

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

~~ICC-01/09-01/11-T-29-Red3-ENG WT 17-09-2013 1/72 NB T~~

~~Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.~~

- 1 International Criminal Court
- 2 Trial Chamber V(a) - Courtroom 1
- 3 Situation: Republic of Kenya
- 4 In the case of The Prosecutor v. William Samoei Ruto
- 5 and Joshua Arap Sang - ICC-01/09-01/11
- 6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and
- 7 Judge Robert Fremr
- 8 Trial Hearing
- 9 Tuesday, 17 September 2013
- 10 (The hearing starts in open session at 9.37 a.m.)
- 11 THE COURT USHER: All rise. The International Criminal Court is now in session.
- 12 Please be seated.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Court officer, please call
- 14 the case.
- 15 Court officer, please call the case.
- 16 THE COURT OFFICER: Good morning. Situation in the Republic of Kenya, in the
- 17 case of The Prosecutor versus William Samoei Ruto and Joshua Arap Sang, case
- 18 reference ICC-01/09-01/11, and for the record, we are in open session.
- 19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 20 Appearances, please.
- 21 MR STEYNBERG: Good morning, Mr President, your Honours. Anton Steynberg
- 22 for the Prosecution and with me Cynthia Tai, Lucio Garcia, Lorenzo Pugliatti and
- 23 Grace Goh.
- 24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 25 Defence.

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- 1 MR KHAN: Mr President, your Honours, good morning. Mr William Ruto is
- 2 represented by Mr David Hooper of Queen's Counsel, Mr Essa Faal and
- 3 Ms Shyamala Alagendra of counsel, and at the back Miss Leigh Lawrie, our legal
- 4 consultant. Your Honours, my name is Karim Khan, QC.
- 5 MR KIGEN-KATWA: Mr President and your Honours. My name is Katwa Kigen,
- 6 together with Caroline Buisman, Logan Hambrick, Judy Mionki and Joel Bosek
- 7 representing Mr Sang, who is present.
- 8 MR NDERITU: May it please the President, your Honours. I am Wilfred Nderitu,
- 9 counsel for the victims, assisted by Mr Orchlon Narantsetseg, from the OPCV.
- 10 Thank you.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 12 We are here to continue with the trial in the case of Ruto and Sang.
- 13 Now, Mr Prosecutor, are you ready with your first witness?
- 14 MR STEYNBERG: I am, Mr President.
- 15 PRESIDING JUDGE EBOE-OSUJI: Before we go into the witness testimony, there's
- 16 some housekeeping matters we need to address. As we all know, last week we did
- 17 not proceed as we would have liked in terms of calling the witnesses, and the
- 18 Prosecutor had indicated on the record that the reason, or part of the reason, why
- 19 witnesses were unavailable was certain developments in the Kenyan parliament
- 20 relating to a certain resolution passed. This is something on which we would like
- 21 some submission -- we would take submissions on that matter tomorrow morning.
- 22 We do that mindful of Article 68(1) of the Statute that provides, amongst other things,
- 23 "The Court shall take appropriate measures to protect the safety, physical and
- 24 psychological well-being, dignity and privacy of victims and witnesses," amongst
- 25 other things.

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- 1 We would take submissions tomorrow on whether or not the development in
- 2 question is something that should be taken into account as a factor in the Chamber's
- 3 measures to -- in-court protection measures for witnesses. First, of course, we would
- 4 need to have the factual matter established on the record, and that's part of the
- 5 submissions. In that regard, the parties should be prepared to address the question:
- 6 Is it a fact that the Parliament of Kenya debated and adopted resolutions that may
- 7 have any relevance to this case? If so, what? If so, when? If so, why?
- 8 On the legal submissions, we would like to hear the parties on the question: If it is
- 9 the case that the Parliament of Kenya had adopted any such resolutions, what effect
- 10 should that development have, either alone or together with any other national or
- 11 communitative factor, and evidence of such any such communitative factor must also be
- 12 provided, in the assessment of witness protection measures in the courtroom. That's
- 13 the first legal question. And the second one would be: Does such a factor override
- 14 the need for individualised assessment of each witness for purposes of witness
- 15 protection measures in the courtroom? That would be the second limb of the legal
- 16 question. So parties should be prepared to address that subject tomorrow.
- 17 MR NDERITU: Mr President, your Honours, just a clarification that I seek. In view
- 18 of the fact that Article 68(1) talks about witnesses and victims, whether it is only the
- 19 parties that will be making submissions on this or even the victims as participants.
- 20 Thank you.
- 21 PRESIDING JUDGE EBOE-OSUJI: That's a very good question, Mr Nderitu. I did
- 22 not mean at all to exclude you from the submissions. You will be making
- 23 submissions as well.
- 24 MR NDERITU: I'm much obliged.
- 25 MR KHAN: Mr President, your Honours. Of course, we'll make those submissions

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- 1 tomorrow, but it's not clear; perhaps I've missed something in the transcript. The
- 2 "why" of course is for the Kenyan parliament. Are your Honours asking also for
- 3 submissions as to what, if any, effect such a resolution may have? Because, your
- 4 Honours, the simple reality is Kenya is a State Party and all the measures and the
- 5 co-operation that was extended by the Republic of Kenya that existed before the vote
- 6 continues today. And so, your Honour, the more pertinent question, with respect,
- 7 and perhaps it's been included, is: What, if any, effect that could possibly have on
- 8 these proceedings? Well, your Honours, I can't possibly - and I'll give advance
- 9 notice - go into the "whys" of the Kenyan parliament which is, of course, a sovereign
- 10 institution made up of democratically-elected individuals. What I can talk about is
- 11 the legal consequence, if any, of such a resolution.
- 12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, I hear you, and the question, if you
- 13 remember, is in the context of in-court witness protection measures, not any broader
- 14 question.
- 15 MR KHAN: I'm grateful.
- 16 PRESIDING JUDGE EBOE-OSUJI: So that will be the map of the submissions we
- 17 expect on the matter tomorrow, for purposes again I stress that what measures need
- 18 to be taken to protect witnesses in the courtroom.
- 19 Now, moving now to the matter of the day, which is the calling of the first witness for
- 20 the Prosecution. A few things need to be clarified again in that regard. In the
- 21 Chamber's decision number 2 on the conduct of proceedings, general directions, a
- 22 quantum of time was allocated for the case for the Prosecution. That quantum of
- 23 time was derived from a formula that -- on the basis of an average of four hours per
- 24 witness. It needs to be stressed that the purpose of that formula was not at all to
- 25 require the Prosecution in every case to limit its examination of its witnesses to only

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1 four hours. The four hours was, as I said, merely a formula to arrive at an overall
2 amount of time to be allotted for the case for the Prosecution. So what that means is
3 it's up to the Prosecution how it uses its quantum of time. If, for instance, let's say
4 two witnesses are called and lined up, it is up to the Prosecutor to decide whether to
5 ask them four hours -- to use four hours per witness or five for one, three for the other,
6 or seven for one, one for the other, or even eight hours to one witness and decide not
7 to ask the next one any questions. So that is left for the Prosecution. That needs to
8 be stated clearly before we proceed.

9 Now, the witness we're going to listen to next, Prosecutor, can you indicate who?

10 MR STEYNBERG: Thank you, your Honour. It is Witness P-0536.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. This witness, so it is understood,
12 has been assessed by the Chamber and found to deserve protection measures in the
13 courtroom. That will require that she, her identity, not be revealed to the public in
14 terms of both her face or her voice. That measure has been granted. The Chamber
15 has also considered the need to permit, on the recommendation of the Victims and
16 Witnesses Unit, that the witness have sitting with her during her testimony an
17 assistant from the VWU and that request is also -- that recommendation is accepted
18 by the Court and that will -- we will proceed in that manner.

19 Prosecutor -- I think we're now ready for the first witness -- I see Mr Nderitu.

20 MR NDERITU: Yes, Mr President. Mr President, I'm on my feet now to just
21 mention that, pursuant to the order that was granted last Friday, I did proceed on
22 Saturday to interview the witness who is just about to come and testify, and thereafter
23 I did transcribe the statement that I had with her. But most unfortunately, in view of
24 the fact that yesterday was not a working day, I have not been so far able to upload
25 the statement through the -- through CMS as required by the eCourt protocol. As

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1 such, the statement is yet to be disclosed to the parties, but that is the statement in
2 connection with her status as a victim rather than the statement that she has
3 previously given and which have already been disclosed. I am seeking your
4 guidance on that.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan.

6 MR KHAN: Your Honour, sometimes there are these technical glitches, and when
7 there are, perhaps the old-fashioned way is best, if the statement can simply be
8 printed out and handed over to us and then it needn't delay proceedings. We can
9 read it whilst the examination-in-chief is ongoing. But if it can be given by the first
10 break -- by the end of the first break, it would be appreciated.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa.

12 MR KIGEN-KATWA: That's agreeable to me also, Mr President.

13 MR NDERITU: Yes --

14 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, I take it that should be acceptable to
15 you?

16 MR NDERITU: That should be acceptable and, in fact, I have a few copies here
17 which I could perhaps hand over even now if that was -- that was to be accepted.

18 PRESIDING JUDGE EBOE-OSUJI: I think you can arrange with the court usher to
19 do that while we proceed with the rest of business. Thank you.

20 With that out of the way, the -- we will now receive the witness. Mr Court Officer, I
21 believe that we will require to go into closed session in order to enable the witness to
22 come into the courtroom. But before we do that, just one more minute. There was
23 an indication earlier about the use of the protected -- it was not an indication on the
24 record, but we were informed outside of court that there may be some questions
25 relating to the use of the protected information sheet, PIS. Is that the case?

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1 MR STEYNBERG: Yes, your Honour, that is the case. We have taken the Court's
2 lead in this matter and prepared only one, on which we have listed all of the relatives
3 of the witness to whom she is likely to refer during the course of her testimony, which
4 would then permit us or enable us not to have to go into private session every time
5 she wanted to refer to one of these people, which would be fairly frequently.
6 Nevertheless, I do anticipate that we will need hopefully not more than three private
7 sessions during the course of her testimony, the first one being at the
8 beginning, when I deal with some background and personal information, and the
9 other twos -- the other two relating to matters which would also tend to identify or
10 disclose her identity to those listening.

11 PRESIDING JUDGE EBOE-OSUJI: The purpose of the PIS is to eliminate, as we
12 indicated earlier, frequent going into closed or private session, so that members of the
13 public can be a part of it, but as often happens in these things, there are times when it
14 is simply inevitable that private or closed sessions must be used. In that case, we
15 just proceed in that way for the limited need of such confidential information being
16 discussed on the record.

17 As it now is, if you do envisage going into private session, it may be best to deal with
18 what you may have in your PIS now during the private session so that
19 private session -- PIS remains for where a witness is testifying at large and may need
20 one or two instances of reference to one or two discrete items of confidential
21 information that we use PIS to do that. But if we do contemplate large swathes of
22 testimony in private session, it may be more efficient to use private session to discuss
23 such matters it would ordinarily, in those sort of situations, put in the PIS. Is that
24 clear?

25 MR STEYNBERG: That is clear, your Honour. Thank you. Perhaps I can just

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1 clarify that. I do intend to go through with the witness in the first private session the
2 details relating to various relatives, but I foresee that during the course of the
3 evidence from time to time as she gives her narrative of the events of the day in
4 question, she will refer to the fact that she had a certain child with her or she had a
5 certain other relative with her, and what I propose is that she will then refer to the
6 person as "person number 1" or "person number 4," "child number 5," "child number
7 6," "child number 8." That's what I had in mind.

8 PRESIDING JUDGE EBOE-OSUJI: That's acceptable to the Chamber then.

9 MR STEYNBERG: Thank you, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: With that then cleared up, court officer, we may
11 proceed into the closed session for purposes of inviting the witness into the
12 courtroom. Thank you.

13 (Closed session at 10.00 a.m.) * Reclassified into open session

14 THE COURT OFFICER: We are in closed session, Mr President.

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

16 The witness may be invited into the courtroom now. Thank you.

17 (The witness entered the courtroom)

18 WITNESS: KEN-OTP-P-0536

19 (The witness speaks Swahili)

20 PRESIDING JUDGE EBOE-OSUJI: Let us not go into open session yet. Thank you.
21 Just for the record so that everyone in the Court knows the set-up around the witness,
22 it's obvious who the witness is - and in a minute, madam, I will get to you - but first of
23 all let us establish who is sitting with the witness for the record and for the parties.
24 We see two people sitting beside the witness. Can you kindly introduce yourselves
25 and what you do. Not the witness, just the two people sitting beside her.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Now we can go into open session.

6 MR KHAN: Mr President, your Honours, before the curtain goes up, perhaps the

7 Court could be so kind to clarify if the witness is to be hidden from us. I can't see

8 her at all because of the curtain. It seems to be a little bit more open on the other side.

9 If it could be put back a couple of inches, it may be sufficient, but I can't see her at all.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, is it possible, for purposes of this

11 particular witness, for you to switch places with one of your teammates on the other

12 end?

13 MR KHAN: Your Honour, the difficulty is perhaps the counsel on the other end will

14 be the one asking the questions, so -- in due course. So I think it's quite helpful for

15 us to -- for counsel to see the witness so we can assess demeanour ourselves and see

16 how the evidence starts unfolding. But at the moment it's important also that

17 Mr Faal can see the witness as well.

18 PRESIDING JUDGE EBOE-OSUJI: All right.

19 MR KHAN: I'm not trying to be difficult. If it's not possible, I'll just crane my neck,

20 but if it is possible without causing any inconvenience to anybody, it would be

21 helpful. I'm in the Court's hands.

22 PRESIDING JUDGE EBOE-OSUJI: Very well. Thank you for your understanding,

23 for offering to crane your neck, if need be. It seems to be inconvenient for the curtain

24 to be moved back any further than it is, from what I understand. There are times

25 when we have to make these sacrifices, Mr Khan.

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1 MR KHAN: I'm grateful.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 So we can now go into open session.

4 (Open session at 10.08 a.m.)

5 THE COURT OFFICER: We are in open session, Mr President.

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

7 Welcome, Witness, to the courtroom. And when I say "welcome" to you, I say

8 "welcome" because we have a saying in the Court and we work here every day and

9 you are coming and going. Saying "welcome" to you does not mean at all that you

10 are a stranger in this courtroom. This courtroom is -- belongs to the international

11 public and you are a member of that public, and this courtroom is as much your own

12 as it is our own, so please feel totally comfortable testifying. The reason we have

13 you in the courtroom today is for you to help us in searching for the truth. Do you

14 understand what I'm saying?

15 THE WITNESS: (Interpretation) I followed what you were saying.

16 PRESIDING JUDGE EBOE-OSUJI: When we have witnesses come to testify, one

17 thing to keep in mind is the idea of telling the truth as the witness sees or saw it,

18 heard it, or sensed it. That means you have to listen carefully to the questions

19 lawyers will be asking you. There will be lawyers in this courtroom who will have

20 to ask you questions. The Prosecution who invited you to come will ask you

21 questions. After the Prosecution is done asking you questions, the counsel for

22 victims may also have questions to ask you. After that, the lawyers for the two

23 defendants in this case will also have occasions to ask you questions.

24 It helps a lot if you listened carefully to each question you were asked before

25 answering. Do not try to guess at an answer you do not know. It's always

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1 important to make sure you understand the question before you answer it. With
2 that in mind, we hope that your presence in court would assist us in our search for the
3 truth. Do you understand?

4 Prosecutor may now proceed.

5 MR KHAN: Your Honour, before my learned friend starts, we are of course grateful
6 that the witness is here, but, your Honour, what I would request that the Court
7 consider because it hasn't been conveyed to the witness at any stage before today, in
8 none of the statements, that not only is it important that she tells the truth and tells
9 whatever she knows freely, but should also, I think it's only fair to the witness that the
10 Court inform her that the Court has clear powers to look into false evidence. Your
11 Honour, I think it's --

12 PRESIDING JUDGE EBOE-OSUJI: I'll stop you right there, Mr --

13 MR KHAN: -- of this case.

14 PRESIDING JUDGE EBOE-OSUJI: Excuse me, Mr Khan, please don't. Thank you.
15 I need you to not proceed along that line.

16 MR KHAN: I'm grateful.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MR STEYNBERG: May I proceed, your Honour?

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 QUESTIONED BY MR STEYNBERG:

21 Q. Good morning, Madam Witness.

22 A. Good morning.

23 Q. My name is Anton Steynberg, together with my colleague Lucio Garcia. We
24 met with you on Friday and Saturday last week for witness preparation; is that
25 correct?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Sorry, Mr Steynberg, I've got to stop. This is my
2 fault, not yours, my fault.
3 Before we start questioning we should have administered the declaration to the
4 witness. Totally my fault. I apologise.
5 Court officer, can you administer the oath or the solemn declaration to the witness.
6 Can the interpreter read that to the witness, please.
7 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the
8 whole truth, and nothing but the truth.
9 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you may now proceed.
10 MR STEYNBERG: Thank you, your Honour.
11 Q. Madam Witness, I just put the question to you: Is it correct that myself and my
12 colleague Lucio Garcia met with you on Friday and Saturday last week for witness
13 preparation?
14 A. Yes, that's true.
15 MR STEYNBERG: Your Honours, as I indicated earlier, I propose to commence the
16 evidence of this witness with some background detail of an identifying nature, and I
17 know we've only just gone into open session but may I request private session for the
18 duration of this introductory portion.
19 PRESIDING JUDGE EBOE-OSUJI: How long do you anticipate this may take?
20 MR STEYNBERG: Factoring the delays necessitated by translation, less than 15
21 minutes.
22 PRESIDING JUDGE EBOE-OSUJI: Proceed.
23 Court officer, we may now go into private session.
24 (Private session at 10.16 a.m.) * Reclassified into open session
25 THE COURT OFFICER: We are in private session, Mr President.

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1 MR STEYNBERG: Thank you, your Honour.

2 Q. Madam Witness, (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 A. (Redacted)

6 Q. (Redacted)

7 A. (Redacted)

8 Q. (Redacted)

9 A. (Redacted)

10 (Redacted)

11 Q. (Redacted)

12 A. (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 Q. (Redacted)

4 A. (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 (Redacted)

8 A. (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

17 (Redacted)

18 "ethnicity," not "nationality." I see it's written -- I see that it is written "nationality"
19 on the transcript, but what I heard Mr Steynberg ask was "ethnicity." Just you may
20 proceed.

21 MR STEYNBERG: Thank you, your Honour. I confirm that.

22 May I ask the usher to show to the witness the protected information form which
23 contains details of her various relatives which I will be questioning her on. Is there a
24 court usher available?

25 Your Honours, while the witness is having a look at that, perhaps I could indicate I

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1 had intended that this form be left with the witness so that she may refer to the
2 various persons on it. So I don't think the usher is required to stand there for the
3 whole time.

4 PRESIDING JUDGE EBOE-OSUJI: The usher will have to -- sorry. The
5 usher -- after the witness has verified, the usher will also need to show it to the
6 Defence --

7 MR STEYNBERG: Oh, I beg your pardon --

8 PRESIDING JUDGE EBOE-OSUJI: -- and after that return it to the witness.

9 MR STEYNBERG: As the Chamber pleases.

10 MR KHAN: Your Honour, can I ask because it's good to get these things straight as
11 we go forward, routinely, could the Defence also be given copies of this document
12 because it's very difficult otherwise to follow the testimony if a number is referred to.
13 It would be much easier if the Prosecution could just make two additional copies so
14 the Bench has a copy and also we have. It has not been sent to us thus far.

15 PRESIDING JUDGE EBOE-OSUJI: The difficulty where this system has been used
16 before is that the idea is not to have so many copies of them floating around. If it is
17 possible --

18 MR KHAN: Your Honour, I can hand in the copy once the witness is excused at the
19 end of the day or the end of her testimony. But, your Honour, at least in this section
20 if we could be given a copy and I could undertake to give it back to the Prosecution
21 for shredding when we're done with it.

22 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, do you see a problem?

23 MR STEYNBERG: I have no objection, your Honours. The reason why we did not
24 make copies was because the Court order specified that we should not. How I had
25 intended to handle the matter was to have the document with the witness. A picture

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(Private Session)

ICC-01/09-01/11

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1 can then be taken and displayed on the screens for all parties to see. If that is

2 technically possible, I think that might be the better way of dealing with it.

3 PRESIDING JUDGE EBOE-OSUJI: If that is technically possible, that will help. The

4 difficulty is not everyone in the courtroom necessarily needs to see every protected

5 information sheet. That's what's awkward about that arrangement. But then let's

6 see how this goes. For now perhaps if, on Mr Khan's undertaking, we can make a

7 copy if there's one available; if not, then we can do that later on.

8 MR STEYNBERG: (Microphone not activated)

9 PRESIDING JUDGE EBOE-OSUJI: You don't have one --

10 MR STEYNBERG: (Microphone not activated)

11 PRESIDING JUDGE EBOE-OSUJI: But you have one that you're referring to.

12 MR STEYNBERG: (Microphone not activated)

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 Mr Khan, let's try and proceed and sort out the wrinkles in the course of the day.

15 Okay? Thank you.

16 MR STEYNBERG: May I inquire whether the document has been shown to the

17 Defence or whether I may proceed.

18 I have done so.

19 PRESIDING JUDGE EBOE-OSUJI: Counsel, this is again a reminder from the

20 court officer that we have to watch the pace -- rather, the transition between the

21 answer and the questioner, both in order to avoid the overlap that may create some

22 blips in the transcription.

23 MR STEYNBERG: I'll try my best, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: I think we can proceed now, Mr Khan. The

25 witness can be given the sheet. In the course of the day a copy will be made of that

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1 document.

2 If the PIS could be returned to the witness. Thank you.

3 MR STEYNBERG: Thank you, your Honour.

4 Q. Madam Witness, if I can just then confirm, you've had a look at this list of the
5 relatives on the list. Can you confirm that it correctly reflects some, but not all, of
6 your relatives; is that correct?

7 A. (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 Q. (Redacted)

13 (Redacted)

14 A. That is correct.

15 Q. Apart from that correction, are you satisfied that this list is correct?

16 A. Yes, it is correct.

17 Q. Very well. Madam Witness, in order to protect your identity, I will request
18 that throughout your evidence, when you refer to any one of the people on this list,
19 instead of saying: (Redacted)

20 could refer to "person number 2" or "child number 1," as the case may be. Do you
21 understand?

22 A. Yes, thank you.

23 Q. Thank you. Let me then proceed. If I can just carry on where I left off
24 regarding your (Redacted)

25 (Redacted)

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(Private Session)

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1 time?

2 A. (Redacted)

3 Q. (Redacted)

4 A. (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 Q. (Redacted)

14 A. (Redacted)

15 (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 A. (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 (Redacted)

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(Private Session)

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1 Q. (Redacted)

2 A. (Redacted)

3 Q. (Redacted)

4 A. (Redacted)

5 Q. (Microphone not activated)

6 THE INTERPRETER: Counsel's microphone, please.

7 MR STEYNBERG: I beg your pardon.

8 Q. You made reference earlier to a place called Kimuli. Is this the same or a

9 different place to what I earlier referred to as Kimuri? Perhaps my pronunciation

10 wasn't right.

11 A. The name is Kimuri, spelled with an "R."

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MR FAAL: May it please your Honours, I wish to object to that. The witness did

16 not state in which (Redacted) . According

17 to the record, she just (Redacted) . So it's not fair for counsel

18 to put in the information derived from the statement of the witness (Redacted)

19 (Redacted) . It is leading, definitely. And we've allowed quite a number of

20 leading question on formal issues, but this is a matter that is quite important. So at

21 least let him put the question properly to the witness: (Redacted)

22 (Redacted) Thank you, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

24 I take it then, Mr Steynberg, you can proceed as suggested by your learned friend.

25 MR STEYNBERG: Yes. Thank you. My recollection is that she did mention that

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1 (Redacted) , but I have no objection. If it's an issue, I will certainly

2 not lead.

3 Q. Let me put it this way. Madam Witness, (Redacted)

4 (Redacted)

5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 MR STEYNBERG: Thank you, your Honours. May we now proceed back into
15 public session.

16 PRESIDING JUDGE EBOE-OSUJI: Court officer, we can go into public session.

17 (Open session at 10.43 a.m.)

18 THE COURT OFFICER: We are in open session, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Steynberg, proceed.

20 MR STEYNBERG: Thank you, your Honour.

21 Q. Madam Witness, I'd like to ask you a few questions about Kiambaa village.

22 Firstly, can you tell us where it is in relation to Eldoret town, how far away?

23 A. It is about seven miles away.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, one second.

25 Witness, we're now in open session. What that means is up until now questions

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1 you've been asked were in private session, where members of the public were not
2 able to listen or know the questions and answers that had occurred before now. But
3 now we're in open session so members of the public are able to listen to the questions
4 and to the answers you will give to them. It is important that you try not to, in your
5 answers, to reveal information that can identify you that will lead members of the
6 public to know who is now speaking. This is part of the precautions we need to take
7 in open session.

8 MR KHAN: Your Honour, at this point - and I will be careful - I wonder if the Court
9 could in the course of the next few minutes just have reference, have regard, to the
10 provisions of Rule 66(3) in relation to my earlier request. Your Honour, I stopped
11 when I was asked to stop. Obviously, I'm not privy to matters that may have been
12 discussed and not in the presence of Defence counsel, but, your Honour, I also have
13 the precedent or the practice of Judge Cotte in the Katanga case and have reference,
14 your Honour, if you wish to hear submissions on that. But, your Honour, in fairness
15 to the witness, I made the request, and I will say no more.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, can you remove your earpiece, please.

17 Mr Khan, the reason why I stopped you on the earlier occasion is that I do not want to
18 create an intimidating atmosphere for a witness who's testifying, and it is the case that
19 when a witness is on the stand, there are certain things that may -- certain warnings
20 that may be given to the witness and that looms large in their mind when they testify.
21 It is something us trial lawyers try not to do in -- when we were in practice, and I'm
22 sure you understand what I'm talking about. That is not at all to say that there's a
23 licence for members of the public or future witnesses to think they can come and
24 testify falsely before the Court, but it is important in the usual circumstances in which
25 most of the witnesses who come here to testify do come, for them not to come here,

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1 the first thing that are on their mind are all those things that may happen to them in

2 the course of their testimony. That is why I did not want to give that warning.

3 MR KHAN: I am grateful, your Honour and, your Honours --

4 PRESIDING JUDGE EBOE-OSUJI: It is sufficient that the oath would have reminded

5 the witness of -- or the solemn declaration, of her obligation to tell the truth and

6 nothing but the truth.

7 MR KHAN: Well, your Honour, with respect, I'll be guided by the Bench, of course,

8 but from our perspective we, of course, do not want an intimidating atmosphere for

9 anybody, but we want an atmosphere in which witnesses realise not only the

10 importance of speaking the truth but the consequences of uttering falsehoods. And,

11 your Honour, that's what, in our respectful submission, Rule 66(3)

12 expressly - expressly - was geared towards and that's why I have the exact verbatim

13 language that was routinely used in the Katanga case by Judge Cotte, warning

14 witnesses of consequences for lying, that they could be imprisoned.

15 Your Honours, I'll say no more than that but, in our respectful submission, it's

16 important, in fairness to the witness, given what I anticipate our applications will be

17 and our approach will be of this witness to give her due warning as to the

18 consequences of false testimony. Your Honour, I can say no more than that.

19 PRESIDING JUDGE EBOE-OSUJI: At the moment, the ruling is not to proceed in

20 that way. We will trust that, in the course of witness preparation, counsel will do

21 that in the normal course of witness preparation. That's the ruling. Let's proceed

22 now. Thank you.

23 MR KHAN: I'm grateful.

24 MR STEYNBERG: Thank you.

25 Q. Madam Witness, you just told the Court that Kiambaa village was

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1 approximately, I believe you said seven miles from Eldoret; is that correct?

2 A. That is up to the stop, up to the bus stop or when we alight from the vehicle.

3 Q. Thank you. And can you tell the Court what is the predominant ethnicity of
4 Kiambaa village?

5 A. It is the Kikuyu.

6 Q. Are there also Kalenjin who stay there?

7 A. Yes, there are some Kikuyu -- Kalenjin, rather.

8 Q. Yes. Perhaps this is a question I should have asked earlier, but can you just
9 confirm what languages you speak and understand.

10 A. I speak Kikuyu, Kiswahili, some English, and some Kalenjin.

11 Q. I'd like to then proceed to the events for which you've been requested to come
12 and testify today, and that is relating to the violence which took place after the 2007
13 elections. Now, it is an agreed fact between the Prosecution and the Defence that the
14 announcement of the elections -- the announcement of the election results took place
15 on 30 December 2007. Do you recall that?

16 A. Yes, I do.

17 Q. And the winner, the person who was declared winner, was Mr Mwai Kibaki of
18 the PNU party. Do you recall that?

19 A. Yes, I do remember.

20 Q. Now, can you tell the Court your impression about who was supporting
21 Mr Kibaki and the PNU party, from your observations?

22 A. I do not remember clearly, but you know that in our area we -- people
23 supported the ODM. So I do not remember who Mwai Kibaki's supporters were.

24 Q. Who were the people supporting the ODM?

25 A. There was one Steven Kikwenti Chamalan.

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1 Q. What was his ethnicity?

2 A. He was Kalenjin.

3 Q. All right. We'll come back to Mr Chamalan shortly, but perhaps I can ask you
4 this then: What happened after the election results were declared in your area?

5 A. (Redacted)

6 (Redacted)

7 Q. (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: One question: Can you safely ask that question
9 in open session?

10 MR STEYNBERG: I think perhaps that is something I would rather return to in
11 private session. Thank you, your Honour.

12 Q. Can you then rather tell the Court, when you say the burning of houses
13 continued on the 31st, where did that happen?

14 A. In Muli (phon) -- rather, in Kimuli (phon).

15 Q. Again I ask you, is "Kimuli" the correct pronunciation for the place called
16 "Kimuri," with an "R," or are these two different places?

17 A. In fact, it is Kimuri.

18 Q. All right. So when you refer to "Kimuli," you mean "Kimuri," is that correct?

19 A. Yes. You may want to know that we, the Kikuyus, we have some kind of an
20 accent so we mean "Kimuri" when we say "Kimuli."

21 Q. Thank you. That's clear.

22 PRESIDING JUDGE EBOE-OSUJI: Just so we are perfectly clear on this, why don't
23 you ask whether there are two places with two different spellings? Perhaps that
24 could help, so as to define the clarity.

25 MR STEYNBERG: Thank you, your Honour.

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1 Q. So just to make it perfectly clear then, Madam Witness, there are not two
2 different places, one called Kimuli and one called Kimuri, in your area?

3 A. There are not two places.

4 Q. (Redacted)

5 A. (Redacted)

6 Q. (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Thank you.

15 MR STEYNBERG: Your Honour, I've received a message that there seems to be a
16 technical issue with the voice interpretation -- with the voice distortion, I beg your
17 pardon, that when the witness answers for a moment before there's a gap before the
18 voice distortion kicks in when her real voice can be heard. I wonder whether we
19 might inquire into what the problem is with that.

20 MR KHAN: Your Honour, I think what would help is to make sure that the
21 microphone is turned off after the question and while the witness is answering.

22 PRESIDING JUDGE EBOE-OSUJI: The clock has struck 11.00 already and that is
23 when we should rise for 30 minutes, so the time should be taken to look into this
24 technical difficulty.

25 In the meantime, it may help for purposes of proceedings that when we have

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1 sensitive information and all that to discuss, it might help if counsel turned off their
2 microphones and speak in loud voice so that members, as a way in a manner of
3 speaking in private session, were meant to really to alert to these things so that we are
4 not immediately calling attention to things unnecessarily. And then if we need to
5 refer back and put things back on record we can do that later, but it might help to
6 minimise -- maximise protection, so to speak. So why don't we rise now for the
7 morning break and return at 11.30.

8 THE COURT USHER: All rise.

9 (Recess taken at 11.02 a.m.)

10 (Upon resuming in open session at 11.39 a.m.)

11 COURT USHER: All rise. Please be seated.

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

13 Before the witness is called in, we want to take the small legal matter that Mr Khan
14 had raised about the operation of Rule 66(3). Indeed, Rule 66(3) does say before:
15 "Before testifying, the witness shall be informed of the offence defined in Article 70,
16 paragraph 1(a)."

17 Of course the question arises we can -- the Chamber indicated in the morning that the
18 preference is not to proceed in any way that it may intimidate a witness, and in
19 saying that the Chamber is mindful of the provision of Article 68(1), which is a
20 statutory provision, Article 68(1) which says the Chamber shall take measures to
21 protect, amongst other things, the psychological well-being of witnesses and victims.
22 We do not of course at this stage want to get into the question of whether or not there
23 might be a conflict within the Rules and the Statute for which Article 51(5) I believe
24 regulates. It is not necessary to go there yet, but what we do know is that the
25 witness preparation decision does say in paragraph 52 of that decision, and I quote

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1 that:

2 "Familiarisation protocol is to be followed in this case except to the extent that it
3 regulates contact between the calling party and its witnesses, in which case it is
4 superseded by witness preparation protocol."

5 In saying that it is good to note that -- or helpful, rather, to note that at paragraph 100
6 of the witness familiarisation protocol, paragraph 100 says, amongst other things:
7 "Before the testimony in accordance with Rule 66(3) of the Rules of Procedure and
8 Evidence, the VWU shall inform the witness of the offence defined in Article 70,
9 paragraph 1(a) of the Statute."

10 So that takes us back to the Chamber's earlier indication that we prefer that any
11 advice to be given to the witness pertaining to Rule 66(3) be done outside the
12 courtroom before they come in. We will expect that the VWU would have done this
13 and we also from now on as a standard procedure would want the party calling the
14 witness, the Prosecution or the Defence when it gets to the case for the Defence, to put
15 that matter on the record before the witness begins to testify as to whether Rule 66(3)
16 had been complied with. In this case, I will not require the Prosecution to put that
17 on the record at the moment unless the Prosecution wants to do that, but what we
18 can --

19 MR STEYNBERG: I can confirm, your Honours, that this was traversed with the
20 witness during preparation, both her obligation to tell the truth and the fact that lying
21 while giving her evidence was an offence under the Statute without going into more
22 detail, but that much was put.

23 PRESIDING JUDGE EBOE-OSUJI: So that was given to the witness during
24 preparation?

25 MR STEYNBERG: That is correct.

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- 1 PRESIDING JUDGE EBOE-OSUJI: That then solves the matter. We will then just
2 for the record, as a matter of our procedure to follow that as a standard practice
3 to -- before the witness gets into the courtroom for -- or starts testifying as the case
4 may be, it's better before they get into the courtroom, for the information to be put on
5 the record.
- 6 MR KHAN: Your Honour, we're grateful for that clarification, and of course we will
7 be guided accordingly. Can we take it, therefore, because it is important, in the same
8 way that the witness has rights for their dignity to be protected, the accused has a
9 right to be protected against false evidence. And, your Honour, that statement of the
10 Prosecution, warning its witnesses that they may be liable, as Judge Cotte said, to
11 imprisonment and conviction, conviction and imprisonment for false testimony,
12 should be on video because it may become relevant later on depending on how the
13 evidence pans out, that they have been given proper notice as to their liability under
14 the Rome Statute for perjury. And, your Honour, that needs to be videoed.
- 15 Your Honour, the second aspect is perhaps the Court could consider in due course
16 requiring the VWU just to give a statement, a short note stating that that has been
17 complied with. But, your Honour, if the Prosecution have it recorded and preserved
18 on video, I think those concerns would be adequately met for the future, given the
19 rights of the witnesses.
- 20 PRESIDING JUDGE EBOE-OSUJI: I think that's a fair way of proceeding in terms
21 of -- because the witness preparation decision does contemplate video recording of
22 preparation, does it not? Okay. But at any rate, Prosecution needs to give a Rule
23 66(3) warning and then it will be sufficient simply to thereafter indicate that on the
24 record of the case before the witness begins the testimony. I think that should be
25 sufficient.

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- 1 MR KHAN: Indeed. And, your Honour, just so we -- you know, things go
2 smoothly from going forward, what I would commend to the Bench's consideration is
3 the Prosecution prepare a short pro forma document that should be signed by the
4 witness on every occasion, and that would also provide independent documentary
5 evidence that the witness has been informed, clearly and unequivocally, that not only
6 should they tell the truth but that it is a criminal offence to perjure oneself that may
7 result in imprisonment. I think if that can be signed by the witness in each case, it
8 can be kept by the Prosecution, but it does need to be preserved in these proceedings
9 given the concerns that we have repeatedly raised about the dangers that we face.
10 Your Honour, I wonder if the Bench could consider that in due course.
- 11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we can rule on that. We need not
12 overstretch the matter of that exercise. The Rules say:
13 "Before testifying, the witness shall be informed of the offence defined in Article 70,
14 paragraph 1(a)."
- 15 I think it's enough to just inform the witness. I don't think having them to sign
16 things adds -- that might be taking it a little too much -- too far.
- 17 MR KHAN: Your Honour, the only reason I raise it is that it deals with criminal
18 proceedings, and the form of the notice and the clarity of the notice may become very
19 relevant depending upon what is said and the evidence that the Defence brings to
20 controvert the witness. Your Honour, it is one thing to be mistaken, to have a hazy
21 recollection; it's quite another to deliberately come and tell lies to the Court. And,
22 your Honour, it's in that second eventuality if the occasion arises that criminal
23 liability may attach to Article 70.
- 24 Now, your Honour, given that criminal prospect, my only suggestion was that it's
25 always better to err on the side of caution so that in those subsequent Article 70

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1 proceedings, there could be no doubt that the witness has been given a full briefing as
2 to the consequence of lying. Your Honour, that's rendered even more important in
3 this case, given that a review of all the OTP statements discloses that witnesses have
4 not been told --

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you're making submissions beyond the
6 purpose now. Let's leave it at this. By the time the witness -- the VWU would have
7 finished giving witnesses their Rule 66(3) warning and the Prosecution doing that, I
8 think it would be abundantly clear to the witnesses what the point is. We will leave
9 it at that so we can proceed now.

10 MR KHAN: I'm much obliged.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Prosecutor, I will -- just to be clear, I will take a moment to deal with Rule 66(3)
13 exceptionally, exceptionally, with this witness and we -- before you continue.

14 MR STEYNBERG: As the Court pleases.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR STEYNBERG: What I would like to clarify is that of course everything which
17 takes place during the witness preparation protocol is videotaped and recorded and
18 those recordings are preserved.

19 PRESIDING JUDGE EBOE-OSUJI: Court officer, we may now invite the witness in,
20 but following the usual protocol of lowering the blinds. Thank you.

21 (Closed session at 11.50 a.m.) * Reclassified into open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Khan, while the witness -- sorry, Defence and Prosecution and Mr Nderitu, the
25 court officer has handed us copies of the PIS the Prosecution used this morning. I

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1 believe at the end of the proceedings we are to gather the material and give back to

2 Mr Steynberg the copies. I understand he's requested that.

3 MR STEYNBERG: That is correct, your Honour. I have numbered the copies.

4 Numbers 1 to 3 are with the Bench, numbers 4 and 5 are with the Bench, and number

5 6 is with the common Legal Representatives. I would be grateful if in the evenings I

6 would collect them back and if we still need them in the morning we can

7 re-distribute.

8 MR KHAN: And, your Honour, I can confirm our copy is number 4.

9 (The witness takes the stand)

10 (Open session at 11.53 a.m.)

11 THE COURT OFFICER: We are in open session, your Honour.

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

13 Welcome back, Ms -- Madam, for your testimony. Now, before we continue, there's

14 a little legal matter we -- I want to discuss with you. You may have heard in the

15 morning some discussion between myself and the Defence lawyer on this matter, but

16 I need to clarify with you that the rules of Court that guide us say that before a

17 witness is to testify, that witness shall be informed that under the provisions of the

18 Court's Statute there is offence provided for against false testimony. We're required

19 to inform you of this not because we suspect that you are here to lie or that you are

20 already, no, it's because the Rules provide that that information needs to be given to

21 the witness. Ordinarily how we prefer to deal with this is that the witnesses are told

22 that given that information before they come into the courtroom, and I understand

23 that that has been done with you. I've been told that that has been done with you. I

24 also wish to confirm it with you. You don't need to say anything. It's simply a

25 matter of me informing you this thing that's in the Rules. Again, please bear in mind

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-32/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 that the idea is not that we are suspecting you of not having told the truth or we are
2 suspecting you of coming here to not tell the truth. It is just some information we
3 are required to give you. Okay? Thank you.

4 THE WITNESS: (No interpretation)

5 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, you may proceed now.

6 MR STEYNBERG: Thank you, your Honours.

7 Q. Madam Witness, just before we took the short break, you were telling us about
8 the violence which erupted in your area after the announcement of the election results.
9 Is that correct?

10 A. Yes, that's correct.

11 Q. Can you please tell the Chamber how this came to your attention, the violence?

12 A. Would you like me to start with the first? Where should I start? Perhaps you
13 could explain that to me.

14 Q. Certainly. I'm now talking about the violence that you spoke about where
15 your parents' home was burnt and houses were burnt in the Kimuri area, so this is
16 prior to the 1st.

17 MR KIGEN-KATWA: Mr President.

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

19 MR KIGEN-KATWA: (Microphone not activated) -- crimes is still pending before
20 the --

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

22 MR KIGEN-KATWA: Mr President and your Honours, we are aware that the
23 Prosecution had made an application to extend the temporal scope of the crimes in
24 these issues to include the period of 30th and 31st of December, 2007. That issue was
25 disallowed by the Pre-Trial Chamber and is pending before the appellate Court. The

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-33/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 question posed by the Prosecutor are to include the alleged crimes in Kimuri would
2 extend to the period that is still pending for determination, and we would pray and
3 insist that the time scope within which the evidence can be adduced be limited to the
4 time-period which was allowed in the pre-trial decision.

5 PRESIDING JUDGE EBOE-OSUJI: But doesn't the effect of the Pre-Trial Chamber's
6 ruling -- isn't the effect that to the extent that the ruling of the Pre-Trial Chamber
7 rejecting the application to amend the indictment, to the extent that that ruling stands
8 and it's not revised on appeal, isn't the effect that that extent -- that temporal scope
9 may not be taking into account in the evaluation of the case in the end to be done by
10 the Trial Chamber, as opposed to a truncation of a narrative flow to a story?

11 MR KIGEN-KATWA: Mr President and your Honours, it is our contention that the
12 rejection by the Pre-Trial Chamber not only excludes the non-consideration by the
13 Chamber but it also includes that evidence relating to that period should not be
14 adduced, your Honours.

15 PRESIDING JUDGE EBOE-OSUJI: The objection is overruled.

16 MR STEYNBERG: (Microphone not activated)

17 THE INTERPRETER: Counsel's microphone, please.

18 MR STEYNBERG: (Microphone not activated)

19 PRESIDING JUDGE EBOE-OSUJI: I know what you mean, Mr Steynberg, but we
20 will not be that drastic. We try to be liberal at the ICC.

21 MR STEYNBERG: As your Honour pleases.

22 PRESIDING JUDGE EBOE-OSUJI: And that relates to an item of clothing, but please
23 proceed.

24 MR STEYNBERG:

25 Q. Madam Witness, please will you proceed to answer the question and that is:

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG WT 17-09-2013 34/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 How did it come to your attention, how did you come to know of the violence which
2 occurred immediately after the announcement of the election results, and that is prior
3 to 1 January?

4 A. Let me backtrack a little bit to say that before I suspended work there were
5 some people who caused us to be fearful, and then later on there were a number of
6 meetings, and I also found out that the threats were founded. On the 30th my
7 parents' home was burnt down and I thus became aware that the acts of violence
8 were ongoing.

9 Q. Trying to avoid identifying information, can you tell the Chamber who were the
10 people doing the threatening, broadly speaking, and who were being threatened?

11 A. It was some Kalenjin youth with whom we used to work.

12 Q. And who were they threatening?

13 A. Those youth threatened me. They told me that if we did not vote for the ODM
14 we will face the consequences.

15 Q. When you say that they told you that if we do not vote for the ODM we will
16 face the consequences, who are you referring to when you use the word "we"?

17 A. I am referring to "we," the Kikuyu.

18 Q. Thank you. I will return to the various meetings in due course in private
19 session, but for the time being -- for the time being, can we turn to the events of 1
20 January and can you start by telling the Chamber where you were on the morning of
21 1 January?

22 A. On 1 January, in the morning, I was in church.

23 Q. Can you tell the Chamber, please, the name of the church and where it is
24 situated?

25 A. It is the KAG, Kenya Assemblies of God church in Kiambaa.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 35/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. And why were you at the church that morning?

2 A. I left my house at two in the morning. I went to the church to pray, or rather,
3 to seek refuge for myself and my children.

4 Q. Seek refuge from who?

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

7 Q. Please could you describe to the Chamber in your own words the -- who was at
8 the church that morning and what the scene was like at the church and what people
9 were doing before the violence started. And before you answer, if I can just remind
10 you, when you wish to refer to any members of your family who might have been
11 with you, if you could refer to them using the list which I provided to you earlier.

12 A. There were many of us at that location, children and women. The members of
13 my family were with me. As for the children, number 3, 4, and 6 were present. The
14 other members of my family who were there were number 4 on the list of adults.

15 Q. And where had the people who were there spent the previous night?

16 A. Some courageous people were there and they are the ones who remained in the
17 church with the children. Those of us, adults and some children, spent -- some of us,
18 that is, the adults and some children, spent the night outside the church building,
19 outside.

20 Q. And what did you sleep on?

21 A. People had left their homes with mattresses and covers, so we were able to sleep
22 on the mattresses and we had some blankets to cover.

23 Q. In due course I will show you a sketch that you made of the church compound
24 earlier, but for present purposes can you just tell the Court where you were in relation
25 to the church at the time the trouble started on that day.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 36/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. Please can you explain to me what you're saying clearly. Could you clarify
2 your question. Are you talking about my home or about the church?

3 Q. I'm talking about the church itself. Perhaps the question was a little bit vague.
4 Let me try to rephrase it. Can you start off by telling the Chamber where you were
5 when you first noticed that there was trouble brewing on the morning in question?

6 A. On the 30th I went -- on the 31st, rather, I went to a feast somewhere, then went
7 back to my home; and it is thereafter that I went on to the church.

8 Q. All right. Let me focus your attention then on the events of 1 January.
9 Perhaps it's best if I just ask you to tell us in your own words what happened on the
10 morning of 1 January, starting with where you were on that morning when you
11 awoke.

12 A. It is difficult for me to narrate these events, but I will try. In the morning we
13 got up and some people had already fled from Kimuri. Women had decided not to
14 prepare food in their homes but rather to prepare some tea where they were found
15 because they deemed that it was safer there. Then on our way home to look for the
16 items to be prepared for meals, before we could even do that we heard people
17 shouting from above. You see, from our home it is possible to see to the distance
18 because we're in the valley. There was a farm near the police station to the left, and
19 we heard the shouting coming from that area. The enemies had come. They were
20 singing. And then towards Kabongo we saw -- we -- some people came in later, later
21 on. At that time, the adults advised us to go to the church, to enter into the church.

22 Q. Thank you. Madam Witness, can I just ask that when you're giving your
23 narrative, if you could just pause every now and then to allow the translators an
24 opportunity to catch up.

25 Now, could you please describe the people who you saw approaching.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-37/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. There were a lot of them, many of them, about a thousand of them. They were
2 singing as they came closer.

3 PRESIDING JUDGE EBOE-OSUJI: I do not know if the interpreter got all that the
4 witness said, but I did notice that she was speaking when the interpretation started.

5 Madam, there are some people, interpreters, who are in the booth who are
6 interpreting what you are saying. As you very well know -- I'm sorry, suspect that
7 the Bench does -- we do not understand Swahili. It's important that the interpreters
8 translate or interpret what you are saying into English. And for that to work
9 smoothly, you need to allow the interpreters some time to translate before you

10 continue speaking, so speak in little chunks of information, pause, speak again, to
11 allow them to interpret effectively so we can hear and record everything you say.

12 Can you -- Prosecutor, are you satisfied with the last answer given or do you need to
13 repeat?

14 MR STEYNBERG: I will continue to explore this area. Thank you, your Honour.

15 Q. You described approximately a thousand youth -- youths. Can you tell the
16 Court from which direction these youths approached the church?

17 A. Those youths were coming towards the church.

18 Q. The question was: From which direction were they coming? You say they
19 were going towards the church. Which direction did they come from?

20 A. I will attempt to show you these things using my hands, by gestures. I didn't
21 go to school well enough to be able to tell you the directions. They came from above,
22 from up, as I have indicated with my hand.

23 PRESIDING JUDGE EBOE-OSUJI: And the witness was indicating towards her back
24 with her hand.

25 Prosecutor, you have to record the movement.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 38/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 MR STEYNBERG: I was getting to that, your Honour. Thank you.

2 Q. You indicate with your left hand, pointing over your shoulder, approximately
3 45 degrees to the rear.

4 Perhaps it would be easier if you just tell the Court, is there a town or a location in
5 that direction from which they were approaching which you can use as a reference?

6 A. Are you talking about the direction which I pointed to with my hand?

7 Q. If that is the direction from which the youths were coming, yes.

8 A. On that side there is a road leading towards a place called Chebaloso (phon).

9 Q. Okay. Thank you. I think it may be easier then if we deal with this rather
10 using the -- the sketch map. I'll come back to that. Now, you mentioned that the
11 youth you saw were singing. Can you tell the Court what they were singing and, if
12 you are able to, what the purpose of the singing was?

13 A. As those youth came closer, they sang saying "ohe, ohe," and at that time we
14 saw other enemies coming from Kabongo.

15 Q. Was this a different group of enemies?

16 A. They were of the same group because they all came to the church and attacked
17 us there.

18 Q. But if I understand correctly, you say they came from two different directions; is
19 that correct?

20 A. Yes, that is correct. Some came from behind while others came from the left
21 side.

22 Q. And can you estimate in total the number of attackers that came to the church?

23 A. I did not have time to do a head count or to count them, but I would put
24 the -- their number at approximately 3.000.

25 Q. And could you please describe for the Court, to the extent you can, what sort of

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 39/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 clothing they were wearing, what they were carrying, and any other physical
2 characteristics you noticed about these attackers.

3 A. Some of them were wearing leaves, others had pieces of cloth on their faces,
4 others were bearing traditional weapons such as machetes, axes, and sticks.

5 Q. And what sort of clothing were they wearing?

6 A. Most of them were wearing clothing of a khaki colour, while others tied pieces
7 of cloth around their heads.

8 Q. Were any of the attackers disguised in any way?

9 A. Yes. They had painted themselves in such a way that it was difficult to
10 recognise their faces even if one came close to them.

11 Q. And can you tell us firstly what they had used to paint their faces; and
12 secondly -- well, let's just start with that.

13 A. They painted themselves with white wash, black -- or rather, white clay.

14 Q. And were all the attackers painted this way or only some of them?

15 A. I explained to you that their leaders had some cloth or fabric tied around their
16 heads, but the youth who were attacking had painted themselves with white clay.

17 Q. And finally, can you comment on the ethnicity of the attackers?

18 A. They were Kalenjin.

19 Q. How do you know that?

20 A. The Swahili they spoke made it possible for one to easily identify them. For
21 example, if they wanted to attack someone they would use the word "pilichu" (phon)
22 and "mete," and those gave it away and I was able to understand that they were
23 Kalenjin.

24 Q. Apart from the language and the speaking, was there anything else that was
25 able to give you an indication of ethnicity?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-40/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. It was easy for me because they were bearing bladed weapons, such as arrows
2 and spears, but we had -- we had no weapons.

3 Q. Can you then please tell the Chamber in your own words what happened when
4 the attackers reached the church.

5 A. When we arrived at the church, I personally went into the church through the
6 main door. At that time the church was full and I was very close to the window.
7 We then took some mattresses and were able to sleep on the mattresses, but later on
8 the church was torched.

9 Q. Tell the Chamber what you observed while you were inside the church.

10 A. The windows of the church were in wood. There were some cracks in the
11 windows. I was able to look through and I could see and identify Mr Chamalan
12 who was holding a blue calabash.

13 Q. Let's firstly clarify the issue of the windows. Did these windows have glass in
14 them?

15 A. No, they were wooden windows.

16 Q. All right. So do I understand that the frames were constructed of wood but
17 there was no glass in between?

18 A. Yes.

19 Q. And was there any means by which these windows could be opened or
20 closed -- or should I say the openings could be opened and closed?

21 A. Yes, it was possible to open or close the windows, but I was not able to open
22 them because there were stones being thrown and arrows being directed at the
23 windows from all sides.

24 Q. All right. Let me just finish -- asking you to finish describing the church. Can
25 you describe also what the walls and the roof were made of.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 41/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. The church was made of planks of wood, and on the inside there was mud. So
2 there was a mud lining to the inside of the church.

3 Q. And the roof?

4 A. There were some sheets across the roof and the ceiling was made of wood,
5 planks of wood.

6 Q. Sheets of what formed the roof?

7 A. The roof was made of corrugated iron sheets, and there were corrugated iron
8 sheets covering the church.

9 Q. Thank you. And what were the cracks or where were the cracks through
10 which you were able to observe what was going on outside?

11 A. I said that I was next to a window and there were holes in the windows, and it
12 was through these holes that I could see what was happening.

13 Q. And at this time, how many people approximately were inside the church?

14 A. It's difficult to estimate. The church was full. There were the women of
15 Kiambaa and there were children too.

16 Q. Are you able to give us an approximate estimation, whether it was in the tens
17 and the fifties, hundreds, thousands?

18 A. In Kiambaa there's about 500 households, and I'm trying to make an estimate.
19 We were probably around 2,000 -- 1800, 2,000, approximately, in the church at that
20 time.

21 Q. You mentioned that you saw a gentleman by the name of -- or a person called
22 Chamalan. Can you tell the Chamber what his full name is?

23 A. Chamalan lives in Chabarus. He's someone from my area and at that time he
24 was a candidate for the ODM during the elections. The -- he was a local leader in the
25 elections.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-42/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. I will deal in more detail with your relationship and your knowledge of

2 Mr Chamalan, but for the time being could you just tell the Court his full names,

3 please.

4 A. His name is Steven Kip Leting Chamalan.

5 Q. And you mentioned that he -- you observed he was holding something. Can

6 you please describe that in more detail.

7 A. He was holding a blue container.

8 Q. Can I just confirm what is the word that you used for the container?

9 A. I said it was a gourd, literally, or a jerry-can.

10 Q. And how was Chamalan dressed?

11 A. He was wearing khaki clothing and a bandanna on his head.

12 Q. And was he disguised in any way?

13 A. Where he was there were people setting fire to the church. He was in the

14 middle of these people, but one could see him clearly.

15 Q. Perhaps I should put my question more specifically. You mentioned that

16 certain of the youth or certain of the attackers were disguised with white clay. What

17 I'm interested in knowing is whether Chamalan was one of those people who was

18 disguised with white clay or not.

19 A. I would say he was hiding his face to a certain extent because he was not in the

20 habit of wearing anything at all on his head.

21 Q. What was he wearing on his head?

22 A. He was wearing a bit of cloth on his head that we normally call a bandanna.

23 Q. For the record, you indicated with your fingers in front of your forehead and

24 back towards your ears. Was that intended to indicate where the bandanna was on

25 his head?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 43/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. I can show you with my scarf to show you how he was wearing the bandanna.

2 MR STEYNBERG: For the record, your Honours, the witness puts her scarf over her
3 head, pulse it tight around her forehead, above her eyebrows, and covers the top of
4 her head.

5 PRESIDING JUDGE EBOE-OSUJI: The record will so indicate.

6 MR STEYNBERG:

7 Q. And lastly on this issue, I'm going to ask you expressly: Was his face painted
8 or was it not painted with white clay?

9 A. His face was not painted white. He just had this cloth on his head.

10 Q. And besides the jerrycan, was he carrying anything else?

11 A. I saw him carrying the jerrycan. He had nothing else.

12 Q. Please describe then what happened next, what did you observe?

13 A. Do you want to know what I saw before the church was set fire to?

14 Q. I'd like you to describe everything that happened from the time you observed
15 Mr Chamalan outside with the jerrycan.

16 A. The mattresses were burnt and we -- the port was barricaded with bicycles, and
17 then later we were all trying to find a way to escape. (Redacted)
18 (Redacted)

19 Q. If I can please remind you, Madam Witness, just to refer to the list when you're
20 referring to individuals that were with you. Let's -- are you all right to continue?

21 A. Let's just continue.

22 Q. Thank you, Madam Witness. If at any time you feel you can't continue, please
23 feel free to bring that to the Chamber's attention. Let me go back to Mr Chamalan.
24 Can you -- or do you know what he did with the container, the blue container, which
25 he was carrying?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-44/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. Looking through the hole in the window, I knew what he was carrying.

2 Q. Yes. And tell us what happened then.

3 A. The church was set alight.

4 MR STEYNBERG: Your Honour, the witness seems to be visibly upset. We are
5 about to get to a particularly sensitive area of the evidence. I see it is ten minutes
6 before the scheduled adjournment. I wonder whether either we could take a short
7 break so the witness may compose herself, or preferably if we could end and possibly
8 start ten minutes early to make up the time.

9 (Trial Chamber confers)

10 PRESIDING JUDGE EBOE-OSUJI: Indeed, the witness is visibly upset, not in the
11 sense of being angry but emotionally overcome. This will be a good time to take a
12 break and we will return ten minutes earlier.

13 Court officer, what time would that be, can you remind me again? That would be
14 when?

15 That will be at 20 minutes past 2.00.

16 Madam, we know this is a difficult experience you're going through, and because of
17 that we will adjourn now to give you more time to recover. We will be coming back
18 in the afternoon after lunch for you to continue your testimony.

19 We will adjourn now. And before we do rise, the Court technicians will lower the
20 blinds.

21 (Closed session at 12.50 p.m.) * Reclassified into open session

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

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

24 THE COURT OFFICER: All rise.

25 (Recess taken at 12.50 p.m.)

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-45/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 (Upon resuming in open session at 2.28 p.m.)

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much and welcome back,
4 everyone.

5 May I take this opportunity before we proceed to -- before we proceed to remind
6 speakers - and I too will try to remember it myself - of the need to observe the little
7 gap between speakers to make the lives of the interpreters and the court reporters
8 easier.

9 Mr Steynberg.

10 MR NDERITU: Mr President, your Honours. Perhaps before the witness comes in
11 and departing from where your -- your Honour has spoken, I'm a bit disturbed by the
12 interpretation, the simultaneous interpretation, that is going on in the sense that in a
13 number of instances it does appear that it does not go very, very well with the dialect
14 of Kiswahili that is spoken in Kenya. And I think this is a matter that is shared both
15 by the Prosecution and by the Defence and by other people that I have spoken to over
16 the lunch hour. And I do not know of what solution there would be to that, but
17 there are situations.

18 For example, at some point there was a question put through to the witness with
19 regard to -- the question that was put to her related to -- or rather, the answer that she
20 was giving related to the word kutembea which in our dialect of Kiswahili is walking
21 on foot basically, basically going on foot. And I do recall my learned colleague
22 Mr Steynberg having quite a bit of a problem trying to ask whether she
23 was -- whether the witness was travelling on foot or on a bicycle and so on. And the
24 reason I can only understand to be because kutembea in other parts where Kiswahili
25 is spoken means to travel rather than to walk. And that's just one of the perhaps

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-46/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

- 1 clearer illustrations, but there are quite a number of them that I did come across and I
- 2 just wanted to bring that to your Honours' attention. Thank you.
- 3 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, what's your reaction to that?
- 4 MR STEYNBERG: Thank you, Mr President. I do not speak Kiswahili, but there
- 5 are those in my office that have reported not so much on mistranslations but in one
- 6 specific instance on something the witness said that was not translated. That might
- 7 be due more to the pace at which she was at that time speaking. In that regard, I
- 8 would suggest that I will try to take measures to pace the witness to indicate to her
- 9 when she must pause, if your Honours would give me some latitude to ask her to
- 10 look at me, and when I raise my hand, if she could just stop talking to allow the
- 11 interpreters to catch up. I think that that would assist in that regard.
- 12 As regards what appears to be a difficulty with regional dialects and different
- 13 meanings of different terms, the only solution I can suggest is that at the end of the
- 14 day if it comes to parties' attention that there have been mistranslation, that that
- 15 should be brought to the Court's attention in the normal manner that one would do
- 16 with any sort of defects with the transcripts. As I stand here, I can think of no other
- 17 solution. Unless my learned friend and any of the other parties that are fluent in
- 18 Swahili could bring it to the Court's attention sooner, but that might unfortunately
- 19 involve repeated -- repeatedly interrupting the witness which is also not desirable.
- 20 Those are the two solutions I have in mind and I leave it to your Honours as to which
- 21 is preferable.
- 22 PRESIDING JUDGE EBOE-OSUJI: Any reaction from the Defence bar?
- 23 MR KHAN: Your Honour, in all Courts and in all proceedings, interpretation is of
- 24 course important and there are sometimes difficulties. We don't want to overstate
- 25 matters. I think the thrust and the detail, in fact, of this morning was adequately and

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-47/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 properly interpreted into -- from English into Swahili and vice versa. But I do
2 submit, with respect, that there is a great deal of sense in my learned friend's proposal,
3 that the best way of proceeding is that if something arises in the course of proceedings
4 that is important, not peripheral, but goes to the substance of the testimony, parties
5 always can maybe rise and ask for the question to be re-put again, or at the end of the
6 day if there are clear errors, that can be brought to the attention of the Court
7 translation and interpretation section, and a finalised version of the transcript can be
8 promulgated in due course. But, your Honours, I don't think it's unintelligible. It's
9 not double-Dutch even though we're in Holland. I think it's just a little bit of finesse
10 here and there on occasion. So, your Honours, I think we can proceed without
11 delay.

12 PRESIDING JUDGE EBOE-OSUJI: It appears -- sorry.

13 MR KIGEN-KATWA: With your permission, Mr President, and your Honours,
14 unlike Mr Steynberg and Mr Karim, I also understand Kiswahili and I can say that
15 there are some aspects of the translation that have also concerned us. For instance,
16 there are instances when the witness used the word "adui," which the English version
17 is "enemy," but the translator used the word "group." There are instances when the
18 witness said the people are wearing khaki shorts and the translation that was given
19 was that it was leaves. I would agree that for purposes of expeditious proceedings
20 today, we could pick out the issues that need to be rectified. But I think in the long
21 term, probably the issue of the translators should be regionalised so that if somebody
22 would understand the way Kiswahili is spoken in Kenya and would give it an
23 approximately accurate interpretation if not accurate interpretation in the long term.
24 Thank you, Mr President and your Honours.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. It seems to me this is

Trial Hearing

(Closed Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-48/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

- 1 something we can approach from the perspective of good sense, common sense, and
2 goodwill on the part of everyone. There may be instances where of course
3 some -- the Prosecution's own understanding of their case and the witness's testimony
4 might have that finesse approach to the answer the witness has given and in order to
5 pursue certain matters with further questioning. That's one way of course of doing it.
6 Another way would be where there is an instance where - as Mr Khan said - on sort of
7 the big issues, there may be a need to draw attention to the matter so that it's clarified
8 without allowing the proceedings to be derailed at that point on that sort of issue.
9 And then leave the rest for what may be safely taken up after. I think we can all
10 working together we're able to proceed in that way. Again, if there's a critical need,
11 a critical need to draw attention while it happens to possible misinterpretation up to a
12 point the Chamber should be able to contain that. If things start getting out of hand
13 we can intervene to stop it, but we should try not to provoke that sort of prospect.
14 MR STEYNBERG: Thank you, your Honours. I'm grateful.
15 PRESIDING JUDGE EBOE-OSUJI: Are you ready now to proceed?
16 MR STEYNBERG: I am ready to proceed with the witness.
17 PRESIDING JUDGE EBOE-OSUJI: Court officer, if we can lower the blinds so the
18 witness may be brought back in.
19 MR STEYNBERG: If I may, while that process is continuing, if I can just place on
20 record the Prosecution is without Ms Tai this afternoon, as she has another
21 engagement. Otherwise, we are the same.
22 PRESIDING JUDGE EBOE-OSUJI: The record will reflect that.
23 (Closed session at 2.39 p.m.) * Reclassified into open session
24 THE COURT OFFICER: We are in closed session, Your Honours, your Honour.
25 PRESIDING JUDGE EBOE-OSUJI: Thank you. The witness will be brought in

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 49/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 now.

2 (The witness enters the courtroom)

3 PRESIDING JUDGE EBOE-OSUJI: We may now -- we can raise the blind now.

4 (Open session at 2.41 p.m.)

5 THE COURT OFFICER: We are in open session, your Honour.

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

7 Madam, welcome back to the stand. And before we adjourned for the lunch break,

8 we noted that at that point in your testimony had been emotionally difficult for you.

9 We appreciate your effort in coming here to assist in spite of those difficulties. All I
10 can say is that the Court understands that this is a difficult experience for you. Bear

11 with us while we proceed. These questions will in some instances be difficult, but I

12 can assure you that they are not wasteful. They are necessary questions that are

13 being asked of you to help us find out the truth in this matter.

14 Now, on another matter while you proceed also kindly keep in mind the need to

15 allow the interpreters to interpret correctly what you are saying. I know this is

16 easier said by me than done, and I can assure you I understand that. I have been

17 doing courtroom work for a long time, but still I forget sometimes that there are

18 people who must interpret what I say. I speak too fast, so I know it's difficult but

19 please do bear it in mind. Always try to remember to speak slowly and also to give

20 some time, some gaps to allow the interpreters to interpret accurately what you are

21 saying.

22 On that note, I thank you again for coming back and your testimony will continue

23 with questions from the Prosecutor.

24 MR STEYNBERG: Thank you, your Honours.

25 Q. Madam Witness, to assist you in regulating your pace or the pace of your

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 50/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 evidence, can I just ask that when you answer your question you keep one eye on me
2 and if you see that I raise my hand like this, can you just pause to give the interpreters
3 a moment to catch up. Do you understand?

4 A. Yes.

5 Q. Very good. Let's continue. Now, I need to just go back and clarify something
6 which was not 100 per cent clear and that relates again to the gentleman or the person
7 Chamalan who you say you saw through the church window and in particular to
8 what he was carrying. Do you remember that?

9 MR KHAN: Your Honour, could I ask that my friend, in order to avoid feedback,
10 just turns off the microphone. Thank you.

11 MR STEYNBERG: Of course, your Honour. I'll do my best to remember that.

12 Q. Madam Witness, did you understand or do I need to repeat that?

13 PRESIDING JUDGE EBOE-OSUJI: Why don't you repeat.

14 THE WITNESS: (Interpretation) I'm saying this to you: That person had a blue
15 jerrycan.

16 MR STEYNBERG:

17 Q. And can you tell the Chamber what this blue jerrycan was made from, what
18 material was it made from?

19 A. That jerrycan was made out of plastic.

20 Q. And can you estimate the size of the jerrycan, the volume of liquid or the
21 volume of the contents which it would carry?

22 A. It was a jerrycan that contained petrol, and when it was used it was to burn
23 down the church.

24 Q. And what did Chamalan do with that jerrycan?

25 A. He poured the contents of the jerrycan onto the roof.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 51/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. Thank you. You also mentioned earlier that mattresses were set alight. Can
2 you please describe to the Court where these mattresses were at the time they were
3 set alight and how they came to be set alight.

4 A. They took the mattresses and they put them up against the wall of the church.

5 Q. And then what did they do to them?

6 A. They set the mattresses on fire.

7 Q. When the mattresses and the roof started to burn, what was the reaction of the
8 people inside the church?

9 A. Everyone was trying to find some way to get out of there.

10 Q. Was there any difficulty in getting out of the church?

11 A. Yes, it was difficult to get out of the church since some people were in front of
12 the small door and the big door -- well, you see, there were some bicycles there and if
13 someone tried to get out and escape, the person would fall.

14 Q. Tell us more about how these bicycles came to be at the big door.

15 A. They were bicycles that were used to go to church.

16 THE INTERPRETER: Message from the Swahili booth: Could the witness kindly
17 repeat the last sentence of her reply which the Swahili interpreter did not quite hear.

18 MR STEYNBERG:

19 Q. Could you please repeat the last sentence of your reply. The interpreter didn't
20 hear you.

21 A. The bicycles belonged to us. They were items that -- possessions that we were
22 trying to keep.

23 Q. And how did these bicycles come to be blocking the door of the church?

24 MR KHAN: Your Honour, objection, for obvious reasons.

25 THE WITNESS: (Interpretation) Before getting to the door of the church --

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-52/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 MR STEYNBERG:

2 Q. I'm sorry, I missed that last answer. Could you please repeat that.

3 A. Which reply are you talking about?

4 PRESIDING JUDGE EBOE-OSUJI: Okay. Mr Steynberg, I was reading the
5 transcript, maybe that's what allowed the witness a gap to continue answering.

6 There was an objection made.

7 Now, Mr Khan, you will have to specify. I have an idea what it could be, but I do
8 not want to pursue.

9 MR KHAN: Your Honour, there was a word used that wasn't elicited by way of
10 direct evidence that suggested the answer that didn't come from the witness's lips,
11 and therefore in our respectful submission it is an inappropriate and leading question.

12 PRESIDING JUDGE EBOE-OSUJI: The -- the objection is sustained to the extent that
13 a certain word had not been elicited ahead of time. It's up to the Prosecutor to
14 decide what to do about it.

15 MR STEYNBERG: I beg your pardon, your Honours, I'm having some difficulty
16 with my transcription. If I can see if I can resolve that quickly because I can't follow
17 what is being said on record.

18 MR KHAN: Your Honour, the easiest way while my friend does that is to put the
19 question and we can move on.

20 MR STEYNBERG: I'm informed that at page 57, line 17, is the answer I'm trying to
21 clarify, where the witness said it was difficult to get out of the church because people
22 were falling over the bicycles. So I will clarify that.

23 PRESIDING JUDGE EBOE-OSUJI: This would have been one instance if it would
24 have been better if the question were put again because falling over doesn't get us
25 there to the point what the -- that elicited the objection from the Defence. And he

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-53/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 had agreed that you may pursue the matter and put it on the record rather than put
2 the answer to the witness.

3 MR STEYNBERG: Very well. Let me rather just approach it again.

4 Q. You mentioned that there were certain bicycles outside the -- I think you said
5 the big door or the main door. Is that correct?

6 A. I was talking about the main door of the church. The other door -- well, there
7 were young people around that other door who were waiting for people.

8 Q. I will come back to the other door. Let's focus for now on the main door. The
9 bicycles of which you spoke, who put them in that position where they were at the
10 main door, if you know?

11 A. I said this: Before getting to the entrance door of the church there was a
12 corridor, and that is where we would put the bicycles here and there and everywhere.
13 And when the church was burnt down, people took those bicycles and put them all
14 together. So, you see, there was no way for people to get out from the church. The
15 people who were trying to flee from the church were not able to get out.

16 Q. Now, the people who took those bicycles and put them all together, who did
17 that?

18 A. Those young people.

19 Q. And do you know why they did that?

20 A. It was a way to keep us from fleeing, from getting out of the church.

21 Q. Thank you. And just so we're perfectly clear, which young people are you
22 referring to?

23 A. Young people who belonged to the Kalenjin ethnic group.

24 Q. You then mentioned that there were young people standing at another door.
25 Can you describe this other door?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 54/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. Even those who were there were also Kalenjin, young Kalenjin people.

2 Q. And what were they doing?

3 A. When someone would try to leave the church, they would grab the person and
4 push them back in.

5 MR STEYNBERG: Your Honour, your Honours, I'm going to come to a specific
6 aspect of the witness's evidence, a feature of her evidence which may tend to be
7 identifying. I'm going to ask the Court to briefly go into private session to deal with
8 this specific aspect of the narrative and with the Court's permission we can proceed
9 back into open session. If you would like, I can give you more explanation for why,
10 but if I could do that also in private session I would be grateful.

11 PRESIDING JUDGE EBOE-OSUJI: The question is for how long would you expect
12 to be in private session for this?

13 MR. STEYNBERG: Your Honours, it should be fairly brief. Again, I expect no more
14 than 10 to 15 minutes. It may be, so as not to interrupt the flow of narrative, there
15 might be certain aspects which would not strictly require to be in private session, but
16 with the leave of the Court those can be placed on the record then when we re-enter
17 public session.

18 PRESIDING JUDGE EBOE-OSUJI: I take it I see no --

19 MR KHAN: I'm grateful, your Honours. That's fine. Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: Court officer, we will now proceed into private
21 session.

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

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

24 MR STEYNBERG: I am grateful, your Honours, and for the co-operation of my
25 learned friends.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

~~ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 55/72 NB T~~

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. You mentioned before the lunch break that -- Madam Witness, (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 A. (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 THE INTERPRETER: The Swahili interpreter asks if the witness could be slowed
21 down.

22 MR STEYNBERG:

23 Q. Madam Witness, the interpreter's having difficulty following your evidence

24 again, so if I could please ask you once again just to keep an eye on me, and when I

25 raise my hand, if you could just pause and then continue. I know it's difficult but

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

~~ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 56/72 NB T~~

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 this is the only way that everybody is going to understand your evidence. All right?

2 All right.

3 Now --

4 A. Very well.

5 THE INTERPRETER: Overlapping speakers.

6 MR STEYNBERG:

7 Q. I think the interpreter was with you up to the point (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. I mean, I was able to get out through the large door. (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG WT 17-09-2013 57/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 (Redacted)

2 MR KHAN: Your Honour, I've given my learned friend a degree of latitude,
3 believing that there was good reason for the private session. But, your Honour, I
4 think we've gone quite far in the witness's evidence, and I have not seen myself at the
5 moment any reason why what has been said could not be broadcast to the public.
6 No names have been mentioned and nothing, unless I'm missing something, has been
7 said that would identify the witness's identity. So, your Honours, perhaps the Court
8 could consider whether or not this can be in public session or whether it needs to
9 remain in private session.

10 MR STEYNBERG: If I can clarify, your Honours. The only issue which I sought to
11 lead in private session, and the witness has gone a little bit beyond I think the
12 question I put to her, (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: So are you then -- are we in a position where we
18 can go back into a public session now?

19 MR STEYNBERG: I would just like to seek one last piece of clarity about
20 the -- (Redacted) . The
21 last answer was nonresponsive to the question I just put. If I could just clarify that.

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

23 MR STEYNBERG:

24 Q. (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 58/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 (Redacted)

2 THE INTERPRETER: There seems to be a technical issue. Could that be repeated?

3 I'm sorry.

4 MR STEYNBERG:

5 Q. I'm sorry, Madam Witness. There seems to be a problem with the interpreters
6 hearing what you said. Could you please just repeat your last answer.

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. Thank you.

13 MR STEYNBERG: Your Honour, with the leave of the Court, we can proceed back
14 to public session.

15 PRESIDING JUDGE EBOE-OSUJI: Not -- court officer, not yet, not yet. I would
16 like to clarify a point in the evidence.

17 (Redacted)

18 (Redacted)

19 THE WITNESS: (Interpretation) (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

23 (Redacted)

24 THE WITNESS: (Interpretation) It was a Kalenjin youth.

25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-59/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 (Redacted)

2 THE WITNESS: (Interpretation) (Redacted)

3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR STEYNBERG: Thank you, your Honour. I'm grateful for the clarification.

6 That is all I wish to traverse in private session.

7 PRESIDING JUDGE EBOE-OSUJI: We may now go into public session.

8 (Open session at 3.13 p.m.)

9 THE COURT OFFICER: We are in open session, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, proceed.

11 MR STEYNBERG: Thank you, your Honour.

12 Q. Madam Witness, if I can take you back for a moment to the time when you were
13 inside the church looking out the window. Besides Mr Chamalan, who you've
14 already mentioned, did you observe anybody else that you recognised at that time?

15 A. Yes, I recognised Emmanuel Bor and I recognised Kimei Bor. I also recognised
16 Brown.

17 Q. All right. Let's take it one at a time. Emmanuel Bor, can you please describe
18 him, what he was wearing, how he was dressed, what he was carrying?

19 A. Emmanuel Bor had normal clothing, he had arrows.

20 Q. Yes. Anything else?

21 A. Emmanuel Bor, he's the one who ordered the young people to allow the women
22 and children to go out, to leave.

23 Q. Thank you. We'll come back to that, and can you then describe for us Kimei
24 Bor, what he was wearing, what he was carrying, how he was dressed?

25 A. He was dressed normally. He had a stick in his hand and he had arrows on his

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-60/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 back.

2 Q. Can you describe the stick, what type of stick was it? What was it used for,
3 this type of stick?

4 A. It was a very large stick, a very thick stick, and on one side it was a stick that
5 was made to hit people with which was very wide on one part.

6 Q. The third person you mentioned, Brown, do you know his proper name?

7 A. I don't know his name. When he came we called him Brown because he was of
8 a light colouring like a white person.

9 Q. And can you tell the Chamber what he was wearing and what he was carrying,
10 if anything?

11 A. He was dressed normally but he had a small axe and he also had -- he also had
12 some arrows. He had a butcher's axe and some arrows.

13 Q. All right. I'll return shortly to your knowledge of these people, but for the time
14 being can we then proceed to or can you proceed to explain to the Court what
15 happened when you exited the church. What did you observe?

16 A. When I left the church and when I was told that the children had been put back
17 in, I just became mad, as if I was mad.

18 Q. Can I just stop you there and ask you not to refer again to the matters we've
19 dealt with in the private session. Leaving that aside, what did you do then?

20 A. I went here and there. There was an old person who had died, had been killed
21 at the crossroads.

22 Q. Please describe at that time what exactly was going on with the youth. What
23 were they doing? What did you see?

24 A. These young people were on the road. There's a road that goes from the
25 church and another one that comes from my house and goes towards the police

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 61/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 station. They were there. They had set up a roadblock and there was a woman
2 who came out of the church.

3 Q. Yes, carry on.

4 A. And she called Brown so that he could help her. Afterwards I saw that this
5 woman had fallen on the ground and I went mad. I just ran, and afterwards we
6 called a village elder.

7 Q. All right. That's not entirely clear to me. What became of this -- you say this
8 woman asked Brown to help her. What happened to her then? How did she come
9 to fall on the ground?

10 A. It's difficult to tell because this was a woman who I know. She was taken by
11 her legs, one leg on one side, another on the other side, she was raped. And
12 afterwards when I saw that she had been raped I was surprised, and sometime
13 afterwards we called the notable person. That person was struck with an axe, and I
14 just lost it basically.

15 Q. All right. The woman who you described, the woman that you knew you said
16 was raped, is this something you saw with your own eyes or is this something you
17 know from another source?

18 A. I saw it with my own eyes. It was the first time in my life that I had seen a rape
19 happen.

20 MR FAAL: Your Honours, we just leave it at that. Let her proceed. Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Steynberg. To the Ruto
22 Defence team, it might be preferable if one of you only deals with the matters of
23 objections instead of having different counsel reacting variously to parts of the
24 testimony.

25 MR FAAL: Much obliged. Thank you.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-62/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 MR STEYNBERG: Thank you, your Honours.

2 Q. And can you tell the Court the name of this woman who you saw being raped?

3 A. Yes, Margaret Wanjiro.

4 Q. You then said that you called an elder. What happened after that -- well, firstly,
5 who was this elder?

6 PRESIDING JUDGE EBOE-OSUJI: Before we -- do not answer the question just yet.

7 Witness, please note that you're now in public session. So that means that
8 information you give will be listened to by people outside and the public. So do give
9 your testimony in a manner that does not make it easy for people to identify who you
10 are. With that in mind you may proceed with the answer to the question the
11 Prosecutor just asked you.

12 MR STEYNBERG:

13 Q. Let me repeat the question. What was the name of the elder that you called?

14 A. He was called Baba Shalagu.

15 Q. Baba Shalagu. Thank you. And what happened then, what happened to this
16 Baba Shalagu?

17 A. He was called as if somebody wanted to speak to him about something that was
18 good and he went up to me and said not to come back.

19 Q. I'm sorry, you said he was called. Who called him?

20 A. It was the young people who were at the crossroads.

21 Q. And did he then go towards them after they called him?

22 A. He went towards -- and when he went he was struck with an axe on his neck.
23 Afterwards, he was injured with spears.

24 Q. And do you know who did that? Did you see who did that?

25 A. The first person to strike him was Brown.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 63/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. Are you able to identify any of the other people who struck him with spears?

2 A. I couldn't recognise them because I was afraid and my brother was hiding, he
3 was hiding close by, close by this place, the compound.

4 Q. All right. Let's turn to that person who you've mentioned. Can you mention
5 him with reference to the list, please, the person who was hiding?

6 A. Among the adults, he was number 4.

7 Q. Please tell us where person 4 was hiding and what happened next.

8 A. I drew a sketch. You can see that it's next to the church, there's a fence, and he
9 was hiding close to the fence.

10 Q. I will show you the sketch which you drew in a moment in private session, but
11 if you can for the time being just describe what happened to person 4 after that. Did
12 you understand the question? Could you describe what happened to person 4 from
13 the moment you saw him hiding at the fence.

14 A. Afterwards he left, he wanted to save himself, but he wasn't able to escape. An
15 arrow was shot at him and he fell down among these young people.

16 Q. What happened then?

17 A. When I saw that, I did all I could to save him.

18 Q. What became of him? What happened to him after that?

19 A. I took off all my clothing and there I stood entirely naked.

20 Q. If I could just ask you to please wait for the translation before you answer. I
21 know you do understand a bit of English. All right? Are you all right to continue,
22 Madam Witness?

23 A. Yes, I can keep on going.

24 Q. Thank you very much. Can you explain to the Court why it is that you
25 decided to take off all your clothes?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 64/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. I decided to stand there naked. First of all, you see, in the Kalenjin custom or
2 way of doing things, when a woman takes off her clothes it is as if -- it is as -- it is like
3 a curse.

4 Q. Carry on. Can you carry on explaining why it is that you did this? What did
5 you hope to achieve by taking your clothes off?

6 A. My purpose was to save my brother's life, and so then --

7 THE INTERPRETER: The Swahili interpreter did not hear the last sentence uttered
8 by the witness. If the witness could please be asked to repeat her reply.

9 MR STEYNBERG:

10 Q. The interpreter didn't catch the last part of your answer. You say your
11 purpose was to save your brother and then? Please take it from there.

12 A. In actual fact, I wanted to save my brother's life, and then Brown said to
13 me -- well, he threw my brother at me or shoved, rather, my brother at me and said,
14 "Take that trash. Take your trash away."

15 Q. What was your brother's condition at this time?

16 A. He was in a bad way because we went a few -- he took a few steps and then he
17 fell to the ground.

18 Q. Can you describe his injuries?

19 A. Someone had shot an arrow at him and it was lodged in the nape of his neck,
20 the throat. You see, his head and his neck were nearly separated.

21 Q. Where did you go after that?

22 A. It was difficult to actually get to the place where one gets the vehicles, so I had
23 to find a shortcut through the forest to reach a place called oasis.

24 Q. And from there where did you go?

25 A. When we left the road from oasis there was one Kalenjin who had a pickup

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-65/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 truck. He saw him with my brother and he stopped. I asked him to help me,

2 speaking to him in the Kalenjin language.

3 Q. And did he help you?

4 A. I spoke to him in Kalenjin and he did not say no. He told me to put my brother

5 in the pickup. He said the word "talato."

6 Q. Meaning what, "talato"?

7 A. It is a way of asking for help.

8 Q. Now this is not really essential to your story, so if I may move things along a

9 little bit. Is it correct that he was ultimately taken to hospital and treated?

10 A. Yes, he helped me and I took my brother to Efardo (phon).

11 Q. And which hospital did you go to?

12 A. To the Moi Teaching Referral Hospital.

13 Q. Thank you.

14 MR STEYNBERG: Your Honours will bear with me for one moment.

15 Thank you. Your Honours, I would next like to go back and clarify certain positions

16 and directions with reference to a sketch which this witness provided to the OTP

17 during the time of her interviews. Now, on this sketch there are various pieces of

18 identifying information such as her house, her parents' house, et cetera, and for this

19 reason I would request that this exercise be done in private session. This might take

20 a little longer than the other private sessions depending on how quickly the witness

21 grasps concepts which I hope to elicit.

22 PRESIDING JUDGE EBOE-OSUJI: Or how clearly you lead her through so that she

23 will grasp them. Are we expected to put this on some sort of display, the material,

24 or what?

25 MR STEYNBERG: I understand, your Honours, that one of the pieces of equipment

Trial Hearing

(Private Session)

ICC-01/09-01/11

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1 that would normally be used for this purpose was not working this morning. Is
2 it -- ah, I'm getting an indication I think it is up and running, yes. So I understand
3 then that the process would be that the witness would put this on a certain display
4 and that would be displayed for all to see. It is, however, an item which is in
5 evidence, so my learned friends should also have access to it that way. And for the
6 record, the document I intend to start with is the ERN number is KEN-OTP-0090-0658.
7 And if I could ask the usher to please take this to the witness.

8 PRESIDING JUDGE EBOE-OSUJI: We can go into private session then.

9 MR STEYNBERG: As the Chamber pleases.

10 (Private session at 3.41 p.m.) * Reclassified into open session

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

12 PRESIDING JUDGE EBOE-OSUJI: Well, I did not mean for it to be broadcast but I
13 might as well. The court officer and I were trying to see the best way to effectively
14 go through this exercise, noting that you are standing there asking a witness a
15 question and ordinarily there would be a large display and you would be using a
16 laser pointer to point at things. I don't know how we're going to do that here.

17 MR STEYNBERG: Well, what I propose to do, your Honours, is to simply ask the
18 witness to point out various spots on the map and then -- so I'm not going to be
19 pointing them out to her. She will hopefully be pointing them out to us or to the
20 Court.

21 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Well, let's give it a try and see
22 how it goes.

23 MR STEYNBERG: And I will ask -- as we go along, I will ask the witness to mark
24 various points with letters of the alphabet so that we have a -- have on record where
25 the various places are.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

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Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

- 1 PRESIDING JUDGE EBOE-OSUJI: The problem the court officer and I were
2 discussing is whether this witness will be familiar with the practice of electronic
3 marking, but I think we can proceed and see.
4 Well, let's proceed and see.
5 MR STEYNBERG: (Microphone not activated)
6 MR KHAN: And, your Honour, while that's being done, I'm sure my learned friend
7 wasn't going to simply jump through and ask the witness to mark this. A
8 foundation is needed regarding admissibility, whether or not she drew it, when did
9 she draw it, was it in the interview or outside of the interview, was the OTP
10 investigators present, all the rest of it. I'm -- I would be interested to see actually the
11 background to this document before we ask questions that are specific to it in the
12 normal manner.
13 PRESIDING JUDGE EBOE-OSUJI: Well -- can you respond to that?
14 MR STEYNBERG: Yes, your Honours, that is indeed the normal manner. But in
15 order to ask her about the document I first need to show it to her. So could the usher
16 please show the document to the witness -- or the court officer in this case. Thank
17 you.
18 I understand, your Honours, the document is being shown electronically to the
19 witness. Can she just confirm that, please.
20 Q. Can you see a sketch?
21 PRESIDING JUDGE EBOE-OSUJI: One second. We're trying to pull it up on the
22 screen as well so we can all be looking at it.
23 THE COURT OFFICER: If I may be of any assistance, the parties and participants
24 can press on the PC 1 button next to your screens, and there you will all view the
25 sketch as the witness is seeing it right now. And any marks, any electronic marks

Trial Hearing

(Private Session)

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1 that would be done with the electronic pen will appear in that same screen.

2 Afterwards, a photo will be captured and the new document will be registered in the
3 case record.

4 MR STEYNBERG: Your Honours, I note that that is the correct document, firstly, on
5 the screen, but that the resolution of the document is somewhat less than the actual
6 hard copy that I have in my possession. So for that purpose may I ask that the hard
7 copy also be placed before her in case she needs to refer to it or in case something is
8 not clear?

9 MR KHAN: Your Honour, if we can be clear, I hope my learned friend says easy
10 regarding whether or not the hard copy is marked or the electronic copy. The key
11 thing is only one copy, of course, is marked and not that we're jumping from two
12 different documents.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we're still trying to figure out the
14 logistics of how this will work, the exercise. Why don't we pro -- will it work better
15 if she marks on the hard copy? The difficulty is if she is marking on the hard copy,
16 we're not seeing what she is marking.

17 MR STEYNBERG: I'm in your Honours' hands as to which of the two methods is
18 preferable. I agree with my learned friend we should at the end of the day have only
19 one record ...

20 PRESIDING JUDGE EBOE-OSUJI: Let's do this: You have a hard copy. Why
21 don't you -- let's work with -- you mark the hard copy, the witness identifies what
22 point on the record, and you translate it into a hard copy, at the end of which we
23 show that around and enter that on the record, your hard copy on the record, that
24 way we're all seeing what she is marking at the same time and the OTP is reflecting it
25 on the hard copy.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013-69/72-NB-T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 MR KHAN: Your Honours, that would be difficult. I'm looking at the screen and I
2 don't know if we've been given it for some reason or as one-off preferential treatment,
3 but it's very clear, and I don't know, your Honours, if it's clear to the Bench. But if
4 it's possible, then, for it to be marked by the witness and appears on the screen we can
5 see it very clearly and that would be the simplest way rather than the Prosecutor
6 marking it and then doing it that way. So I would propose that the original
7 suggestion of your Honours be accepted, that it be marked on the screen, and
8 everybody here and outside can see it if necessary.

9 PRESIDING JUDGE EBOE-OSUJI: But Mr Steynberg raises a concern about
10 resolution. What -- is that still a valid concern?

11 MR STEYNBERG: It appears to have been improved, your Honours. I can now see
12 it fairly clearly. The only request that I have is that it's not centred, so there is a gap
13 on the right-hand side of the screen and there's parts of it that are cut off on the
14 left-hand side. If that can only be resolved, then I'm actually happy to work with
15 this copy.

16 PRESIDING JUDGE EBOE-OSUJI: Right. Why don't we proceed then with the
17 screen marking.

18 MR STEYNBERG: It appears to be a setting of the screen, this monitor. Thank you.
19 We now seem to be up and running, your Honours. Thank you for the indulgence.

20 Q. Madam Witness, if you look at the image before you on the screen, you will see
21 in the top right-hand corner a date which appears to read 16/12/2012 and above that
22 date there is a mark. Can you identify that mark?

23 A. That is my signature.

24 Q. And can you please tell the Chamber who drew this sketch that's before you?

25 A. I did this sketch.

Trial Hearing

(Private Session)

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Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 Q. And for whom did you draw this sketch?

2 A. Well, when I look at this sketch carefully one gets an idea of how this
3 place -- well, everything that is to be found in this place, everything that is located at
4 this place I have put on this sketch here.

5 Q. Thank you. My question was something different, though. On what occasion
6 or for what purpose did you draw this sketch?

7 A. I did this sketch when I was giving my statement. My purpose was to allow
8 the Chamber to understand what had happened at that place.

9 Q. And was this a statement you gave to ICC staff, to Prosecution staff?

10 A. Yes.

11 Q. And the date reflected on this statement is 16th of the 12th, 2012. Was that the
12 date when you did this?

13 A. Yes.

14 Q. Thank you. Now I'd just like to -- I'd like you to identify for the Chamber
15 certain important places that you have referred to in your testimony today with
16 reference to this map, and I'd like to start if you could identify on this map the
17 position of the Kiambaa church. And once you have done so, if you could mark it
18 with the letter A, capital letter A.

19 A. (Marks)

20 Q. Thank you. And the next thing I would like you to mark if you can is the
21 direction from which the first group of attackers that you observed on the 1st of
22 January were coming, and if you could mark that with an arrow and a letter B.

23 A. (Marks)

24 Q. I see you've drawn a letter B above a building which is labelled Kiambaa police
25 station. Does that represent the direction from which the attackers came?

Trial Hearing

(Closed Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

ICC-01/09-01/11-T-29-Red3-ENG-WT-17-09-2013 71/72 NB T

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

1 A. Yes.

2 Q. You mentioned then in your evidence that certain attackers came from a
3 different direction, and you mentioned that was from Kabongo. Can you please
4 indicate with the letter C the direction from which this group came.

5 A. (Marks)

6 Q. Thank you.

7 MR STEYNBERG: Your Honours, I see that, reluctant as I am to stop at this point,
8 that we've reached the normal hour of adjournment. I'm quite happy to carry on,
9 but I understand that there will be technical reasons why we probably can't.

10 PRESIDING JUDGE EBOE-OSUJI: How much longer would it have taken you on
11 this exercise?

12 MR STEYNBERG: It will take some time I'm afraid, and there is another sketch
13 which comes after this one. So this is not something we're probably going to get
14 through in the next five or ten minutes.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We will adjourn until 9.30
16 tomorrow. So we will wait for again the screen to come down and then the witness
17 leaves the courtroom before we do.

18 Madam, we are about to adjourn for the day. It's important that you do not discuss
19 your testimony with anybody in the meantime. We will come back to continue
20 tomorrow. Right. Thank you.

21 (Closed session at 4.00 p.m.) * Reclassified into open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 You may escort the witness out now.

25 (The witness stands down)

Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September 2013, and the email's instructions dated 1st October 2013, the version of the transcript with its redactions becomes Public

Trial Hearing

(Closed Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0536

~~ICC-01/09-01/11-T-29-Red3-ENG-WT 17-09-2013 72/72 NB T~~

Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further redactions have been applied to this public transcript.

- 1 PRESIDING JUDGE EBOE-OSUJI: We will rise now.
- 2 THE COURT OFFICER: All rise.
- 3 (The hearing ends in closed session at 4.01 p.m.) * Reclassified into open session
- 4 RECLASSIFICATION REPORT
- 5 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 6 2013, and the email's instructions dated 1st October 2013, the version of the
- 7 transcript with its redactions becomes Public.
- 8 SECOND RECLASSIFICATION REPORT
- 9 Pursuant to Trial Chamber V(a)'s instruction dated 24 January 2014, further
- 10 redactions have been applied to this public transcript.
- 11