

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation in Uganda, case number 1, ICC-02/04-01/05.
4 Closed session
5 Wednesday, 7th December 2005, 10.10 am
6 THE USHER: All rise. The International Criminal Court is now in session.
7 Please be seated.
8 THE PRESIDING JUDGE: Madam Registrar, please call the case.
9 THE REGISTRAR: This is situation in Uganda, case number 1,
10 ICC-02-04-01/05.
11 THE PRESIDING JUDGE: Mr Prosecutor, kindly announce yourself and your
12 colleagues for the record.
13 MR OCAMPO: Thank you. I am the Chief Prosecutor, here with Christine
14 Chung, Senior Trial Attorney, Fabricio Guariglia, Appeals Attorney, and Eric
15 MacDonald.
16 THE PRESIDING JUDGE: Mr Dubuisson, likewise, please announce yourself
17 for the record, and your colleagues.
18 MR DUBUISSON: President, judges, with me today is Simo Vaatainen, who
19 is the Chief of the Victims and Witnesses Unit, and (Redacted) the
20 Protection Officer, (Redacted), who works for the Victims and Witnesses Unit,
21 (Redacted), who is a lawyer working in my office, and myself,
22 Marc Dubuisson, I am the chief of the Division of Court Services, speaking on
23 behalf of the Registrar.
24 THE PRESIDING JUDGE: Mr Prosecutor.
25 MR OCAMPO: Yes, I have to present a preliminary motion, and I would like

1 to do it now and maybe clarify some mistakes in the process. So if I am
2 authorised, I would like to seek a preliminary motion seeking an order from
3 this Court.

4 THE PRESIDING JUDGE: Mr Prosecutor, I should like to proceed first -- we
5 will of course be pleased to hear you and the motion that you propose.
6 The Chamber, in its tradition, would like to proceed first with its opening
7 remarks.

8 MR OCAMPO: Yes, Mr President, but my problem is that the Prosecutor has
9 a motion which is preliminary to your position. Let me give you my
10 argument why we believe -- the motion is about the letter added to the files.
11 The letter is in evidence, has significance in the administration. I would like
12 to present this motion before, and then I need a ruling on this, and I would
13 also like to clarify some problems that will allow us to fix the problems, in
14 a way that the Court will show its fairness.

15 So I need to do the preliminary motion before the hearing starts.

16 THE PRESIDING JUDGE: Thank you, Mr Prosecutor. Be assured that there
17 will be no question whatsoever about matters of fairness from this Chamber.

18 MR OCAMPO: Okay, but --

19 THE PRESIDING JUDGE: At the appropriate moment, I will give you the
20 floor to make your motion, and hear you fully and completely without any
21 prejudice whatsoever to the matters before the Chamber. It is now the
22 determination of the Chamber that I proceed with the opening remarks, and
23 I do so now.

24 This is a closed session of Pre-Trial Chamber II by way of a status
25 conference. In accordance with the Chamber's Decision dated

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1 25th November 2005, the purpose of this status conference is to
2 comprehensively assess the current safety and security situation in Uganda,
3 and determine its impact on the protection of victims and witnesses and other
4 persons who might be at risk, including the staff of the Court, as well as the
5 impact of any future decisions of the Chamber on unsealing of documents in
6 the record.

7 As asked for in the Chamber's Decision, we acknowledge the attendance
8 of the Prosecutor and members of his office, and also of the representatives of
9 the Registrar and of the Victims and Witnesses Unit.

10 Since the status conferences of 3rd and 6th October 2005, both relating to
11 protective measures for victims and witnesses, the Chamber has become
12 aware of reports in Uganda and in the international media concerning serious
13 attacks and violence against civilians in Northern Uganda and in Southern
14 Sudan, allegedly carried out by the Lord's Resistance Army, resulting in the
15 death of at least 22 civilians, including five humanitarian workers, as well as
16 a significant number of injuries and abductions.

17 The Chamber is concerned about the impact that such serious attacks
18 and violence may have on the overall plan for the safety and security of
19 victims and witnesses, and on the security of staff of the Court in the field. In
20 this hearing, the judges propose to ask of the Victims and Witnesses Unit and
21 of the Office of the Prosecutor specific questions with a view to gaining
22 updated information and understanding of the current safety and security
23 situation in Uganda.

24 In its Decision of 25th November 2005, the Chamber has ensured to state
25 clearly the statutory basis and authority of the respective roles and

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1 responsibilities of the Prosecutor and his office, of the Registry and the
2 Victims and Witnesses Unit, and of the Chamber itself, with respect to the
3 protection of victims and witnesses and respect to this status conference. It is
4 important that there be clarity about such roles and responsibilities.

5 I want in particular to address the role and the responsibility of the
6 Registry and the Victims and Witnesses Unit, and the submission dated
7 5th December 2005 which has been filed by the Registrar. The Chamber notes
8 that the Prosecutor has a preliminary submission and proposal to make on
9 that filing, and we look forward to hearing the Prosecutor on that matter.

10 Let me say that from the very beginning, with its first substantive
11 Decision on this matter dated 8th July 2005, and since reiterated in its
12 Decision on unsealing of 13th October 2005, the Chamber has urged upon
13 the Prosecutor and the Registry, and the Victims and Witnesses Unit, close
14 consultation and cooperation and for the Chamber to be informed on
15 a periodic and regular basis as to developments concerning the
16 implementation of protective and security measures in the field.

17 Indeed, by virtue of Article 43.6 and 68.4 of the Statute and Regulation 4,
18 the Victims and Witnesses Unit has clear statutory duties on the matter. On
19 the basis of these authorities, the Chamber has required the participation and
20 contribution of the Victims and Witnesses Unit in several of the status
21 conferences we have held. It is necessary, furthermore, that the Chamber
22 requires this type of information in order to be able to exercise its functions
23 and powers under Article 57.3(c) of the Statute and for the discharge of its
24 obligations under Article 68 of the Statute.

25 In these circumstances, taken together with the subject-matter of the
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1 submission made by the Registrar, the Registrar, and specifically the
2 Victims and Witnesses Unit, has a clear responsibility to inform the Chamber
3 of appropriate and relevant matters. For that purpose, the Unit is entitled to
4 make direct communication with the Chamber.

5 The Victims and Witnesses Unit is a unit of the Court, charged
6 specifically with duties with respect to victims and witnesses. But the safety
7 and well-being of field staff of the Victims and Witnesses Unit are integral,
8 indeed vital, to the very integrity and functioning of the Unit for the
9 protection of the victims and witnesses.

10 Before I leave this particular subject, I want to say that we have been
11 impressed and greatly encouraged by the reports of the work in cooperation
12 and relationship between the Office of the Prosecutor and the Registrar, and
13 specifically the Victims and Witnesses Unit, what has been described in these
14 proceedings more than once as an excellent relationship. Allow me to say on
15 behalf of the Chamber that we are confident that the relationship will
16 continue to move forward, enhanced and substantively strengthened.

17 As to methodology, and you would be familiar with the procedure we
18 have adopted previously, the Chamber proposes to ask a range of questions
19 addressed first to the Victims and Witnesses Unit and then to the Prosecutor,
20 to which we seek your respective responses. The subject of our questions will
21 be in two distinct parts. The first part dealing with recent developments in
22 the overall safety and security situation in Uganda; and the second part with
23 the submission by the Registrar.

24 I will commence with a number of questions, followed by their
25 Honours. But before I do so, may I now on behalf of the Chamber invite you,

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1 Mr Prosecutor, to make your submission and proposal. You have the
2 floor, sir.

3 THE INTERPRETER: President, the interpreters kindly request that you
4 invite the Prosecutor either to provide a copy of the text which he is about to
5 read or invite him to read it clearly and slowly.

6 MR OCAMPO: I am here now --

7 THE PRESIDING JUDGE: I am not sure, Mr Prosecutor, whether you heard
8 the request from the interpreters: if you have a prepared text to read, whether
9 copies could be --

10 MR OCAMPO: They will follow ... We will try to give them something, but
11 I will try to speak slowly, I will try to.

12 THE PRESIDING JUDGE: Thank you. Please proceed.

13 MR OCAMPO: Thank you very much, Mr President. I am presenting here
14 a preliminary motion seeking an order from this Court to disregard the letter
15 provided by the Registrar in his submission (Redacted)

16 (Redacted). To summarise my point, the letter has evidentiary significance.
17 Its presentation to your Honour is not a mere administrative matter. The
18 document in question came into the possession of the Office of the Prosecutor
19 in confidence, and we are trying to protect the provider. I personally
20 informed all the circumstances to Mr Dubuisson last Monday. But before all
21 this legal argument, let me clarify some procedural problems.

22 My clarification will show that the OTP were trying to fulfil the orders;
23 we were never trying to conceal the information from other organs, but we
24 understand the wrong process affected the trust between the organs of the
25 Court. I think it is very important to clarify our behaviour to restore the trust

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1 and satisfy any doubt in the minds of the Court. I will show you that
2 the letter is an issue of staff security, and did not require changing any
3 measure needed to provide security for victims and witnesses. Because ... the
4 letter should not be included in the record. For different reasons, the letter
5 has to be returned to us or sealed forever. Because it is an issue, the
6 conversation about this letter cannot put in the files.

7 Before that, let me say that I agree with you that this is a new Court, this
8 is a very important institution, we are learning how to work together. As
9 I say, I fully share with you the desire for the Court to show its commitment
10 to the victims. Sometimes we disagree, but there are serious concerns, and we
11 are all working very hard on the victim and witness protection, and we are all
12 very, very pleased with the work that the VWU is developing. We are
13 helping providing information for this. In this way, each organ was working
14 to fulfil a very important mission, and we are very happy with this, and we
15 will try to sustain this. I will clarify the wrong process to restore theses
16 possibilities.

17 The introduction of the letter was the consequences of the series of
18 mistakes that affected the process and the trust between the organs. I am here
19 because my office committed the first mistake. But after that, other mistakes
20 affected the process in which you receive information about the letters. But
21 this hearing and this motion provide to all of us an opportunity to fix this
22 wrong process. It is also an opportunity to learn how we can fix between us
23 the mistakes, and produce a better result.

24 So let me explain first in this short motion the background of the
25 problem, the background of the wrong process, and then the opportunity that

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1 this motion creates.

2 First the background. We received a letter (Redacted)

3 (Redacted)

4 (Redacted). So

5 that is why we are very concerned about this.

6 Immediately we shared the letter with the UNDSS system, because they
7 are basically those who provide the assessment on security level on the
8 ground. In this also, we tried to assess the authenticity of the letter.

9 UNDSS was also evaluating, previous that we received the letter,
10 attacks, as you mentioned and the media mentioned, against NGOs and
11 tourists. So the UNDSS was assessing this, and the letter was part of the
12 assessment. Even if we never authenticated the letter, we assumed the letter
13 it could be obtained, so it was part of the assessment.

14 (Pause to resolve a technical problem)

15 So the UNDSS decided not to change the level of risk, despite the attacks
16 taking place against NGOs and tourists. We shared their assessment. The
17 conclusion was that no new staff security measures were needed. My senior
18 attorney can explain more about this.

19 THE PRESIDING JUDGE: If you could kindly pause, Mr Prosecutor.

20 (Pause to resolve a technical problem)

21 MR OCAMPO: Let me go to the point of importance. From the beginning we
22 intended to share the letter with the Registry, and because of
23 mis-communication we failed. We received the letter, and we were very
24 worried in the beginning, concerned to share the letter with the UNDSS, and
25 basically -- well, (Redacted)

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1 we tried to check this, and we tried to focus on this and trying to authenticate
2 the letter. In the meantime (inaudible) going to Kampala. After that, when
3 I asked them why they did not share the information with them, they told me:
4 we believe they knew, because in Kampala when we were there, everyone, all
5 the security people were talking about this letter. In fact, (Redacted)
6 (Redacted) was circulated in the NGO community.

7 So we failed. So I am not saying that we did well; we failed, but I will
8 explain to you why we failed. First, we did not -- at the beginning, we just
9 focused on authentication, and after that we did not realise that the Registry
10 had not officially the letter. We assumed that they had the letter. In part,
11 some of them had information about the letter. So it was a lack of information
12 between that, between them and my office. My operational people believed
13 that I was telling the top people the information; I had no idea, I was working
14 on a different problem. So it was mis-communication inside my office,
15 mis-communication with the Registry. So this is part of the problem.

16 We had the wrong assumption that the Registry knew about the letter.
17 So now we are fixing this. Our problem was the lack of protocols. We had no
18 protocols on how to share the information, and we are learning from
19 mistakes. This mistake produced a meeting in the working level, and now we
20 have weekly meetings with all the organs, all the different units that had to be
21 involved to share the information, to make sure that we would not repeat this.

22 To talk about facts of the letter, let me finish with my own
23 interpretation. The first time that I learnt personally that the letter itself had
24 not been shared with the Registry was on 17th November. When I received
25 the memorandum from the Registrar informing me. He told me that, without

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1 having seen the letter, without any expert advice and, the most
2 important in the circumstances to me, in accordance with the Rule 13.2, he
3 had top field operation, he had informed the Presidency, and he put in his
4 memo that he made sure the Pre-Trial Chamber was aware. I asked him
5 exactly the same day, and I just filed a copy of my answer. Let me read to you
6 what I said.

7 THE REGISTRAR: This will be filed in the record as HNE8.

8 MR OCAMPO: I said basically that I was surprised. Because, as you say, we
9 are trying to learn how to work together. My previous meeting -- previous to
10 this meeting with the Registrar, we had two days' cross-cultural training in
11 which we worked together, and I personally was discussing with him how to
12 deal with communication, because of course, in such a difficult operation, all
13 the time problems arise. So I told him we should communicate more. But
14 that was for me a shock, that he told me after he had taken the measures with
15 the Pre-Trial Chamber, with the Registry, and not with me that he had. I said,
16 look, this is wrong, and it is especially unfortunate because I believed that
17 through prior consultation this matter could have potentially been resolved,
18 and the understanding implicit in the letter clarified .

19 The letter you mentioned did not impact upon security. The relevance
20 in the field, namely the killing of the NGOs, were the events that influenced
21 the security assessment. These events were being monitored by ICC security
22 services.

23 As soon as I learnt, and the problem is that I learnt in the wrong way,
24 I offered him all the information, and immediately my officers provided the
25 document to the Registry. So immediately we saw the problem and fixed it.

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1 We shared the problem with the Victims and Witnesses Unit and the
2 Registrar.

3 Then the document was fully and jointly evaluated at the working level,
4 so what we do in our office now, the Registrar units can do it. With all the
5 information we explained to them everything, how we received the letter, the
6 content, everything, and also the effort we did to try to authenticate or not
7 and the date, and all this information. In the discussion, all the experts, the
8 Victims and Witnesses Unit, security section and my unit, had the same
9 conclusion: the letter does not affect either the adequacy of staff security
10 measures or victim and witness protection measures.

11 In fact, and this is the problem, this is just one of the thousands of
12 different information coming to our work, our normal work. The only
13 circumstance that makes this letter exceptional is the way the information
14 arrived to you, in this wrong process creating doubts about our intentions,
15 like we were trying to conceal or hide something. They were lots of people
16 saying many, many things.

17 Our assumption is that we need first an expert assessment from different
18 units, integrating more, and you received the assessment. If you want to
19 work with the details, you can ask in the proper way. But our problem is the
20 way it is created the wrong assumption that we were trying to hide
21 something, or it was not very important. It was important, many information
22 is important, but it had to be assessed. You had to receive the expert
23 assessment.

24 Of course, as I told you, we realised that there were not ICC protocols on
25 the routine sharing of information like this, and in this sense we are learning.

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1 We have now started weekly meetings to make sure all information on
2 security is promptly shared between relevant organs. We are working hard to
3 be sure this problem cannot be repeated. We are planning to have operation
4 centres to receive all the information and put the information together. So it is
5 a big project. We prepared a room -- I think it is in floor 9 -- so we were
6 working a lot on this before that, but now we find the lack of protocol is
7 a problem, with no clear channel how to communicate. My lower level was
8 thinking I would do it, I was thinking they would do it, so there was
9 mis-communication in the entire Court.

10 When we find a problem, okay, let us talk and solve it. That is why for
11 me, in this motion, I would like to take the opportunity to explain to you
12 exactly what has happened.

13 The problem is that, first, in our meetings the Registry confirmed it to
14 you very, very informally. Last Friday, the registry informed us that the
15 President of the Pre-Trial Chamber requested of him to file the letter. Last
16 Monday morning, I personally, and my two deputies, informed
17 Mr Dubuisson, and the letter was evidence provided to the Registry in
18 confidence; therefore, it was not in his authority to provide it to the Chamber.
19 The statutes say that the information given to us is our evidence, we are the
20 channel. You can request to us information and we can provide, but we are
21 the channel, not the Registry. That is why the filing of the letter is such
22 an important issue. It is not just affecting the case, it is affecting the entire
23 operation of the Court. This is the background.

24 My conclusion is that you receive information in a wrong process. You
25 receive information without any security assessment of the risk created by the

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1 letter, and without -- they were doing it in a wrong way, and that
2 created for you the doubt about our intentions. That is why for me I go to the
3 legal part, but the facts are very, very important. So this wrong process
4 created the impression that the letter had a difference relevance, or that the
5 Office of the Prosecutor was concealing it.

6 Another conclusion I think you took was this letter was always
7 considered to affect the security, because (Redacted)
8 (Redacted). So the Registry's reaction was emotional, basically, thinking
9 their people are in threat and the information was being hid. So we always
10 considered this as a staff security issue. That is why we checked, this is
11 another, additional reason to check, to incorporate the letter in the filing.
12 Because it is not about your role in victim and witness protection; it is about
13 staff security. So I think the Victims and Witnesses Unit or Ms Chung could
14 give you further information on the interlinking of these two aspects. We can
15 give you more information so you can explore this avenue. But for us the
16 problem is that the issue of staff security cannot be discussed here. It is not
17 the place to do it.

18 For us -- and let me go now to the legal aspect -- these are the facts. We
19 had a wrong process. There is substantial information, which again is not so
20 important, in terms of changing the security; of course it is important to
21 receive the letter, but there are many threats, many things happen, and it does
22 not affect the level of the measures we are taking. So now there are two roads
23 before us; one is whether you give a letter to relate to a purely administrative
24 matter. It is the case that if you agree that the letter is about staff security, and
25 staff security is about --

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1 THE PRESIDING JUDGE: I think you are saying something very, very
2 important, and it is not being caught in the transcript. I wonder if you would
3 be kind enough to repeat that.

4 MR OCAMPO: Absolutely. Thank you very much. Of course. What we
5 mean is that the origin of this problem was the idea that we were hiding
6 a letter that was affecting staff security.

7 (Pause to resolve a technical problem)

8 THE PRESIDING JUDGE: If this is very disruptive for you, I think it is very
9 necessary that we hear and understand you.

10 MR OCAMPO: It is okay, we can wait.

11 THE PRESIDING JUDGE: Please proceed, Mr Prosecutor.

12 MR OCAMPO: This is a good moment, because we have finished the
13 background, and now I go to the legal aspects.

14 There are two different possibilities of understanding this legally; one is
15 the normal path. The normal path was (Redacted)

16 (Redacted), so the reaction of the Registry was emotional.

17 I saw him very concerned. That is why he did this, I think, because he was
18 very emotional. He was thinking that our people were at risk and we were
19 ignoring the problem. The staff security issue is a purely staff security issue,
20 because the letter did not change the measures to protect the victims and
21 witnesses. This is the process.

22 So this is the way in which we always see the problem: it is
23 an administration problem. If the Chamber agrees that the letter ...

24 (Pause to resolve a technical problem)

25 You see, you needed an expert. We always need the experts!

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1 So the experts say in this case there is no connection between staff
2 security and the victims and witnesses. The letter did not change the
3 measures of the victims and witnesses. So this is what our experts in both of
4 the organs said. So this is a case in which the matter is purely administrative;
5 it is not judicial, it is purely administrative.

6 Of course, under Rule 13.2 -- this is under the staff security -- it is
7 a matter of administration for the Registrar in connection with the President
8 and the Prosecutor. That is why the (inaudible) the Court, and there is good
9 reason for this, including the impartiality of the Chamber. The Chamber
10 cannot take responsibility for staff security without appearing to favour staff
11 personnel over ... (inaudible).

12 But the important point is that, if we agree with this normal path, if the
13 letter relates to staff security only, and it is not judicial but administrative, and
14 it is not judicial because it is not case-related, then we do not need to discuss
15 the point here. The point could not be discussed in the Chamber.

16 Also, there is no need to complete the record describing the conversation
17 with a different unit of the Registrar about this point, because the discussion
18 was about administration, it was not a discussion about the case. The staff
19 security is another matter; it is an administrative matter, rather than judicial.
20 Therefore, it does not matter that the letter was not discussed between the
21 Registry and the President or the judges, because it is administration. We do
22 not need to put this in the record, we do not need to discuss, you do not need
23 to rule on this. Also, this means that you should not include in our hearing
24 discussion on the letter.

25 We hope that you share this view in your ruling on this motion, because

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1 this will solve all the misunderstanding and solve all the problems. Of
2 course you will make the decision, so if you have a different idea, if you
3 consider that the Chambers could discuss the letter, because the letter is
4 case-related, this puts me in a difficult position, because I disagree, and I had
5 my opportunity to present my points.

6 First, I have to renew my motion that the Chamber complete the record
7 before the hearing, because if the letter is case-related, if the information of
8 the letter that you received informally is case-related, all the parties, not just
9 the Office of the Prosecutor but the future parties, they have the right to a
10 description of the conversations between the Chamber and the Unit and the
11 Registry regarding the issue. I had to make this point. All practicalities of the
12 case must be maintained. This is a matter of basic fair trial.

13 Second, if you decide it is a legal issue and case-related, I have another
14 obligation. I must ask for an opportunity to be heard and for a reasoned
15 decision, because we have not had an opportunity to brief the issue of
16 whether the Chamber properly has jurisdiction over staff security. This, as
17 you say, is an important point, related with the interaction of the different
18 organs of the Court. So if you decide this, I would like the opportunity to
19 brief you and then have a ruling.

20 Third, and it is a different kind of problem I have, because you -- if you
21 consider this to be a case-related issue, my duty is to object strongly to the
22 manner in which the document was provided to the Chamber. The Registrar
23 cannot -- it is not an administrative matter, and we informed him one hour
24 before he filed the letter: this could be evidence; it was given to the OTP staff,
25 so we had the opportunity and the right to provide to you the relevance. The

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1 Registrar cannot take the decision: okay, this is important, we give it to
2 the judges. It is highly confidential information, they cannot give it to you in
3 this way. You can ask me, but they cannot give it to you in this way, and
4 I told Mr Dubuisson this very, very clearly.

5 Interestingly, even the Chamber cannot ask the Registry to provide
6 an OTP document. Regulation 48 says the proper channel is the OTP, not the
7 Registry. We all know how controversial is Regulation 48, but in this way it
8 will be an expansion of Regulation 48.

9 The Registry cannot provide OTP evidence to the Chamber; this is
10 Rule 13.1, which is very clear. The OTP provides many documents to the
11 Registry, on the understanding that they will observe confidential rules. If
12 you decide that the Registry can turn those documents over to the Chamber
13 even when the Prosecutor objects, it is a rule that will cut off the cooperation
14 of my office, and even the cooperation with the Court, because I cannot
15 provide any confidentiality. The judges could give interaction, and the
16 Registry will give to the judges, so I cannot work.

17 That is why, if you decide this in this way, I have to insist on my point.
18 The case is even more grey, because specifically the provider of the letter
19 begged us: please, be sure that my identity is not revealed. And this is a very
20 important point for us, as we have to protect our sources, we cannot expose
21 them. In this submission, even the Registry (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted). The lack of communication with us

25 provided for this. That is why, if you request it, our submission would be

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1 different, because you know the background, and ... (inaudible).

2 So in this way, a Court who is really protecting a witness something for

3 misunderstanding endangers the life (Redacted)

4 (Redacted)

5 (Redacted).

6 So if you consider in this way, yes, we are presenting here a motion that

7 you cannot conceal in this way, and my senior attorney will amplify my legal

8 argument on this point, and then I will finish, close the motion. So just in case

9 you consider this to be a legal issue, we will present formally our objections.

10 THE PRESIDING JUDGE: Thank you, Mr Prosecutor. Ms Chung, please.

11 MS CHUNG: Thank you, Mr President, your Honours. As the Prosecutor has

12 highlighted, our legal position is that there were substantive and procedural

13 defects, which means that the letter filed with your Honours by the Registrar

14 was filed without a basis in the Statute or the Rules, and the letter should not

15 be considered at the hearing today. In terms of questions about sharing the --

16 we all know what the history of it is, I think, such that we cannot discuss the

17 letter substantively before the Chamber, because it should not be considered.

18 One way to think about it is under Rule 64, which says that the Chamber

19 should consider objections to relevance and admissibility, and it shall not

20 consider evidence that is submitted that is not relevant, or is inadmissible.

21 We have objections to the relevance and the admissibility of this

22 document, in part based upon some of the justifications that the Prosecutor

23 gave.

24 THE PRESIDING JUDGE: Can I just stop you right there. You seem to be

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1 contradicting already what the Prosecutor has said to us. He has made the
2 point that there is no legal basis for the letter being before the Chamber, but
3 he does not object to the letter being discussed.

4 MS CHUNG: What can be discussed is the impact of the letter on security.
5 To the extent that the VWU or ourselves want to discuss, okay, in the context
6 of overall security, was the letter taken into account, and what was the
7 conclusion on the security, that is fine. The impact of the letter on security is
8 one thing, on victims and witnesses' security. But in terms of the history that
9 we are all trying to get beyond, our view is that we should not be discussing
10 the substance of this letter in this hearing, and we should not be going back
11 over that. What we should be talking about the correct path that should have
12 been followed, what is the expert assessment of what the letter means to
13 victims and witnesses' security.

14 What I hear in the hearing today, and I listened very carefully, as did all
15 the members of the Prosecution team, to your Honour's opening remarks, and
16 we are all trying to find a way to get beyond this misunderstanding, what
17 the Prosecutor is beginning to describe, and what I have the obligation of
18 describing to you, is why the legal way that we choose out of this
19 misunderstanding matters to the Court and to the Prosecutor.

20 The rulings that I heard your Honours made this morning -- and,
21 unfortunately, I will have to characterise them a little bit, because I heard
22 them, but if there is any inaccuracy obviously we should correct that --
23 the Chamber found this morning that staff security is within the jurisdiction
24 of the Court; that the Victims and Witnesses Unit is responsible for staff
25 security, because staff security is captured within that phrase "other persons

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1 at risk" in Article 48.6, and also necessarily 68.5 then; and that VWU can
2 be an independent channel of information to the Court, even when what they
3 are channelling to the Court is a document that was provided to us in
4 confidence and has evidentiary value.

5 While we greatly appreciate the idea that the Chamber is making these
6 rulings in part to get us past this misunderstanding, each one of those rules
7 has huge implications, and our view on those rules would be: we have not
8 had a chance to brief those issues. If those are going to be the rules of the
9 Court, and the Prosecutor is suggesting another way to look at this problem
10 this morning, our view is that if this is related to staff security, that is fine.
11 Then there was no problem over the contacts between the Chamber and the
12 Registry, and there is no issue about the letter. It is an administrative matter,
13 not a case-related one. Under Rule 13.2, that is a matter for the Presidency,
14 the Prosecutor and the OTP. But if we choose the route of saying that it is
15 staff security-related, and that is judicial, that creates another set of
16 implications.

17 Let me give an example. Even the idea that staff security falls within the
18 phrase of "other persons put at risk", that is an extremely controversial idea; it
19 will very much change the responsibilities of VWU, not just in this
20 proceeding. The negotiating history of 48.6 shows that even the phrase
21 "family" -- of course, what 48.6 says is "persons put at risk by virtue of
22 testimony given in court". This was very hotly contested language in Rome.
23 That phrase once said "persons put at risk" -- "family members" or "family or
24 people put at risk". What was decided at Rome was even that was too broad.
25 The word "family" was taken out, because the idea was not all family

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1 members may be at risk.

2 Also another thing that was very controversial at Rome was: what does
3 this mean? Does this mean just trial testimony? Does this phrase even apply
4 in the investigative stage? And there was a lot of doubt that it did. So while
5 we may find a solution for this hearing that seems like a good solution, this
6 kind of ruling will have very big repercussions; for us obviously, and I think
7 also for VWU and the scope of their duties, and even the budgetary impact,
8 this is an enormous ruling.

9 Another example is the letter. Our issue is not that the Chamber knows
10 about the letter. If it had come through the proper channels, obviously it
11 would be a good thing that the Chamber got the letter, in context, with
12 accurate information, after the Registry and the OTP had had a chance to
13 confer about it. But, it being presented to the Chamber through the channel of
14 the Registry over the Prosecutor's objection, and let me stress this: without
15 the Prosecutor having a chance to object to it ... Because what happened that
16 morning, after the Prosecutor told Mr Dubuisson: this letter is our letter;
17 please, our view is you do not have the authority to file it. And
18 Mr Dubuisson made no promises in that regard, I want to be clear about it,
19 but we did tell him, "This is our letter."

20 Then, the email sequence will show it, eventually what happened is that
21 we got an email at 3.32 or 3.40 saying that the Registrar had made a decision
22 to file the letter anyway, and the document was filed 8 minutes later. So we
23 had no opportunity -- we received the Court Management Notice saying that
24 the document had been filed exactly 8 minutes after the notification from the
25 Registry. They had determined that they were going to disregard our

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1 objection and file the letter.

2 It may be that, if we had had an opportunity to describe to
3 your Honours why we objected to the filing of the letter, we could have had
4 either a common view about the best way for the letter to come to the
5 Chamber or not, or we could have worked out what the legal objections and
6 the validity of those objections were. But we never had that chance. So we
7 are sorry to be bringing to the Chamber this morning this preliminary motion
8 in this fashion, and I wish that we had even had a chance to brief this letter in
9 writing, but this is our dilemma.

10 The final point is that, obviously with respect to our request that the
11 record be supplemented, again, in our view, this turns on how the Chamber
12 characterises the information that it received. If the information is received as
13 staff security-related, and the Chamber deems staff security to be a matter
14 under Rule 13.2, it is administrative for the President, the OTP and the
15 Registrar, that is on thing. But our view is that, if the Chamber does consider
16 the letter to be related to anything in the case, then we are on a different path,
17 and we must complete the record in an *ex parte* context. Again we are not
18 saying that -- there is no bad faith or anything, but it is the entitlement of all
19 the parties to have a complete record, if we decide that this letter is
20 case-related.

21 May I just confer for a second with the Prosecutor? (Pause).

22 MR OCAMPO: So, Mr President, this concludes our submissions on the
23 preliminary motion. But, of course, we are ready to answer and clarify any
24 other point, because this is the first time that you know about the interaction
25 with the Registrar and Mr Dubuisson, so we can clarify all these issues, and

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1 you can ask Mr Dubuisson, who is here.

2 We are really committed to fixing the process, and to go back to the
3 normal channels. Of course, it is your decision, so if you need to clarify, you
4 can do it. My only last comment is that we need a decision from you before
5 we start the hearing. Thank you very much.

6 THE PRESIDING JUDGE: Yes, thank you, Mr Prosecutor. Thank you,
7 Ms Chung. The judges will need to confer fairly shortly. But just two
8 questions, if I may.

9 The submission by the Registrar consists of two documents. Are you
10 objecting to both, the letter from the (Redacted) and what appears to be
11 an internal memorandum from the operation security officer on the letterhead
12 of the Office of the Prosecutor? Are you objecting to both documents in the
13 file or to (Redacted) letter only, about which you and Ms Chung have spoken?

14 MR OCAMPO: I know the letter. Can you repeat to me what is the second
15 document? (Pause).

16 I think it is irrelevant, but I think that the note is just again internal
17 administration between the President and the Prosecutor, so it has not the
18 same character of evidence. So my impression is that this is connected with
19 the document, with the letter; without the letter it has no sense. So it is not
20 an important part, but my proposal would be, yes, to treat them in a similar
21 way. But I have no objection, because ...

22 My proposal would be, if the Chamber is interested in the document,
23 you can request to me the document and I will provide it to you in the proper
24 channel.

25 THE PRESIDING JUDGE: Thank you. Allow me, then, to follow that up. If

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1 the request from the Chamber were for you, as the Prosecutor of the Court, to
2 provide and to file the (Redacted) letter, treated, as you have indicated, under
3 seal, *ex parte* Prosecutor only, would you maintain your objection?

4 MR OCAMPO: Your Honour, we have not -- we have to be a transparent
5 office, and you are the rulers of the case, so we have two objections: the
6 channel is wrong; and if you consider this staff security, assume you was me,
7 if I can provide a letter because you are concerned about victims and
8 witnesses' security, I would have no problem; on the contrary I would be
9 pleased to do it.

10 THE PRESIDING JUDGE: Thank you, Mr Prosecutor. Let me consult with
11 the judges for a moment, please. (Pause).

12 The Chamber would need to take a few minutes, and I suspend the
13 hearing for those minutes. Madam Registrar.

14 THE USHER: All rise.

15 (11.08 am)

16 (A short break)

17 (11.40 am)

18 THE USHER: All rise. The Court is now in session. Please be seated.

19 THE PRESIDING JUDGE: Thank you very much. At this point, the Chamber
20 would invite Mr Dubuisson, on behalf of the Registrar and the Victims and
21 Witnesses Unit, to respond as fully as he can to the motion made and the
22 submissions of the Prosecutor and the Office of the Prosecutor.

23 Mr Dubuisson, you have the floor, please.

24 MR OCAMPO: Can you discriminate the questions because I fully agree with
25 your initial statement on the important role for the Victims and

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1 Witnesses Unit but I believe it is a different relation between the Victims and
2 Witnesses Unit and the Registrar. I would be glad if you can discriminate the
3 question to the Registrar and the Victim and Witnesses Unit represent victims
4 themselves, because one of the problems is that there is no clarity between
5 these two functions. The Registrar has two different functions victim witness
6 unit, expert assessment, Registry is doing many, many other things. So the
7 interaction between the Registry itself and the Victims and Witnesses Unit is
8 a problem for us. So if you ask the question differently, it would be
9 appreciated.

10 One of the problems that we see in this process is that the Registrar was
11 involved with technical expertise in matters belonging to the security service
12 or the Victims and Witnesses Unit, and we believe that this is something that
13 caused some of the mistakes. If the Office of the Prosecutor objects -- the
14 Registrar could answer in the name of the Victims and Witnesses Unit.

15 JUDGE DIARRA (interpretation): Your Honour, with your permission,
16 I would like to suggest the following. I think the Chamber could leave it to
17 this service or department to share the questions, and leave them the
18 opportunity to answer certain questions without the Chamber having to make
19 a decision on this issue and to establish safeguards. They can share their
20 respective roles.

21 THE PRESIDING JUDGE: I am sorry, Mr Prosecutor, are you objecting to
22 Mr Dubuisson speaking?

23 MR OCAMPO: No, no. I agree with the judge's opinion. You can make the
24 question; if you have further objection, after the answer we can explain to you
25 our objection. I agree the procedure you describe could be better, so you can

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1 make the question. If after the answer we have an objection, we can explain
2 to you our point of view. Thank you very much.

3 THE PRESIDING JUDGE: Yes, you have the right to register your objection,
4 but I think you can leave it to the Chamber to pose the questions. Thank you
5 very much. Mr Dubuisson, you have the floor.

6 MR DUBUISSON: Thank you, your Honour. Distinguished judges, I would
7 like to divide my intervention into two parts. First of all I would like to go
8 back to what has been said by the Prosecutor on the sequence of events as
9 they unfolded, and then I would like to give a few clarifications in order to
10 respond to the preoccupations and the concerns raised by the Prosecutor on
11 the role of the Registry, the role of the Victims and Witnesses Unit, on
12 communication to the Chamber and on the status of the document that we are
13 discussing.

14 Now, going back to the sequence of events, within the Registry, it was
15 only on 16th November, Wednesday, that I was informed personally of the
16 fact that the Prosecutor allegedly -- allegedly -- had in his hands a letter which
17 would have been (Redacted)
18 Court, and that the Prosecutor had had for approximately three weeks.

19 First of all, I asked that a check was made within the Registry in order to
20 see if there was any problem of communication within the Registry, so I asked
21 with the security services, so that we could see if there was a problem in
22 communication between the Registry and the security department.

23 The first answer we got was that those services did not know about the
24 existence of such a letter within the hands of the Prosecutor. Our second
25 instruction was to get in touch with (Redacted)

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1 (Redacted). We asked him if we
2 knew that there had been such documents circulating in Kampala. He came
3 back and immediately said that he was unaware of the existence of this letter
4 and was going to check with the Prosecutor. This is something that we asked.
5 So he was instructed to get in touch with his counterpart within the Office of
6 the Prosecutor, (Redacted), to see if he could get any information on this
7 letter.

8 The information that we received at 3.45 pm in the afternoon of the
9 16th was the following. Yes, the Prosecutor has a letter (Redacted)
10 (Redacted), but he did not wish to give it to
11 (Redacted).

12 Then so there was 3.45, what did we do in the Registry. Immediately
13 I consulted with the Registrar and we took three measures. We were not in
14 a position to assess the situation, because we were not provided with the
15 document, but it had to do with the security (Redacted),
16 so we first of all decided to stop all field missions. We tried to see what the
17 situation was with the Prosecution, but we did not receive the information,
18 and we decided to alert the Chamber. The measure we also decided -- the
19 Registrar had a meeting with the Presidency at 4 o'clock. We decided to have
20 this event put on the agenda, so to speak -- I will go back to this later on
21 whether I give you further clarification. On 17th November, upon request by
22 the Prosecutor we met with the Prosecutor because he wanted clarifications
23 on three issues: why did we stop the field missions, on what basis, why did
24 we alert the Chamber and why did we alert the Presidency? We had
25 a request which we filed. Why was there no communication whatsoever

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1 during three weeks on an issue closely related to staff security. (Redacted)
2 (Redacted) reported to us saying that he thought that we knew already that
3 the information reached us as regards the situation in the field. Let me add
4 that we have an email dated 27th October from (Redacted)
5 (Redacted)
6 (Redacted), indicating to them that they had heard by UNDSS a rumour
7 about a potential letter. Immediately (Redacted) informed the Prosecutor
8 and said that he was going to try to receive further information. A few emails
9 were exchanged at the time when the Prosecutor already had the letter, but
10 did not inform either Security or the Registry.

11 That is when we received a memo from (Redacted), with attached to it
12 the letter, (Redacted), as well as an analysis document. Later on,
13 around 24th November, Christine Chung, within the framework of the
14 regular communication between the Victims and Witnesses Unit and
15 the Prosecutor, sent again the letter with a little note, saying that we had
16 indeed to be careful in terms of confidentiality, and it should only go to ICC.
17 Of course I have all the emails and notes I am talking about here.

18 On 29th November, in preparation for this hearing, I took the liberty of
19 sending an email to both Deputy Prosecutors as well as to Silvia Fernandez,
20 and I asked them if it would be possible to meet first of all, to have a meeting
21 together, and I indicated that it would be useful and interesting that the file
22 Prosecutor filed this letter, so that it could be in the record.

23 To that email I received no answer, except the following: we will try to
24 find some time in our schedule. Up to that day, I have not received anything
25 else.

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1 On Monday, finally, on 5th December, first of all I had a phone call on
2 Sunday from the Registrar saying that there was an agreement between
3 the Prosecutor and the Registry and the Prosecutor would file on Monday
4 morning the letter. Therefore, upon the request of the Registry on Monday
5 morning, I went to see the Prosecutor in his office. Then, I was not told that
6 the letter was going to be filed, but I was shown two documents that were
7 going to be filed during the day, with the Registry.

8 I was given an instruction which I was quite amused about.
9 The Prosecutor was giving me an instruction not to file this document.
10 I never said I was not going to do it. However, we had agreed that, if I was
11 going to file the document, I would inform the document accordingly. This
12 did not mean discuss, it meant "inform". That is what I did, and this is the
13 sequence of events as they unfolded.

14 Now, more clarifications. Let us be very clear. We are being told that
15 we have an *ex parte* communication with the Chamber. We are not
16 a participant to the trial, the proceedings, we are not a party. We are not
17 talking about parties anyway in the Statute or the rules, we are always talking
18 about participants. Who are the participants? The Prosecutor, potentially the
19 Defence, the accused or a victim. These are the participants. We never see the
20 Registry as a participant to the proceedings, so therefore I do not see how
21 I could have an *ex parte* communication or contact with the Chamber.

22 Let us add to that that the role of the Registrar is clearly specified in
23 a number of articles. Let me quote 43.1:

24 "The Registry shall be responsible for the non-judicial aspects of the
25 administration and servicing of the Court."

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1 There is also Rule 15, where we can read that the Registrar shall keep
2 a database. And I can go to Rule 120.1.10:

3 "The Registry shall create and maintain a full and accurate record of the
4 proceedings before the Pre-Trial Chamber."

5 So I think I have given you a few provisions which define very well the
6 functions and the role of the Registry, and I believe it shows that we are
7 a neutral organ in the proceedings.

8 The intervention of the Victims and Witnesses Unit, as we heard
9 already, here we are based on two Articles, mainly 68.4, 43.6. I am not going
10 to linger on this. They had been quoted many times.

11 There it is clearly indicated that they are consultations with
12 the Prosecutor, and I do agree on this fully. However, let me qualify this in
13 two regards. First of all, we are working on the protection of victims and
14 witnesses, and we have a methodology, through seminars and our meetings,
15 I keep repeating this, we are working on a methodology that will apply to
16 defence teams and potentially to the Chamber's witnesses. In that particular
17 context, of course I am not going to consult with the Prosecutor in order to
18 protect a Defence witness.

19 So here I believe again there is room for interpretation on those two
20 articles.

21 My second comment has to do with communication. Yes, I am ready to
22 consult with the Prosecutor if I am informed beforehand. In this case here
23 there was a lack of information, and this over a three-week period, and given
24 the urgency of the situation, given the fact that we were unable to carry out
25 our own assessment, we decided to take action and a few measures, as I said,

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1 to stop field missions, to alert the Presidency and to inform
2 the Chamber.

3 Let me refer you to a decision of 6th October 2005 which refers to
4 Regulation 41. If you want I could quote such provision. In fact, no, I could
5 quote an expert of this status conference. The Chamber had asked the Victims
6 and Witnesses Unit in accordance with Regulation 41 to submit to
7 the Chamber's attention any issue that is related to protection measures and
8 which deserves attention.

9 So this is the reason why we informed the Chamber. Now, why did we
10 file the letter? This is another issue. First of all, we invited the Prosecutor to
11 do so, and we tried and, from the very beginning, as of 16th November, we
12 met the Prosecutor and asked for further information before we took any
13 measures, on which we had no feedback.

14 So on 29th November, I asked for the letter to be filed, I asked for
15 a meeting to be convened and I received no answer. Therefore, I felt that it
16 was important that, since the Chamber had been alerted, that the Chamber
17 could have comprehensive information in order to avoid any question on the
18 status of the document, et cetera, we needed to express ourselves, we needed
19 transparency, and we needed to help facilitate the discussions. Again I would
20 like to refer you back to a decision of 18th July, this is on page 4 of such
21 decision. Let me read you part of it. It aims rather to make sure that the
22 process of consultation and cooperation continues in order to reach the main
23 aim which is to ensure the security of victims and witnesses. So I believed it
24 was appropriate that we should have an opportunity to discuss this issue.

25 Now, what do we hear? The document is of an evidentiary nature. Let

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1 us be very careful here. I fully agree with the Prosecutor when he says it
2 is not up to the Registry to submit evidence which in this case belongs to
3 the Prosecutor, but any kind of evidence which belongs to the Defence or any
4 other participant in the proceedings. I fully agree with this provision.
5 However, there is a problem. On 17th November, when the Prosecutor gave
6 us the letter, we were never told that this was evidence. And you can check
7 yourself in the document that you have in your hands. We have no
8 information whatsoever on the level of confidentiality of the document.
9 Moreover, the letter was sent to the President, who is also a member of the
10 Appeals Chamber, on top of being the President.

11 Maybe we should say more about the confidentiality issue. In a note
12 written by Christine Chung and sent to Mr Vaatainen in which this letter was
13 sent in the framework of this contact that I think are excellent between those
14 two organs, we are told: be careful -- only the second part of the letter was
15 circulated -- be careful, this letter should not go outside the ICC. I believe
16 I did not go against this recommendation. I gave the letter to the Chamber,
17 and the Chamber as far as I know is part of the ICC.

18 The only reference to any kind of confidentiality is linked to an analysis
19 which was provided by the Prosecutor in this (Redacted). I did not
20 send this analysis document to you, because of course I did not want this
21 letter to be read outside its context. That is why I only sent the letter with the
22 cover letter (Redacted). I did not communicate this analysis which
23 could have had repercussions for the Prosecutor.

24 To conclude my intervention, I would like to say the following: indeed,
25 it is not easy for the Registry to file a document; we do not have, as we would

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1 have in other jurisdictions, a 33B, which would give us the possibility of
2 turning to the Chamber. However, there is enough case law, so to speak,
3 through transcripts and oral decisions taken by the Chamber, and through all
4 the other decisions -- I think there is enough there to interpret those various
5 provisions in a way that would allow me and the Registry to file this
6 document. Maybe we could clarify this in the future; it would be very good
7 for the Registry.

8 We have also heard that the Prosecutor alerted the security department
9 of the United Nations; and that the general issue of security had already been
10 discussed. Well, I have doubts here. We are an institution, we belong to the
11 same institution through the various organs of the Court, and I do not see
12 how by alerting the UNDSS you would not inform the security department of
13 this institution. There was an email between (Redacted) and the Prosecutor
14 whether he learnt that there were rumours, and again we did not receive any
15 kind of answer to this email.

16 So since I am discussing this issue here between the Chamber, I hope
17 that these security issues must lead to exchanges between the Prosecutor and
18 the security department of the Court.

19 Finally about the incident, of course this is a serious one, but it should
20 not hide the work that has been carried out. We have made a lot of
21 considerable progress establishing in the field in Uganda mechanisms which
22 were actually working. To go back to the original agenda, I will give the floor
23 to Mr Vaatainen, who will report to you the measures which have been taken
24 in Northern Uganda. I have to say that the working relationship is very good
25 at that moment. A threat assessment group has also been created, made up of

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1 people from the security department, the Prosecutor and the Victims
2 and Witnesses Unit, and I think this is a positive step taken after the incident
3 we are discussing.

4 Now talking about the link between this incident and the security and
5 safety in Uganda, this could have a consequence on the capacity, the ability of
6 the Victims and Witnesses Unit to work in the field, even more so because our
7 methodology works on communication, on the basis of communication
8 between the Prosecutor and ourselves. If this communication is not fully
9 operational, I believe it is our duty to turn to the Chamber. Thank you.

10 THE PRESIDING JUDGE: Thank you very much, Mr Dubuisson.

11 Now, Mr Prosecutor, you have made submissions on this letter and
12 a proposal. The Chamber would wish to receive your submissions in writing.
13 It is an important matter, and you have laid stress on many aspects of the
14 matter. You appear to have marshalled the arguments in an organised
15 manner already. We would therefore ask that this submission in writing be
16 made as soon as is practicable. If it is manageable, we would seek that this be
17 made by close of business tomorrow. If that is not --

18 MR OCAMPO: Mr President, we will try to do the best we can. It is a very
19 important rule. If I may --

20 THE PRESIDING JUDGE: Let me complete, and then, of course, you can
21 respond to this. We are not being categorical about this, but we need to try to
22 deal with this important matter. There is the close of the year and this rather
23 restricted timeframe, but we would like to see this material submitted as soon
24 as possible.

25 There are a number of aspects we invite your particular attention toward

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1 in your submission. First, we have referred to the evidentiary value of
2 this material, the letter. It seems to me, though, that you have not precisely
3 made clear -- we are of course far from -- well, we are not at the confirmation
4 hearing, nor at trial -- if you could specify more clearly why it is of
5 an evidentiary significance, as opposed to general case-related material
6 information, that should be part of the record. We would certainly appreciate
7 it.

8 There is also the matter of the confidentiality of this letter. The criteria
9 set out in Article 54(3)(e) I believe is clear to us all. Again, we would invite
10 your attention to how this criteria is satisfied fully by your claim for
11 confidentiality on this material.

12 It is not quite clear, incidentally, on your submission -- one would need
13 to check it out -- the letter (Redacted)
14 (Redacted)
15 (Redacted). So if you could attend to that aspect.

16 There is also -- the Chamber would be interested to note to what extent
17 confidentiality is claimed in this instant, *vis-à-vis* the judges. You and I have
18 spoken of the clear alternative of placing this material under seal, *ex parte*
19 Prosecutor only. So we do ask you for the submission in writing as soon as
20 you can.

21 Mr Prosecutor, you wished to address the Court.

22 MR OCAMPO: I agree with you that it would be important to finish this
23 problem as soon as we can. We will do the best effort we can to finish this.
24 Of course it is a very important issue but we will do the best effort to try to
25 satisfy your Honours. I do not like to interrupt, because I think for our

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1 motion it is important to listen with the Unit, so I would like to follow the
2 path you propose. I had some comments on Marc Dubuisson's comments.
3 I would like to make a few comments on the Mr Dubuisson part but also I
4 would like to follow your path asking the Victims and Witnesses Unit so you
5 will decide how to do it.

6 THE PRESIDING JUDGE: Certainly we would provide the latitude that is
7 required. Bear in mind that this is a status conference, it is not an adversarial
8 procedure necessarily, but you will have the opportunity in your written
9 submission to comment, and we invite you to comment on what
10 Mr Dubuisson said in the submission.

11 MR OCAMPO: It is okay. I agree with you. It is interesting because they say
12 we are not a party, but they are acting as a party, provide information ...
13 I agree.

14 THE PRESIDING JUDGE: It would assist us for you to comment fully and
15 frankly on what was said.

16 MR OCAMPO: Okay, so if I can make a few remarks on this ... oh, in writing?
17 You prefer in writing?

18 THE PRESIDING JUDGE: Yes. I think that would be better.

19 MR OCAMPO: No problem.

20 MS CHUNG: In terms of procedure, your Honours, not only were there legal
21 issues raised this morning but in terms of Mr Dubuisson's presentation, other
22 legal issues have been raised. So we will do our best to put together
23 a comprehensive filing. Would it be helpful if tomorrow morning we filed
24 a list of the issues we intend to address, and then we will try our best to file
25 by tomorrow afternoon, but, knowing the scope of what we talked about this

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1 morning, I think it will be very difficult. The idea would be if the Chamber
2 looks at the list and decides, okay, we do not need to hear about these things
3 or we need to hear about these things in addition, we could get some decision
4 back from the Chamber, all the while us working towards the complete list as
5 soon as we can.

6 THE PRESIDING JUDGE: I suggest that you control the matter entirely, you
7 work on the complete list, it is your submission; the Chamber does not wish
8 to play a role in that, but we look forward to receiving the submission in
9 writing.

10 MS CHUNG: Thank you, your Honour.

11 THE PRESIDING JUDGE: Thank you. This is a status conference that focuses
12 on the security and safety of victims and witnesses in Northern Uganda. As
13 I have indicated in my opening remarks, I propose now to start a series of
14 questions on the overall security and safety situation in Uganda, with a view
15 to gaining information and some understanding of the recent developments.

16 I propose first to put questions to the Victims and Witnesses Unit, and to
17 take all of us back to the status conferences of 3rd and 6th October at which
18 the Office of the Prosecutor and the Unit had provided assurances to
19 the Chamber that implementation of the overall security plan for the
20 protection of victims and witnesses was completed; it was in place and
21 completed.

22 Now, we have, as I indicated in my opening, reports of recent attacks
23 allegedly committed by the LRA. I refer to the violence and killings of at least
24 22 civilians. Also, I think there has been reference to the discontinuance of
25

1 operations of some aid agencies, so there seems to have been some
2 impact on the ground.

3 The question we want to put to the Victims and Witnesses Unit is: what
4 is the assessment of the Unit of the security situation in the region and the
5 consequences for victims and witnesses in the light of these recent attacks,
6 and reports of violence? I leave it to you, Mr Dubuisson, to allot the response
7 from your side.

8 MR DUBUISSON: Yes, President, as I indicated before, I will hand over to
9 Mr Vaatainen for these issues.

10 MR VAATAINEN: Mr President, your Honours, if I may, I would like first of
11 all to thank you for your remarks and your comment on the Victims and
12 Witnesses Unit and our very good functioning working relationship with the
13 OTP, it is greatly appreciated.

14 Before addressing your specific question, I would want to make
15 a background remark on the Victims and Witnesses Unit. First of all, we are
16 supporting currently basically three investigations that the OTP is conducting
17 with our limited resources. We, as the Victims and Witnesses Unit, do not
18 have our own intelligence-gathering capability in the field, neither we have
19 within our resources analytical capability in our headquarters.

20 Our monitoring of the safety of the witnesses, and the secretive situation
21 in all of these situations takes place through close coordination with the Office
22 of the Prosecutor and the information provided by the Office of
23 the Prosecutor, as well as through open sources information, that obviously,
24 as you indicated in your decision, the order for the status conference, you are
25 aware of this information as well.

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1 Now turning to the actual situation, the Office of the Prosecutor has
2 enhanced intelligence-gathering capability in place in Northern Uganda, and
3 we have access to that information. We have not received any information
4 that would suggest that there have been any attacks on IDP camps or villages.
5 The attacks that have taken place have been ambush attacks, opportunistic
6 attacks, it seems to be by the LRA, and this seems to confirm our earlier
7 assessment that have been discussed in the previous status conferences, that
8 the LRA's capability is limited, they will be able to launch targeted attacks on
9 IDP camps or villages.

10 We have not received any specific information on targeting our
11 witnesses, or plans to target our witnesses. Once again, I have to stress that
12 this information is based on the intelligence gathered by the Office of
13 the Prosecutor. I am not going to discuss these attacks, as you are fully aware
14 of the attacks on the NGOs and the number of people that have been killed.

15 In summary, in our view, the security situation of victims and witnesses
16 remains unchanged since the last status conference. Northern Uganda
17 continues to be a very dangerous place to live. People are killed and face
18 every day risks.

19 Our overall protection plan is in place, and I would be very careful using
20 the word "completed". We need to adjust our plans to the changing
21 operational environment. So I think we cannot ever say that it is completed.
22 It is in place.

23 We are confident that the systems that are in place, for example
24 (Redacted), as you have been explaining in the previous status conference, is
25 functional. The Victims and Witnesses Unit has tested the

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1 (Redacted)

2 (Redacted).

3 (Redacted) As you are fully aware, (Redacted)

4 (Redacted) earlier this year, and we plan to (Redacted)

5 early next year.

6 Part of the overall protection is the (Redacted). That is

7 also functioning and is being used currently. If we are to receive referrals

8 from the Office of the Prosecutor, we are confident that (Redacted)

9 functioning efficiently.

10 As a result of the incident that I talked about previously in this

11 conference, we have had consultations with the Office of the Prosecutor, and

12 (Redacted)

13 (Redacted)

14 witnesses. Basically that means that we have (Redacted) to prepare

15 ourselves for the possible (Redacted)

16 (Redacted) from Northern Uganda.

17 Your Honour, that is all I had to say. Now, if you have any further

18 questions, I am at your disposal, thank you.

19 THE PRESIDING JUDGE: Thank you very much. At the last status

20 conference you did speak of the contingency plan, and you did so in the

21 context of (Redacted). You are saying that this is an ongoing

22 development? Are these contingency arrangements being developed, are

23 they ongoing; is that correct?

24 MR VAATAINEN: Your Honour, basically the contingency plan (Redacted)

25 (Redacted). It involves (Redacted)

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1 (Redacted). As far as we are
2 concerned, we are not planning to go any further in developing those plans.
3 As far as we are concerned, those plans are sufficient at this stage to address
4 this kind of threat.

5 THE PRESIDING JUDGE: Do I understand you generally there to be saying,
6 therefore, that, having regard to the recent attacks, there is no need for change
7 or re-evaluation of the systems now in place on behalf of the Court; is that
8 what you are saying to the Chamber?

9 MR VAATAINEN: Yes, your Honour. We considered the systems that are in
10 place at this stage are sufficient, unless we will have further information
11 indicating otherwise regarding the level of threat the witnesses face in
12 Northern Uganda.

13 THE PRESIDING JUDGE: Is there a pattern of particular areas, for instance in
14 Northern Uganda, where these recent attacks have occurred? Is it confined to
15 the Pader and Kitgum area that has been highlighted in the immediate
16 material? Are you able to say whether they had been confined to any
17 particular region or district?

18 MR VAATAINEN: as I indicated, in the Victims and Witnesses Unit, we do
19 not have a capability of analysing the situation but that seems to be the case,
20 the Pader and Kitgum areas are the areas that are the most risk at the
21 moment.

22 THE PRESIDING JUDGE: Just so one can understand, you still have officers
23 in the field at the moment?

24 MR VAATAINEN: Yes, at the moment in our field operations, we have
25 (Redacted), so we are operational

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1 there. Unfortunately the ASP did not approve an additional post for us in the
2 field, so that is something that we will be struggling with.

3 THE PRESIDING JUDGE: I wish I could help you with your budget issues.
4 Were Victims and Witnesses Unit staff withdrawn at any point, given the
5 incidents that we have been talking about here?

6 MR VAATAINEN: At the time when these incidents happened, we did not
7 have any operations in the north, so nobody was withdrawn, people were
8 operating in Kampala.

9 THE PRESIDING JUDGE: Very good. You have reaffirmed in a happy way,
10 I think, that the cooperation and the working relationships continue, is this
11 correct, with the OTP and the OTP people?

12 MR VAATAINEN: Most certainly.

13 THE PRESIDING JUDGE: Thank you very much. May I now invite
14 Judge Politi to put his questions?

15 JUDGE POLITI: Thank you, Mr President. My questions are addressed to
16 the Prosecutor, and the first one goes along the lines of what has been asked
17 already of the Victims and Witnesses Unit.

18 Reference was just made by the President to the status conferences held
19 on 3rd and 6th October, where the OTP also provided assurances to
20 the Chamber that the implementation of the overall security plan for the
21 protection of victims and witnesses was completed. The OTP mentioned also
22 in particular that the LRA capability is significantly degraded now, and that
23 the security picture in Northern Uganda is very good. This comes from the
24 transcripts of the hearing that we had on 3rd October.

25 Now, I do not have to repeat what the President has already said and

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1 ask the Victims and Witnesses Unit about the most recent attacks by the
2 LRA and the discontinuance or suspension of the activity of some aid
3 agencies. We are interested to hear what is the assessment of the Prosecutor
4 of the security situation in the region after this event.

5 In other words, can one say that the situation has deteriorated, and that
6 the LRA military capacity has increased up to the point of posing additional
7 threats to victims and witnesses? In that case, how does the Office of
8 the Prosecutor intend to manage the risk? You made reference,
9 Mr Prosecutor, to the concept of managing risk, which cannot give
10 100 per cent assurances, but can reduce the risk significantly for victims and
11 witnesses. So we are interested in hearing from you your views of the risk
12 assessment, which is a matter of very serious concern to the Chamber.

13 MS CHUNG: Mr President and your Honours, with the Chamber's
14 permission, I would like to distribute three charts which I think will help in
15 the presentation.

16 I can put on the record that these charts are entitled "Killings and
17 Abductions in Uganda, July 2002-June 2004, compared to
18 June 2005-November 2005". There is a second chart called "LRA Activity,
19 1st-30th September 2005"; and a third chart showing "LRA activity
20 1st-30th November 2005.

21 Judge Politi, I am happy to answer your question directly by saying that
22 in the OTP's assessment there are no additional threats that have evidenced
23 themselves since the last Chamber's meeting that require management
24 beyond what is already set forward in the overall security planning; I think
25 that is the most accurate way to state it. And the reason is that -- no, your

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1 Honour, it is at my instigation -- let me start with some of the good
2 news.

3 None of (Redacted) or so witnesses have been threatened since the last
4 time we met. None have been exposed beyond what they were exposed to
5 before. (Redacted) are very quiet now and they all
6 know how to get in touch with us if they need help, and all of that is well in
7 place and working extremely well. Again, very high credit to VWU.
8 (Redacted). As we
9 discussed at the prior conference, there are definitely some social and cultural
10 adjustments for them but they are safe. They are now (Redacted)
11 (Redacted), and that is all being
12 managed in a way that they will remain safe.

13 The overall security levels, which is the question that your Honours are
14 asking, have remained unchanged. The LRA activity levels, although there
15 have been serious attacks as there usually are in any long period of time or
16 any month, the attacks fit the characteristics that we described to your
17 Honours in the prior security assessments. In other words, they are
18 opportunistic, committed by small groups of LRA, occasionally quite
19 successful in terms of numbers, but not beyond the numbers that we are used
20 to seeing even in the most recent period from June 2005.

21 So the first chart, the bargraph, shows the killing and abductions levels.
22 Of course one of the questions we ask ourselves is: has there been any change
23 in the activity levels since the warrants were released? In fact what the
24 bargraph shows is that the decreased level of activity which I described to
25 your Honours on prior occasions is holding steady. And in fact very good

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1 news, more recently, since the last week of November, there has been
2 very, very little activity and it is linked to this idea, we think, that the LRA,
3 through Vincent Otti, is now making peace overtures; historically when they
4 do that, it is not in their interests to be attacking people at the same time so
5 you will see the violence levels drop. But in the last week or two there has
6 been very, very little activity; very small-scale abductions outside of camps.

7 Now, since the time that we last met, what we have seen are these small
8 group attacks which are opportunistic, and obviously something we need to
9 discuss are the NGO attacks themselves, which was something that was not
10 so anticipated. Obviously those attacks fit the characteristics we describe.
11 They are carried out by small members, it is a tactic possibly to get a high
12 impact, you do not need a lot of people to do it, you do not need many arms,
13 but it is true that in one window of time there were six incidents and six
14 killed. More precisely these were attacks on NGOs, and one was an attack on
15 a tourist.

16 This spate of activity now appears to be over. What happened in the
17 meantime was that UNDSS and various NGO contact groups, they mobilised
18 themselves in response to these attacks. There were discussions in the NGO
19 community about what to do and what the possible causes were. Obviously,
20 what was discussed was more precautions. These attacks -- one of the
21 characteristics they share is that these are small very NGOs who typically do
22 not travel with protection so they are particularly vulnerable. And if the LRA
23 decides to switch to tactics where they are waiting along the roadsides to
24 ambush people, sooner or later somebody will go by from an NGO or some
25 other place and, if the vehicle is marked in that way and they are targeting

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1 these NGOs, sooner or later the attack will occur.

2 Although I hasten to add that it is not really clear, the motivation is not
3 clear. Three of the attacks involved looting, phones, money. It could be that
4 this is a way of getting resources. The fourth attack, the car was never
5 stopped so there was no looting so it is hard to tell if there would have been
6 looting if the car had been stopped. the one attack does not really fit the
7 profile because it was on a group of tourists inside Murchison Park.

8 But I think the important thing about these attacks, as regrettable as they
9 are, and also it does show that the LRA is capable of changing tactic, is that it
10 does in the end fit the profile of their capabilities. It does not show, for
11 example, that they can mount a largescale attack on camps, something we
12 were very concerned about, so far we have not seen any capability to carry
13 out any kind of attack like that, so our initial assessments about LRA
14 capability, we think, have proven to be quite accurate.

15 The thing we did not figure in was that there would be the slight change
16 of tactic maybe in response to hostility from whites, we have to assume
17 maybe even in response to hostility to our intervention, but in terms of its
18 impact, it did not show that they had capabilities beyond what we had
19 assessed. Since 8th November there have been no attacks on NGOs, so for the
20 past month now it has been entirely quiet on that front maybe because the
21 NGOs are taking better precautions, having been put on notice that this is a
22 tactic that is being used, maybe because LRA is withdrawing that tactic
23 because of the peace overtures.

24 I think there is a couple of characteristics that I would like to discuss that
25 are a little bit unique to this period. Maybe I should first talk about the other

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1 two maps. The September and November maps, the September map is
2 exactly the map that I think I shared with the Chamber on either October 3rd
3 or October 6th. Your Honours may remember that if you let your eye pick
4 out the red triangles, those are the activities with which we are most
5 concerned, LRA activity by comparatively large numbers, a group of at least
6 six. The bottom lines and I will not belabour it here because your Honours
7 can examine the maps later but the points are, yes, the activities are still in the
8 areas where we thought they were. Actually, if you compare November to
9 September, the levels of activity are lower. So we are seeing the same patterns
10 that we saw in September.

11 With respect to -- for example, your Honours made mention of the
12 certain number of killings just before you issued your Decision. If you look
13 on the November map, the red triangles that are relevant are numbers 28 and
14 19. They are the red triangles to the lowest and furthest to the right, near the
15 word "Pader", numbers 28 and 19.

16 Those attacks also were in the same areas that even historically in our
17 period of lower activity, are places where the LRA has been and has somehow
18 managed to entrench themselves. About these larger attacks, because there
19 were two attacks just before your Honours issued your Decision. There was
20 one on a lorry which was particularly gruesome in which they essentially
21 either shot an RPG into a bus or took people out and killed them, but 14
22 people ended up dying, and there was an incident before that where another
23 nine people were killed. These were the highest number of incidents, really,
24 in the recent past.

25 They are not out of keeping with the numbers of people that the LRA

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1 have been capable of killing, if they get exceptionally lucky and come
2 upon a bus which is falling behind the UPDS corps which is what happened
3 here. The times -- it is interesting because this caused us to analyse all attacks
4 in which nine or more people have been killed in the last five or six months;
5 they all share one characteristic: it is usually a bus or a truck which is caught
6 unawares, and then it is very easy for even a low number of people, and in
7 one of these incidents it is believed it was only two armed men -- I am sorry,
8 less than 10, it was reported as many as 10.

9 Even if you have 10 people in that circumstance, you can create a lot of
10 killings if you can intercept a bus that is unprotected. So this is something
11 that happens periodically through any period that you watch the LRA, but
12 again the characteristics fit the characteristics of what we thought they were
13 capable of and the kind of thing we are looking out for although I think it is
14 important to stress that this is not something that creates a danger for the
15 victims and witnesses; the issue for the victims and witnesses is really more
16 what is the ability to attack their homes and their camps.

17 The overall situation is, I think, very much in keeping with the
18 assessment that we initially gave your Honours, and the Prosecutor has
19 already mentioned it, but in terms of the impact of the letter (Redacted)
20 (Redacted), the only thing I would say about that is that that was
21 factored in by UNDSS; the NGOs were aware of the letter at the time that they
22 made their plans. Ultimately in part because this was also the NGOs' wish,
23 there was no escalation in the conditions of operations for even the
24 international institutions in the north of Uganda based on either the attacks or
25 the letter.

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1 I think in closing, what I would emphasise is that the most recent period
2 has been quieter than the periods that we have looked at in the past. Unless
3 your Honours have any other questions, I will stop there.

4 MR OCAMPO: If I may chat to you, this active interaction, because you
5 quote, your Honour, the management of risk, and I think it is a concept that
6 we are trying to do, but I would like to explain a little better my own thinking.

7 First we are finding what we can do, what we cannot do. Can we
8 protect the population of Uganda? We cannot. We are working to increase
9 the cooperation of the Ugandan Government, the Sudanese Government and
10 Congo Government, yes, but can we be in charge -- not, of course, if there are
11 more attacks, we can do nothing.

12 Of course, the Court's mission is to protect the victims and witnesses, so
13 we have a programme and we are trying to help them. Because the problem,
14 basically, is that we are foreseeing situations, and we try to ask (inaudible)
15 when they could be. This is our way of managing, we have no army and no
16 police, so we are trying to see the problems in advance and carry the
17 information and -- so this is the way that we manage the risk. But if
18 tomorrow the LRA receives support and they attack the population, I hope
19 that we can learn about this before, but it will not be our fault, so that is the
20 only point I am trying to make. The Court is trying to work in this new
21 situation in which we have ongoing conflict. I appreciate how the Court is so
22 careful about this victim and witness protection, and we are also very careful
23 of this; we are very happy as Ms Chung explained, had no problem. But to
24 predict what would happen to help them, this is the only thing that we can
25 do.

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1 So this is my explanation to you also this opportunity to explain to you
2 how we believe in managing the risk.

3 JUDGE POLITI: Thank you, Mr Prosecutor, thank you, Ms Chung. The
4 remarks are very interesting and important for Chamber, and the statistics
5 need to be looked at carefully and are very important.

6 Still, you must recognise that in recent times almost every day -- and we
7 have here all the press releases --the Court was confronted with incidents and
8 killings and action by the LRA that were targeted in particular NGOs and
9 other aid workers, that had as a consequence discontinuance or suspension of
10 activity. So that explains why we were and are concerned about these events.
11 Now, do I take it that, as a result of your assessment, no additional
12 measures were basically taken in recent weeks to protect (Redacted)
13 (Redacted) which were the targets of the attacks described in the
14 arrest warrants or other camps in the region? And are we to take it that there
15 has been a review or there has not been a review of the overall security plan,
16 and, as a consequence of this, not one of these measures has been
17 implemented, or is this something under review, and what is the connection
18 between the original plan or the overall plan and the contingency plan to
19 which the Victims and Witnesses Unit has made reference? That would be
20 very important for us to know in addition to what the VWU has told us
21 already.

22 MS CHUNG: Mr President, your Honours. No additional steps were taken
23 beyond the ones that always apply. So we continue to get weekly updates
24 from the (Redacted), for example, the one, as
25 you know, that we are most concerned about (Redacted) because it is at

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1 (Redacted) and we have weekly reporting from the
2 various sources there about whether there has been LRA activity there,
3 whether the UPDF troops are still in place, things like that. Based on that
4 reporting, we have not made adjustments, because all the information from
5 (Redacted) has been quite good.

6 With respect to the contingency plan versus the overall plan, I believe,
7 and I will have to let my friends in VWU clarify if I have been misspeaking,
8 one thing in particular that we have been discussing more recently -- because
9 we have a few different contingency plans, we are always planning for
10 different contingencies -- but now we are anticipating: what happens if and
11 when someone gets arrested? Because then we have other levels of potential
12 disclosures. At least the defendant will get some of the documents that are
13 now sealed. Does that create different risks for the victims and witnesses?
14 What can we plan to make sure that, if we need to move the next (Redacted)
15 people, we are prepared to do it, even if we think that the risk level does not
16 warrant that step now. So those are the sorts of things we are doing on a
17 forward-looking basis, to get ready for what we hope will be the next steps in
18 the case.

19 So now, with the luxury of having finished the first round of what we
20 called (Redacted), the ones where (Redacted)

21 (Redacted)

22 (Redacted), now we are planning for the next phase, which is, when the next
23 set of disclosures happens, or the case becomes even more high profile than it
24 is now, what more do we need to do with the victims and witnesses? I will
25 leave it to my colleagues, if I am not quite describing that correctly.

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1 THE PRESIDING JUDGE: Do you have anything to add?

2 MR VAATAINEN: Your Honours, I do not really have anything to add to
3 that. I think that very well describes the situation at the moment.

4 JUDGE POLITI: My last question is the following: is the level of cooperation
5 (Redacted) protecting victims and witnesses still fully
6 satisfactory, as it has been described in the past?

7 MS CHUNG: Mr President, your Honours, yes. There has been no change in
8 that either.

9 JUDGE POLITI: Thank you, Mr President.

10 THE PRESIDING JUDGE: Before I invite Judge Diarra to put her questions,
11 a bit of formality. For the record, the charts that have been submitted, are
12 they sealed material?

13 MS CHUNG: Your Honour, I think they should be sealed, because they do
14 contain information that was provided to us for this purpose only.

15 THE PRESIDING JUDGE: Very good. Madam Registrar will advise the
16 numbering system that is applicable to the three documents.

17 THE REGISTRAR: The first chart discussed, from July 2002 to June 2004, is
18 number HNE9, and is placed under seal; the second chart, which describes
19 LRA activity from 1st to 30th September 2005, is number HNE10, also placed
20 under seal; and the last chart, which describes LRA activity from 1st to
21 30th November 2005, is HNE11, also under seal.

22 THE PRESIDING JUDGE: Thank you, Madam Registrar. I now invite Judge
23 Diarra to put her questions. Judge Diarra, please.

24 JUDGE DIARRA (interpretation): Mr Prosecutor, in the light of your
25 declarations this morning, must we know that you will circulate from now on

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1 all information you have in your possession when they have to do with the
2 security of people in the field, or are you going to keep this information
3 because of confidentiality issues or because when you need to protect your
4 sources of information?

5 MR OCAMPO: Thank you, your Honour, for your question. I think I was
6 trying to be clear. The lack of sharing of information was the result of
7 mis-communication. I do not think -- why people do not answer, how people
8 were talking, it is an issue of administration, so we will deal with this, but
9 with protocols now and rules, to be sure that all the Units receive the
10 information. Then the proper channel for that, then you receive the report
11 from the units, and when you require a specific document, you will use the
12 proper channel. So that is the normal way in which we are proposing to
13 work.

14 So we will do the best we can, we will improve the interaction with the
15 different organs, they will perform their functions, and then you will receive
16 a professional assessment. Then if the Chamber decides to do some
17 questions, they could ask the question to us, or if you need to receive some
18 elements, you can request to us and we will explain to you.

19 JUDGE DIARRA (interpretation): Thank you. This information-sharing
20 protocol, does it apply to future information or to the many documents you
21 have referred to? You said that this controversial letter is only a small part of
22 many documents that you will have in your possession.

23 MS CHUNG: Mr President and your Honours, the protocol that we are
24 talking about is obviously one that we think should have been followed
25 before, and will continue to be followed. What we touched on this morning is

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1 something different, which is, we are happy to share this information, and
2 should always be promptly sharing this information with VWU and the staff
3 security people. The question is, in a case of confidentiality or some other
4 prohibition, in what conditions will those documents then make themselves
5 to other places, including the Chamber or potentially the outside world?
6 Again, we do not have to resolve that here, but that is the slight dilemma, but
7 we absolutely feel that his information needs to be shared with the security
8 organs, including the VWU.

9 There is an issue. One of the reasons that it is important to observe this
10 channel is that we do have thousands of bits of information every week, and
11 some of it we weed through and say it is important and some of it we weed
12 through and say as a group it is not important. So from this information that
13 we are getting (Redacted), from the people in the field, including (Redacted)
14 (Redacted), it includes
15 documents and statistical information that we are getting from other sources,
16 (Redacted). So part of the job of this working group which
17 is now going to be call the threat assessment group is to share all of this
18 information, and then the things that should float to the top in terms of
19 importance, will.

20 We think that, in terms of prioritising things for the Chamber, or ensuring the
21 Chamber is getting the most relevant information, together with the expert
22 assessment, it is important that that process be observed. So what we hope is
23 that everything will go into the huge funnel of the common group, which is
24 the threat assessment group. We have now done it two weeks in a row, and it
25 seems to be working very properly. So now a very important

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1 thing about this group is just to get the people sitting at a table one day
2 a week when all they are thinking about is this issue, and making sure,
3 racking their brains, that they have shared everything that needed to be
4 shared. So that is the process that we will be following, and we only regret
5 that it was not followed a little earlier.

6 MR OCAMPO: In addition, I would like to interact in this opportunity. The
7 concept we are developing, all the relevant information will be discussed with
8 the expert people, experts from the security sections, experts from the Victims
9 and Witnesses Unit. In our own office we have different areas who are
10 discussing, because the security and cooperation division, for instance,
11 received some documents, some investigative documents. So we had to
12 also -- our office is complex. Sometimes our own office has problems with
13 communications, so that is not -- it is not about bad intentions; it is about a lot
14 of what we are doing.

15 But the rules, to clarify and to give you some tranquillity on this, the
16 rule is all the information will be shared. The second point is each unit will
17 make their own assessment. That was for us, we were insisting that the
18 Victims and Witnesses Unit is independent, because they had to have their
19 own assessment. So we share the information, but maybe they have a
20 different view than us.

21 I would like to use this case as an example to you. Suppose we share
22 information with them, and we have the idea: this is okay. But they have the
23 idea: no, for us this is different. In this case the victims and witnesses Unit
24 can tell you: look, we have an assessment of something that is complicated,
25 we cannot share with you the information because it belongs to

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1 the Prosecutor. So if the Chamber thinks that they had to see the
2 document, the Chamber should send the Prosecutor a request.

3 So that is why I like to have this interactive meeting, to discuss how we
4 can complement each other, because we respect your authority, but also we
5 would like to do it in a proper way.

6 JUDGE DIARRA (interpretation): I just would like to remind to the Office of
7 the Prosecutor that in our Decision about the communication of our arrest
8 warrants to the Registry for transmission to the relevant states, we invited the
9 Office of the Prosecutor to inform us about any kind of incidents or events
10 which may make the execution of its mission difficult, and I believe that the
11 communication of this letter should have taken place within that particular
12 framework.

13 Do remember that we have taken an oath as judges, and that members
14 of the Registry have also taken an oath, and do not think that anything that
15 goes outside the Office of the Prosecutor has lost its confidential character.
16 We are in a closed session, for instance, here.

17 MS CHUNG: Your Honours, Mr President, this touches on something that
18 we will probably address in our submission, but a little bit of a preview that
19 I can give is that the Prosecutor emphasised this morning how diligent
20 Chamber has been on victim and witness protection issues. There is no doubt
21 that everyone has an interest in ensuring that the Court functions so that it
22 can protect victims and witnesses. But there is a distinction in Statute in the
23 first place as the original place between what are the functions of the
24 administrative arm of the Court and what are the functions of the Court as
25 the Chamber's and this is our view and we will elaborate in our submissions

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1 and it is no denigration to the Chamber, in fact it protects the Chamber.
2 Because if the Chamber appears to be caring for the staff of the Court
3 including VWU and the Office of the Prosecutor, then obviously we may be in
4 a situation where later victims and Defence counsel are coming in and saying:
5 if the Chamber is hearing issues that protect the ability of these arms of the
6 Court to operate, why are they not hearing issues that protect our ability to
7 operate, so there are fundamental questions that are raised again about the
8 neutrality of the Registry, the independence of the organs, the neutrality of
9 the Chamber as the decision-making body with respect to case-related issues
10 *vis-à-vis* what might be administrative matters for the Presidency.

11 So this is not in any way a denigration of this Chamber's caring of this
12 issue or its diligence to this issue but we do think that it is one of these legal
13 issues that we cannot -- it may be that we fully elaborate on it and make
14 further decisions if it is necessary, but we did not want the moment to pass
15 because it will have repercussions.

16 MR OCAMPO: Sorry to add, because I think that this meeting was very
17 important to us, for us to explain more openly. I understand Judge Politi's
18 comment, you are reading newspapers, and reading information, and
19 suddenly you receive information in some channels showing us has
20 information. I understand your responsibility and authority. That is why for
21 us it is a matter of trust. We are trying to do the best job that we can. It is
22 very complex, but we are trying to do the best that we can. I hope you can
23 trust us.

24 Of course, each time we believe something would be relevant. First, if it
25 is not relevant, all the Unit will know, but if it is not relevant you will know

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1 because of us. They can tell you: look, there is a problem for us,
2 a warning, they cannot provide the document. So I think this conflict could
3 be a lesson for all of us to improve the interaction. I understand Judge Politi's
4 point, you are here, you have to wait for the evidence of the case, but you are
5 reading information and sometimes you say: I am the judge, how do I control
6 this? I think now the situation will be better in the case.

7 Our only concern is we have one mistake, then with all the problems, we
8 would like an additional opportunity for us to solve this problem and
9 establish everything as correct. I can understand the position of the judges,
10 I would like to explain very candidly what has happened on our side. Of
11 course, all the issues and the administrative matters have to be resolved in the
12 proper channels but your Honour will receive all the assessments and the
13 way is, you know that you have to request to us, and of course we will
14 answer you.

15 JUDGE DIARRA (interpretation): Thank you, Prosecutor. I now have
16 a question for the Registrar. You took a decision on 16th November to cancel
17 all missions to Uganda, to avoid sending missions to Uganda, and I would
18 like to know whether you have now had an opportunity to assess the threats
19 that lay behind your taking those steps. Do you maintain your prohibition, or
20 has your standpoint on this moved forward?

21 MR DUBUISSON: Following our decision to suspend missions to the field,
22 we entered into a normal, regular process of discussion with the other organs
23 of the Court. We have now resumed movements. We are authorising
24 missions, and we are coupling our precautionary measures with those
25 recommended by the UNDSS, so movement have now been re-established in

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1 Northern Uganda, and we are continuing to work in a normal way subject to
2 certain precautions.

3 JUDGE DIARRA (interpretation): The good cooperational spirit between the
4 Registry and the Office of the Prosecutor is central to the success of the
5 common goals of the organs of the Court.

6 Could one confirm that it is indeed the case today that good cooperation
7 continues to reign? This is my last question.

8 MR DUBUISSON: I believe that one could say that the cooperation is
9 excellent, excellent above all at the working level. The Victims and Witnesses
10 Unit enjoys excellent cooperation, and that is what is indeed essential. Leave
11 to one side discussions at the higher levels, but I do believe that at the
12 operational level there is not the slightest difficulty. At the same times it is
13 the responsibility of the managers and the administrators of the institution to
14 ensure at all times that the work can continue in a spirit of trust. That is why
15 this incident has been brought to your attention, and I hope that it can be
16 resolved thanks to this status conference.

17 JUDGE DIARRA (interpretation): Thank you very much.

18 THE PRESIDING JUDGE: Thank you, Judge Diarra. I had a number of
19 questions relating to the submission of the Registrar, but of course this is now
20 to be covered in the written submissions, that we have looked for it. Indeed,
21 some of the questions that I had have already been covered by the
22 presentation this morning, and for that I am thankful.

23 I need, however, to put a question, and do stop me, Mr Prosecutor, if
24 you feel it is an improper question.

25 One of the two documents that has been submitted by the Registrar is

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1 this memorandum from the operation security officer of your office.

2 There are two points that I would raise about that memorandum. One is
3 that it appears from the memorandum itself that there is or there has been
4 an OTP analysis of the (Redacted) letter. The second point that I would refer
5 to is that it appears that the OTP missions in Uganda were restricted as
6 a result of the letter, a letter that is said to be (Redacted)
7 (Redacted).

8 Now, the question that I would put is, if you would, please: are there
9 any connections of a security nature affecting the safety of victims and
10 witnesses with the LRA letter? As I say, if you could kindly respond to that
11 or object to it.

12 MR OCAMPO: I can give a short answer now, and I can elaborate more.
13 Because you mentioned this document before, we had a problem with the
14 channel used. So this is a big problem. Because of course the Registry is not
15 a party, because they are the Registry, they have to be impartial. It is like
16 a referee in a football match kicking the ball. So the problem here with the
17 letter is just the channel. We can provide you with information you request,
18 no problem at all.

19 Before received the letter were the attacks. So we assumed the NGO
20 was doing this -- the LRA was attacking the NGOs so this was the common
21 assumption of the Victims and Witnesses Unit, the Registry and my own
22 people. That is why the letter at the end of the day is irrelevant, because we
23 saw the attacks; as Christine Chung and Mr Victims and Witnesses Unit
24 explained, we saw the attacks, it was opportunity attack, ambush; we
25 assumed it was the LRA, so we just applied our normal systems. The letter

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1 was just peace, not sure it was authentic, but even if it was authentic, just
2 confirming our assumption, (Redacted)
3 (Redacted). That is why, without the context- and because this wrong process,
4 you alerted for something that was not so alerted, because the problem was
5 the real killings. Maybe we can find a normal way to produce you -- maybe it
6 is reckoned to think another way to keep you updated, produce some report
7 to you weekly or monthly. Because it is not -- you are reading information
8 that is sometimes not correct. Because you know that in Northern Uganda
9 (Redacted), and there is a big problem with
10 this. (Redacted)
11 (Redacted). So of course information
12 is something accurate.

13 So I would like to see how we can -- please help -- I understand more after
14 this meeting your concerns, why you are concerned, and we have to find
15 a way in which in our proper mandates we can provide to you all information
16 that you need. So, please, we are open to discuss this part.

17 THE PRESIDING JUDGE: As we are coming to the end of the session, let me
18 ask my fellow judges if they have any further questions. Judge Politi.

19 JUDGE POLITI: Thank you, Mr President. I just want to follow up briefly on
20 what the Prosecutor has just said about information. We have heard that
21 the Prosecutor receives a great deal of information every week, and
22 the Prosecutor has mentioned the fact that it will be important to establish
23 a better channel of communication of this information, which is of different
24 relevance, naturally; some of them may be more relevant in terms of
25 protection of victims and witnesses, others less relevant.

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1 But in relation to the letter that we have been discussing today, is
2 the Prosecutor aware of whether there has been any threat of a similar kind,
3 other letters of this kind that would pose a threat to victims and witnesses?
4 Have there been letters of this type that have been forwarded and sent to the
5 Office of the Prosecutor and are in the possession of the Office of
6 the Prosecutor?

7 MS CHUNG: Judge Politi, this is one of these things about the letter coming
8 without context. One thing the Chamber should be very aware of is
9 historically there are (Redacted). This is not an
10 isolated occurrence. It occurs sporadically, (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted). Whenever
15 a letter like this appears, there has been nothing recent that we know of like
16 this letter. Even when this letter appeared, and people began to note the
17 second page pretty rapidly, many, many rumours spread, and people say,
18 well, there is another letter or there are other letters like this or you hear of
19 letters that sound like this but you are not sure if it is this letter but it is
20 nothing like this letter.

21 We have traced it back as best we can. This is the only letter that we are
22 aware of. But I think it is important to know the context, which is that these
23 (Redacted) historically are not unknown, this is not a unique occurrence.

24 JUDGE POLITI: Thank you, Ms Chung. Thank you, Mr President.

25 JUDGE DIARRA (interpretation): I have just a short question for

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1 the Prosecutor. In his motion this morning, the Prosecutor told us this was
2 a matter of substance, and that the Chamber should not be in possession of
3 this document because the document was not connected to the security of
4 victims and witnesses, and only connected to the security of staff in the field,
5 and that the Chamber did not have jurisdiction over the matter of protection
6 of staff security.

7 But now he admits that it is only a matter of form, if you like, and that
8 the Chamber may well be in possession of this document, but it should have
9 been the Prosecutor filed and not the Registrar, and that the Registrar, by
10 filing the document, had interfered in a way which was inappropriate.

11 This is unclear to me. I would like to clarify this. Is this a matter of
12 substance, of principle, that the Chamber should not have received the letter,
13 or is it simply a matter of form, that the Registrar should not have been the
14 channel to transfer the document?

15 MR OCAMPO: It is a very important question which I would like to present
16 in the formal filing as soon as we can. Thank you.

17 THE PRESIDING JUDGE: Well, let me say on behalf of the Chamber that we
18 too have derived value and benefit from this session. You have understood
19 correctly the essential concern of the Chamber about matters of security and
20 safety for the victims and witnesses.

21 May I commend you, Mr Prosecutor and your officers, in the important
22 work that you do, as I do commend the Registry officers and the
23 representatives of the Victims and Witnesses Unit.

24 Let me thank you all for this hearing, as well as our colleagues who have
25 supported us in this hearing.

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1 Madam Registrar, will you please now adjourn the Court?

2 THE USHER: All rise.

3 The hearing is adjourned at 1.20 pm.

4 RECLASSIFICATION REPORT

5 Pursuant to Pre-Trial Chamber II's Order ICC-02/04-01/15-245, dated 11th June

6 2015, this transcript with its redactions is reclassified as "Public"

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