from your testimony that you're (Redacted)
9 (Redacted)
10 (Redacted); that's correct, isn't it?

11 A. Yes, your Honour.

12 Q. Now, could you tell us, Mr Witness, how were your relations with Mr William
13 Ruto prior to the post-election violence 2007-2008? Can you describe that to us?

14 A. Our relations was good, your Honour.

15 Q. Now, Mr Witness, when you say that your relations were good, can you just
16 give us additional details? Were you on a friendly -- were you friendly to one
17 another? Did you see each other?

18 A. In no time we have quarrelled or disagreed with him before the 2007 general
19 elections, your Honour.

20 THE INTERPRETER: Could the witness be asked to speak further into the
21 microphone, please, asks the interpreters?

22 MR GARCIA:

23 Q. Mr Witness, if I could ask you to just take your time, but lean in a little bit more,
24 because the interpreters are having a difficult time following what you are saying.
25 And if you can as well, speak a little bit louder. Is that all right?

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1 A. Yes, your Honour.

2 Q. And just always remember, and I have to keep that in my mind as well, just
3 wait a little time between the time of what I say, I finish saying what I have to say and
4 you responding so that the interpreters can interpret everything. Is that all right?

5 A. Yes, your Honour.

6 Q. All right. Now, Mr Witness, I was asking you a question, a very general
7 question on what type of relations you had with Mr Ruto prior, before the
8 post-election violence. You've stated that you quarrelled at some point, is that
9 correct?

10 A. Your Honour, I say that at no time had I quarrelled with him or disagreed with
11 him before the 2007 general elections, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: You said at no time did you disagree with him
13 before the election, or did you say you did disagree with him or quarrel with him
14 before the election? We want to get that information clear.

15 THE WITNESS: We didn't quarrel or disagree about anything, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: You did not?

17 THE WITNESS: Yes, sir.

18 MR GARCIA:

19 Q. Thank you for that clarification, Mr Witness. So you say that you didn't
20 quarrel, you didn't have any disagreements. Did you have normal type of relations?
21 Would you go and visit him at his house?

22 A. Yes, your Honour. But rarely I did that because I was always a busy person,
23 your Honour.

24 Q. And, Mr Witness, when you would go and visit him at his house, where would
25 you visit Mr William Ruto?

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1 A. Normally it was at his Sugoi home or his Eldoret residence, your Honour.

2 Q. Now, Mr Witness, just I think you said that maybe just a little too fast, and it
3 wasn't heard. But, once again, lean into the microphone.

4 From what I understood, you said that you would see him at his Sugoi house. Is that
5 S-U-G-O-I, is that correct?

6 A. Yes, your Honour.

7 Q. And where else would you see Mr Ruto?

8 A. At his Eldoret residence, your Honour.

9 Q. Now, did, Mr Witness, did Mr Ruto have any other residences where you
10 would go and see him?

11 A. Eldoret residence, your Honour.

12 Q. Now, just for the benefit of the Court, Mr Witness, you've stated that you would
13 go see him in Sugoi. Where is that in relation to Eldoret?

14 A. It is along Uganda, a road from Eldoret, your Honour. It's Turbo.

15 Q. And you also stated that you would go and see him at the Eldoret residence.
16 Where exactly? Do you remember where exactly the house was?

17 A. It's along Eldoret, Kapsabet road (indiscernible), your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, look at line 9 and 10.

19 MR GARCIA:

20 Q. Now, Mr Witness, you said, when I asked you about where the house was in
21 Sugoi in relation to Eldoret, you said it is along Uganda Road from Eldoret. And
22 then the rest, what you said is unclear. Can you just repeat that for the record?

23 A. Turbo, your Honour.

24 Q. Is that near Turbo or Turbo Road?

25 A. Near Turbo, Your Honor.

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1 PRESIDING JUDGE EBOE-OSUJI: Can you spell it, please?

2 THE WITNESS: T-U-R-B-O, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: So that's how you spell "Turbo," but spelled

4 Turbo. All right. Thank you.

5 MR GARCIA:

6 Q. And also, Mr Witness, when I asked you a question regarding the Eldoret

7 residence, you said it's along Eldoret Kapsabet Road. The rest of what you stated is

8 unclear. Did you want to give us more precisions on that?

9 A. It is in Pioneer, Pioneer area (indiscernible) your Honour.

10 Q. Can you spell the first, Pioneer area? How do you spell that?

11 A. P-I-O-N double E-R.

12 Q. I just want to make sure, is that a "B" as in "Bob" or "P" as in "Papa"?

13 A. "P" as in "Papa."

14 Q. So it's Pioneer area, is that correct?

15 A. Yes, your Honour.

16 Q. Now, I understand, Mr Witness, that when you would go and visit Mr Ruto

17 there, it would be (Redacted), is that correct?

18 A. It was not normally (Redacted), your Honour. But I would also

19 (Redacted) or anything

20 else.

21 MR KHAN: Your Honour, mindful of your injunction previously that one should

22 object at the right time before harm is done, I would ask my friend on all these issues

23 not to lead at all and to be vigilant in making sure that no leading questions are asked.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I believe that's a fair position from the

25 Defence.

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1 MR GARCIA: A very fair position, your Honour. And I'll adapt accordingly.

2 Q. Now, Mr Witness, just if you can, give us some details as to the reason why you
3 would go and visit Mr William Ruto prior to the post-election violence either at Sugoi
4 or at his Eldoret house.

5 A. I could go to visit him maybe because (Redacted)
6 (Redacted), your Honour.

7 Q. And can you tell the Court how many times this would have happened that you
8 would have gone to see Mr William Ruto (Redacted)?

9 A. Your Honour, I think about (Redacted) times, your Honour.

10 Q. And, Mr Witness, how would Mr William Ruto react to that when you would
11 go (Redacted)?

12 A. There is no time he has disagreed with me. He could (Redacted) or he could
13 (Redacted), your Honour.

14 Q. Now, I initially asked you prior to the post-election violence. Do you
15 remember when you would have gone to see him (Redacted), what year?

16 A. I can't remember the year, but I remember I went to see him (Redacted)
17 (Redacted), your Honour.

18 Q. That's fine. Thank you, Mr Witness, for those clarifications.
19 When we started out initially and I started asking you questions about the type of
20 work that you were doing, you were explaining to the Court that you (Redacted),
21 is that correct?

22 A. Yes, your Honour.

23 Q. Now, you also explained to the Court that you were in 2007, you were residing
24 in (Redacted), and that is (Redacted), is that correct?

25 A. Yes, your Honour.

Trial Hearing
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1 Q. You also told the Court, Mr Witness, this morning that you would, in 2007, you
2 had gone to (Redacted) district, is that correct?

3 A. Yes, your Honour.

4 Q. I think that this morning as well you mentioned the period starting in
5 (Redacted) of 2007, is that correct?

6 A. Yes, your Honour.

7 Q. Now, just so that the Court can understand and I can understand as well, what
8 exactly were you doing in (Redacted) district during 2007, starting in (Redacted)?

9 A. I was (Redacted), your Honour.

10 Q. And I understand that you (Redacted). Where was this
11 (Redacted)?

12 A. I was (Redacted), your Honour.

13 Q. Now, just so that we understand well what you are stating, you've mentioned
14 that you were (Redacted). Can you explain to the Court what
15 (Redacted) is?

16 A. It is along (Redacted), your Honour.

17 Q. Now, from my understanding, Mr Witness, is that as I mentioned this morning,
18 (Redacted) is at administrative center of (Redacted) district, is that correct?

19 A. Yes, your Honour.

20 Q. And (Redacted), that's a (Redacted) that is as well in the (Redacted)
21 district, is that correct?

22 A. Yes, your Honour.

23 Q. Thank you for those clarifications, Mr Witness. So I'm just going to pursue
24 with other questions on this matter. Can you remember exactly when you would
25 have gone to (Redacted) in that year 2007 to go and (Redacted)?

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1 A. It was (Redacted), your Honour.

2 Q. And while you would be in (Redacted),
3 would you be living there as well? Did you have a place that you rented out or that
4 you lived in?

5 A. Yes, your Honour. (Redacted).

6 Q. And can you tell us where (Redacted)
7 (Redacted)?

8 A. It was at (Redacted), your Honour.

9 Q. And, Mr Witness, how much time did you stay there (Redacted) that year
10 in 2007 in (Redacted)?

11 A. I came back on (Redacted), your Honour.

12 Q. Now I would like to bring you back to the (Redacted)
13 (Redacted). Did you stay in (Redacted), or what did you do?

14 A. I came back home on 24 December, your Honour, for Christmas.

15 Q. Can you explain to us exactly how you got back home? Where did you pass by,
16 what towns?

17 A. I passed by (Redacted).

18 Q. I'm just going to ask you to slow down. You've started out, okay, you passed
19 by (Redacted), first of all?

20 A. And (Redacted).

21 Q. Okay. We're just going to go this one by one. So (Redacted)
22 (Redacted), that's correct?

23 A. (Redacted).

24 Q. And that's (Redacted), is that correct, Mr Witness?

25 A. Yes, your Honour. Then (Redacted).

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1 Q. Now, Mr Witness, I'm going to have to ask you to just spell that out for us, this
2 last name you gave.

3 A. (Redacted), your Honour.

4 Q. Okay. Now, after (Redacted), where did you go?

5 A. (Redacted), your Honour.

6 Q. Now, I understood, Mr Witness, that at the start of your testimony, and even a
7 few minutes ago, you mentioned that at the time you were residing in (Redacted).
8 Why were you in (Redacted)?

9 A. Your Honour, I had passed through (Redacted)
10 (Redacted), your Honour.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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22 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, how many minutes do you have left
23 in this segment? Basically I am pointing to the need to watch the clock for our usual
24 break.

25 MR GARCIA: I still have a good 10/15 minutes on this particular subject. I was

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1 under the impression it was at 1, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Sorry.

3 MR GARCIA: I'm sorry if maybe I'm wrong.

4 PRESIDING JUDGE EBOE-OSUJI: Our different scheduling, my mistake. Please
5 proceed.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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25 PRESIDING JUDGE EBOE-OSUJI: That clarifies the matter then. We will rise for

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1 the lunch break, and we will be reconvening at 2.30. We'll be reconvening at 2.30,
2 but we will bring down the blinds to escort the witness from the courtroom first.
3 Thank you. (Closed session at 12.59 a.m.) Reclassified into open session
4 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.
5 PRESIDING JUDGE EBOE-OSUJI: Thank you. The witness will now be escorted
6 from the courtroom then.
7 Court will rise.
8 THE COURT USHER: All rise.
9 (Recess taken at 1.00 p.m.)
10 (Upon resuming in open session at 2.42 p.m.)
11 THE COURT USHER: All rise.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Court officer, you have
14 some announcements to make?
15 THE COURT OFFICER: (Interpretation) Thank you, your Honour. I wanted to
16 make one correction to an EVD number that we gave to a document this morning.
17 In actual fact, the list of names used by the witness was based on the same document
18 as the photograph itself and thus the original of the photograph number EVD -- I beg
19 your pardon -- KEN-OTP-0073-0317 (sic) will be known as EVD-T-OTP-00032. The
20 annotated version of the photograph will be given the following number:
21 KEN-ICC-0001012 and will be given the reference number EVD-T-OTP-00033.
22 The second photograph KEN-OTP-0073-0318 will be given the following number:
23 EVD-T-OTP-00034.
24 Now, the third photograph bearing the number KEN-OTP-0073-0320 will be given the
25 following number: EVD-T-OTP-00035.

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1 Those four documents are also confidential. Thank you, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Are we getting periodic

3 printouts of the exhibits as they are entered on the record? We're not? All right.

4 Court officer, or Registry, let's think about that so periodically we can print out the

5 exhibits so that the parties can have them. Thank you.

6 We will now go into private session so we can deliver an oral -- the reasons for an oral

7 ruling we made this morning.

8 (Private session at 2.46 p.m.) Reclassified into open session

9 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

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

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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7 We will now bring the witness back into the courtroom and proceed with his
8 testimony.

9 Court officer, blinds down, please.

10 (Closed session at 2.58 p.m.) Reclassified into open session

11 THE COURT OFFICER: (Interpretation) We are in private (sic) session, your
12 Honour.

13 MR KHAN: Your Honour, while the witness is being brought in, I understand that
14 we are finishing at 4 p.m. today, and I would ask just for the last two minutes before
15 we finish at 4 p.m. if my learned friend would be so kind as to give an estimate as to
16 how long he would anticipate examination being next week so we can assess things.
17 I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE EBOE-OSUJI: So we go back to private session now with the
21 blinds up.

22 (Private session at 2.59 p.m.) Reclassified into open session

23 THE COURT OFFICER: (Interpretation) We are in private session.

24 PRESIDING JUDGE EBOE-OSUJI: Welcome back. The Prosecution counsel will
25 continue with his examination. Thank you.

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1 MR GARCIA:

2 Q. Good afternoon, Mr Witness.

3 A. Good afternoon, your Honour.

4 (Redacted)

5 (Redacted)

6 (Redacted)

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6 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, it's five minutes to time.

7 MR GARCIA: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: I hope I got it right this time.

9 MR GARCIA: It is four minutes, yes, to time, your Honour. We can stop here and
10 continue on Monday, or I can ask a couple of additional questions, but we will
11 certainly not exhaust the topic in the amount of time left.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Defence counsel had made a certain
13 request.

14 MR GARCIA: The time that the Prosecution had anticipated would be three days in
15 light of the quantity of information and evidence that this witness will give. I'll
16 always strive, I'm always striving to be more efficient and cut down on that time. I
17 hope that I'll be able to do so, but three days is what we've estimated initially. So we
18 should be done by Tuesday, next Tuesday.

19 PRESIDING JUDGE EBOE-OSUJI: Why don't we do this, let's stop the testimony
20 here and take it up on Monday. Let's excuse the witness and then use the remaining
21 time to deal with any housekeeping matters we may have on our plate.

22 Witness, we will relieving you for the weekend from the stand. You will rejoin us on
23 Monday. In the course of the weekend, please do not discuss your testimony with
24 anybody. Do you understand?

25 THE WITNESS: Yes, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you. You are still technically on the
2 witness stand. Thank you. Can we bring the blinds down and let out the witness.

3 (Closed session at 3.57 p.m.) Reclassified into open session

4 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. The witness will be escorted.

6 (The witness stands down)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Thank you. We can go into public session now
22 for housekeeping?

23 MR GARCIA: No objection from the Prosecution, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Court officer, let's go back into open
25 session, please. Thanks.

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1 (Open session at 3.59 p.m.)

2 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

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

4 Mr Khan, you were beginning to rise.

5 MR KHAN: Yes. I'm most grateful, Mr President. The inquiry was when my
6 learned friend says three days, and he, therefore, anticipates ending on Tuesday, do I
7 take it that he anticipates taking all of Tuesday so that I can safely prepare my
8 cross-examination to start on Wednesday? I think that's the logical conclusion of the
9 time estimate given, that it's three days of evidence.

10 I think we started a little bit late today with the actual testimony of the witness, but I
11 take it as -- in that case that my learned friend is indicating that we can expect to start
12 our cross-examination on Wednesday, and that he will finish the end of Tuesday
13 hopefully.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia will respond to that. But I will also
15 note that he has indicated that he will make his best efforts to see if he can take lesser
16 time than indicated to finish the examination in-chief, but proceed on that note.

17 MR GARCIA: Indeed, your Honour. Quite briefly, I've said three days, obviously,
18 and I intend to make it less than three days if possible. I think that things are going
19 quite fluid with the witness. The witness speaks English, understands, so the
20 testimony is fine for the moment.

21 It could be that I finish a little bit earlier on Tuesday, obviously, so I can't guarantee
22 anything in that regard to Mr Khan. However, if the question is posed in regards to
23 the disclosure by the Defence of the items that will be used for the cross-examination
24 of this witness, this is a witness with a significant amount of evidence, and we would
25 appreciate that it be done sooner rather than later at the last minute, especially if there

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1 is a lot of documents or items that the Defence is intending to cross-examine this
2 witness with.

3 We wouldn't want incidents like those that have occurred in the past where the
4 Prosecution has received this at the very last minute. So those are the things that I
5 had to state in that regard.

6 I hope that if there is a list of elements, that they are transmitted to the Prosecution as
7 soon as possible.

8 MR KHAN: Your Honour, can I just say for the record there has not been case thus
9 far where the Prosecution has cross-examined a witness with less than 24 hours'
10 notice of the Defence material, and that includes the first witness because of the way
11 that the Bench handled it that my learned friend went first. So, so far we've been in
12 full compliance with the orders of the Court.

13 PRESIDING JUDGE EBOE-OSUJI: And, Mr Garcia, also be mindful of the need to
14 refresh your estimate as to remaining time. If you've now put us on notice of three
15 days with a promise to lessen it if possible, just keep that in mind, and as it becomes
16 to you apparent that you may finish sooner, you can also indicate that ahead of time
17 so that we are all with you.

18 MR GARCIA: Certainly, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: All right. I think --

20 MR KHAN: Your Honour, with your leave, your Honour, I had some fruitful
21 discussions with my learned friend, the senior trial attorney with conduct in this case,
22 Mr Steynberg, and we had informed him that because of various investigative issues,
23 we were still requiring to -- we were still obtaining some information. Your
24 Honours, what I'm asking for, and it's really -- I don't think it will cause any prejudice
25 given the time estimate, is in the circumstance of this case, if I serve the material

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1 Tuesday morning, given that the Prosecution anticipate they will finish at the end of
2 Tuesday, that that is -- they are not going to be difficult about it and that they're
3 gracious enough to say that that would be in order.
4 Your Honour, that's based upon their own time estimates, and with the caveat they
5 put in. Of course, all parties try to curtail matters, counsel tries when they make
6 submissions to base it upon professional experience, and an estimate of three days, I
7 think I'm asking that we be allowed to rely upon that, at least to the extent that if we
8 give the disclosure of the material that we intend to use in cross-examination for this
9 particular witness on Tuesday morning by 9.00 or 9.30, whenever we said, that would
10 be in order, because I anticipate based upon my learned friend's own some time
11 estimates, that I will not be required to start cross-examination before Wednesday
12 morning.

13 Your Honour, it's just that clarity so there's no problems down the -- down the line.
14 And it's a -- it's an acceptance that --

15 PRESIDING JUDGE EBOE-OSUJI: There are two different things, Mr Khan. The
16 first is whether there's a risk of you running afoul of the time limits within which you
17 must disclose to the Prosecution your cross-examining material. That is one thing.
18 And if you resolve that question amongst yourselves, it doesn't resolve a second issue
19 as to making use of time that comes up to our advantage to start cross-examination.
20 I trust that if the Prosecution finished sooner than expected, you should be able to
21 commence cross-examination in some way on some of the topics so that we are not
22 wedged into the expectation that you may not be able to start at all until Wednesday
23 morning.

24 MR KHAN: I'm grateful. Your Honour, with that helpful indication, could I say in
25 that case that in the event that my learned friend manages to curtail it somewhat, that

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1 I be allowed to commence my cross-examination in whatever part of Tuesday is left
2 with the hope that I will -- either the Prosecution will accept that I can cross-examine
3 the witness on any material I have or, alternatively, I'll try to arrange matters that I
4 won't use that material before the expiration of 24 hours. So either way there's no
5 prejudice hopefully to the Prosecution.

6 PRESIDING JUDGE EBOE-OSUJI: That is what we're talking about --

7 MR KHAN: I'm grateful.

8 PRESIDING JUDGE EBOE-OSUJI: -- isn't it, Mr Garcia?

9 MR KHAN: I'm grateful, your Honour.

10 MR GARCIA: Actually, your Honour, the rule is 24 hours before the
11 cross-examination the items have to communicated to the Prosecution, and we've had
12 questions or issues about this in the past.

13 If Defence counsel already has items that it knows that it's going to intend on using in
14 cross-examination, why wait until the last minute? They can easily communicate
15 those to us today or Monday and not wait until Tuesday morning.

16 And I understood that that was the sense of the question as to when we were going to
17 finish our -- our examination in chief. I can't say for -- with certainty that I'll be
18 finished Tuesday at the end of the day or Wednesday morning, so Defence counsel
19 should react and adapt to that appropriately. They should disclose to us what they
20 have as soon as possible so as to keep their rights to cross-examine with those items.

21 PRESIDING JUDGE EBOE-OSUJI: That is the first issue I indicated. As I said,
22 that's an independent issue from the second one. And as I indicated also, that both
23 sides should get together on the first issue, as we have been doing, to see what
24 accommodation that may be made in that regard, trusting the good faith of counsel
25 on both sides to resolve that sort of thing.

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1 What I'm saying rather is regardless of how that issue is resolved, counsel for the
2 Defence should be able to commence sooner than Wednesday morning if the time
3 comes up to do that.

4 MR KHAN: Your Honour, because these can have important ramifications, it's
5 not -- one is not playing a tactical game or at least tactics are not dominating
6 considerations of the Defence. It's normally the case or very often the case that one
7 can't make final decisions as to the material one wishes to put in cross-examination
8 until all the Defence material is in one place.

9 But, Your Honour, what I would endeavor to do, just to reassure my friend or not, the
10 information that I'm sure that will be used and that will not be affected -- my decision
11 will not be affected by any evidence that may otherwise come, I will try to disclose as
12 soon as possible on Monday in reality.

13 But, your Honour, what I don't want to happen is to be by an artificial rule or by
14 rigidity of the Prosecution be prejudiced from using that information in circumstances
15 where we've said very clearly this witness is coming a little bit early in the case for us,
16 but we've endeavored to deal with it, and we've come up with a compromise with the
17 assistance of my learned friend Mr Steynberg.

18 So, your Honours, we're willing to proceed. I'll give what information I can, but in
19 the event I have material that I give only on -- sometime on Tuesday, hopefully
20 Tuesday morning, I don't want to be prevented from using that material because that
21 would cause prejudice.

22 So, your Honours, perhaps the best thing is to see how it goes. I'll have discussions
23 my learned friend Mr Steynberg, and hopefully we can come to a fair and sensible
24 way forward.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I think that's a good and

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1 sensible way to leave it.
2 We will adjourn for the day, and then we'll reconvene tomorrow at -- on Monday,
3 Monday at 9.30.
4 THE COURT USHER: All rise.
5 (The hearing ends in open session at 4.10 p.m.)
6 RECLASSIFICATION REPORT
7 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
8 2013, and the instructions in the email dated 9 May 2014, the version of the transcript
9 with its redactions becomes Public.
10