

Trial Hearing
Witness: KEN-OTP-P-0516

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 24 September 2014
10 (The hearing starts in open session at 9.38 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 THE COURT OFFICER: Good morning. We are in open session, Mr President.
15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
16 Please, the case.
17 THE COURT OFFICER: Situation in the Republic of Kenya, in the case of The
18 Prosecutor versus William Samoei Ruto and Joshua Arap Sang, case number
19 ICC-01/09-01/11.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR STEYNBERG: Good morning, your Honours. For the Prosecution the team
23 remains the same.
24 MR NARANTSETSEG: Good morning, your Honours. Victims are represented by
25 myself, Orchlon Narantsetseg, and my colleague, James Mawira. Thank you.

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1 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present. His
2 team remains the same, with the addition of Honor Lanham.

3 MR HOOPER: Yes, this morning Mr Ruto's Defence team is composed of Shalini
4 Jayaraj, Mr Karim Khan, Ms Leigh Lawrie and Ms Clara Gérard Rodriguez. Thank
5 you.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 And in Nairobi, Mr Karathe, we notice your presence. You have finally arrived.

8 Mr Karathe, please make an effort to be on location at the time --

9 MR KARATHE (via video link): Yes, Mr President. Thank you.

10 PRESIDING JUDGE EBOE-OSUJI: Yes. We, the Court, require you to make better
11 efforts to be on location on time. This is the third time now we have had to wait for
12 you to arrive. You are a very experienced lawyer, you look like it, and you know the
13 Court doesn't wait for lawyers who appear before it. I thought I should say that.
14 All right. We will continue with the examination-in-chief from Mr Steynberg.
15 Mr Steynberg?

16 MR STEYNBERG: Thank you, your Honours.

17 Good morning, Mr Witness.

18 PRESIDING JUDGE EBOE-OSUJI: We are in open session.

19 MR STEYNBERG: Thank you, sir.

20 PRESIDING JUDGE EBOE-OSUJI: Is it still the case that we expect you to finish
21 today. Is that it?

22 MR STEYNBERG: Your Honours, your Honours will have noted that progress was
23 rather slow yesterday. I do hope to try to finish today, but I'm less optimistic than
24 I was this time yesterday. But I'll do -- I'll make my best efforts to finish this
25 afternoon.

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1 PRESIDING JUDGE EBOE-OSUJI: Make your best efforts, Mr Steynberg, and then
2 we'll try. Thank you.

3 MR STEYNBERG: As the Court pleases.

4 WITNESS: KEN-OTP-P-0516 (On former oath)

5 (The witness speaks Swahili)

6 (The witness gives evidence via video link)

7 QUESTIONED BY MR STEYNBERG: (Continuing)

8 Q. Good morning, Mr Witness. Do you hear me?

9 A. Yes, I can hear you. Good morning.

10 Q. Mr Witness, I'd just like to return to a matter I omitted to cover yesterday.

11 Yesterday I asked you some questions about the first accused, Mr Ruto. I'd just like
12 to, before I continue discussing your statement, ask you one or two questions about
13 the second accused, Mr Sang.

14 Can you please tell the Court, Mr Witness, what you know about accused number
15 two, Mr Joshua Arap Sang, and in particular as regards the post-election violence
16 in 2007 and 2008.

17 A. As to Mr Sang, I was not a fan of Kass FM because Mr Sang was in Kass FM.
18 Sometimes I could listen to Kass FM radio, but I never followed the programmes
19 presented by Mr Sang, who usually presented political programmes. Sometimes I
20 tuned to that radio station and I listened to some programmes, but not the
21 programmes presented by Mr Sang.

22 Q. What programme or programmes was it that Mr Sang presented in 2007 and
23 early 2008?

24 A. I do not remember. However there were Kass FM programmes being
25 broadcast, but I was really not a fan of Kass FM.

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1 Q. You said a moment ago that you "... never followed the programmes presented
2 by Mr Sang." Did you ever have occasion to listen to Mr Sang's programmes in
3 late 2007 or early 2008?

4 A. No. I usually listened to the programmes of Citizen Radio, not Kass FM.

5 Q. You say Mr Sang usually presented political programmes. How did you know
6 that if you did not listen to his show?

7 MR KIGEN-KATWA: Mr President, I object to that question. The witness did not
8 say that, and I'm following the transcript closely. That is not in the transcript.

9 MR STEYNBERG: Your Honours, I quote from page 4, line 3, "... but I never
10 followed the programmes presented by Mr Sang, who usually presented political
11 programmes." I was in fact quoting directly from the transcript.

12 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

13 MR STEYNBERG:

14 Q. The question, Mr Witness, is how did you know Mr Sang presented political
15 programmes if you didn't listen to his show?

16 A. It may happen that you are trying to tune in to a radio station and then you
17 come across programmes from radio stations such as Citizen and others, and you may
18 also casually listen to someone presenting a programme without really concentrating
19 on it. I didn't regularly listen to Kass FM, even if these were programmes presented
20 in my own language. So as I said before, I was not a Kass FM fan. I liked to speak
21 in Swahili. Even my children do not know my dialect. So I usually listen to the
22 radio, but not to Kass FM programmes.

23 Q. So do I understand you to be saying that while tuning into other programmes
24 you may have come across Mr Sang's show and listened to it casually; is that correct?

25 A. Yes.

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1 Q. All right. I'd like to then move back to the issue of your statement, and we're
2 in open session so please be guarded in your answer -- answers. You told the
3 Chamber yesterday that persons 1 and person 3 on the PIS had told you to make a
4 false statement to the investigators and had provided you with certain information to
5 include in that statement; is that a fair summary of what you told us yesterday?

6 A. Can you kindly repeat your question, please?

7 Q. Yes. Please try to listen carefully, sir. I'm just summarising what you told us
8 yesterday in relation to the making of your statement. I'll break it up to make it
9 easier for you. You told us that you met with person 1 and person 3 in October and
10 they told you to make a statement to the investigators in this case, correct?

11 A. That is correct.

12 Q. And they gave you information and told you certain things that you -- you were
13 to then tell to the Prosecution investigators; is that right?

14 A. That is correct.

15 Q. And you also told us that it was discussed how you were going to give
16 testimony against Mr Ruto and Mr Sang so that you could get some money; is that
17 right?

18 A. I am with you.

19 Q. So were you specifically told to give evidence against both Mr Ruto and
20 Mr Sang?

21 A. It was not false testimony, but testimony that really did not hold water.

22 Q. What do you mean by that?

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, was that answer really responsive?
24 If you looked at your question -- the point I make is whether there might have been
25 an interpretation issue. The witness appears to be answering a question about false

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1 testimony and his mind is now turned to false testimony. I don't believe you used
2 that expression precisely in your question. Maybe we should bring him back to your
3 question.

4 MR STEYNBERG: Yes. Your Honours, I did intend to go back and clearly the
5 answer was not responsive. Whether it was interpretation or not, I don't know. All
6 right, I can do it in either order.

7 Q. I'll repeat my question. Please listen carefully. When you met with persons 1
8 and 3, were you specifically told that the evidence you were going to give to the
9 investigators should implicate both Mr Ruto and Mr Sang? Is that right?

10 A. Yes.

11 Q. Now, your answer when I last asked the question was that this "... was not false
12 testimony, but testimony that really did not hold water." Can you explain what you
13 meant by that, please?

14 A. This is what I meant to say: I was supposed to give testimony that was not
15 actually correct. This means that I had to give a statement that would seem to be
16 credible.

17 Q. So let me understand clearly. The testimony or the evidence you were going to
18 give to the investigators, was it true or was it false?

19 A. You have just used two terms and to answer your question, it was false
20 testimony. You have asked me whether it was true or false testimony and I am
21 going to tell you that it was false testimony.

22 Q. I see. Besides persons 1 and 3, did anybody else tell you what to say in your
23 statement?

24 A. Regarding the preparation of my statement, I know only these two persons:
25 Persons number 1 and number 3. Those were the people who made me to go to

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1 location number 4 to give my statement.

2 Q. All right. And you've told us that persons number 1 and 3 told you that if you
3 went and gave this false evidence to investigators, you would receive benefits such as
4 location overseas, education for your children, et cetera; is that right?

5 A. Yes, that is correct.

6 Q. Okay. Now, besides persons number 1 and person number 3, did anybody
7 else make you any promises of benefits in return for making this statement or this
8 false statement to the Prosecution?

9 A. Mr Prosecutor, I only know those two persons. I do not know anyone else, so I
10 can't tell you about anyone else who told me anything.

11 Q. All right. I'd like to turn then to the interview you had, face to face, with the
12 two investigators in location 4, on 20 to 23 November.

13 You've told the Chamber that parts of what you said in this statement were true and
14 other parts were false; is that right?

15 A. That is true.

16 Q. I would now like to explore with you for a little while which parts of the
17 statement you say are true and which parts you say are false. Do you understand?

18 A. Yes, I understand.

19 MR STEYNBERG: Madam Court Officer, can I please ask that the witness be
20 provided with preferably a paper copy of KEN-OTP-0087-0031_R05?

21 THE COURT OFFICER (via video link): Mr Steynberg, a paper copy of
22 KEN-OTP-0087-0031 redacted version 5 is presented to the witness.

23 MR STEYNBERG: Thank you, Madam Court Officer, And for the Chamber this is at
24 tab 1 of the binder.

25 Q. Mr Witness, could you please turn to page 3 of that document? The ERN is

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1 0033 And the document contains a number of explanations, starting at paragraph 1 on
2 the previous page up until paragraph 13 on page 3. Can you confirm, Mr Witness,
3 were those explanations given to you by the investigators?

4 A. Is it possible for you to help me and translate this statement into Swahili,
5 please?

6 Q. Is it correct, Mr Witness, that throughout the four days -- three days -- four days
7 that you gave this interview with the investigators you spoke to them in English?
8 Isn't that right?

9 A. The interview was conducted in English, but there was no interpreter, and as I
10 mentioned earlier, they asked me to continue to give my statement in English, yet I
11 had some difficulty speaking in English, but in any event, I was able to give the
12 statement after all.

13 Q. So are you saying that you were able to understand the investigators
14 notwithstanding or despite the fact that you were communicating in English?

15 A. Yes, we were able to understand each other, but subsequently I discovered that
16 part of my statement - the statement which I gave - was not consistent with what it
17 could have been if an interpreter had been present.

18 Q. I'll come back to that. Prior to your testifying in this case, is it correct that you
19 were given an opportunity to refresh your memory with this statement by members
20 of the Victims and Witnesses Unit?

21 A. Please kindly repeat your question.

22 Q. Before you started testifying in this case, I think it was on Monday, did
23 you -- do you recall that you had a session with the members of the Victims and
24 Witnesses Unit of the Court at which you were able to go through your previous
25 statements? Is that right?

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1 A. Yes, but I did not have enough time. I asked for more time and I was told that
2 I did not have any more time because the trial would start on Monday. This was a
3 long statement and I did not have enough time to read through its entirety, as I
4 already mentioned.

5 Q. My question is this: During the course of that familiarisation you read the
6 statement in English, didn't you?

7 PRESIDING JUDGE EBOE-OSUJI: Can you hold that question one second. One
8 second.

9 Interpreters, I'm looking at the transcript and what ended the last answer was, "I
10 already mentioned." Is that all that was said, or are there some missing words?
11 The reason I say that is I do not know whether I noticed a certain blip in the feed I
12 received.

13 MR STEYNBERG: If I may assist, what I heard the witness say was "... as I already
14 mentioned." I'm not sure if I heard it correctly.

15 PRESIDING JUDGE EBOE-OSUJI: We can proceed. Let's continue. Okay.

16 MR HOOPER: Your Honour, I don't know if I can intercede --

17 THE WITNESS: (Interpretation) That is correct, your Honour. It's "... as I already
18 mentioned." Thank you.

19 MR HOOPER: -- and bring to your Honours', the Bench's, recollection --

20 THE WITNESS: (Speaks English) Mr President --

21 MR HOOPER: -- because mine's just been reminded of it, and that was the contact,
22 as I understand, between VWU and the Court last week.

23 PRESIDING JUDGE EBOE-OSUJI: Sorry, I -- there was overlapping.

24 MR HOOPER: Sorry.

25 PRESIDING JUDGE EBOE-OSUJI: I did not hear you.

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1 MR HOOPER: Let me start again.

2 PRESIDING JUDGE EBOE-OSUJI: Yes, start again.

3 MR HOOPER: I thought it not inappropriate for me to remind at this juncture the

4 Bench of that correspondence last week, as I understand it, or an email from VWU

5 relating to this witness's quote "panic" unquote and wanting the trial to be on

6 Tuesday as part of the context of what the witness is now saying in terms of the

7 statement. I'd forgotten it and I was just reminded of it and I thought it was a useful

8 thing to bear in mind.

9 PRESIDING JUDGE EBOE-OSUJI: It would have been safer, Mr Hooper, if you had

10 brought that thing up in your cross-examination.

11 Continue, Mr Steynberg.

12 MR STEYNBERG: Yes.

13 Q. Mr Witness, I was just confirming with you whether it was not -- let me make it

14 simpler. When you read your statement last week with the VWU you read it in

15 English; is that correct?

16 A. The VWU staff gave me the statement. They also made available an interpreter

17 to assist me in reading through the statement.

18 Q. I see. Well, as we go through the statement you can advise us of any matters

19 that you say were or any errors that you say were the product of the lack of

20 interpretation, all right?

21 A. That is fine by me. Very fine by me.

22 Q. All right. I'd like to direct your attention, please, to paragraph 15. At

23 paragraph 14 you give certain details that you've already confirmed to be true.

24 Paragraph 15 however, and I'll read it out, states -- well, I'll have to do it with the

25 benefit of the PIS as we're in public session. You say, "In 1997 my parents bought a

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1 land in ..." location number 1 "... and we moved there. So before the violence in
2 2007--2008, I lived with my family in ..." location number 1. "I had a farm and cows."
3 Location number 1 "... is in ..." a certain sub-location I won't mention, and I think we
4 can safely say "... in the Turbo Division of the Uasin Gishu District, Rift Valley
5 Province."

6 Do you see that?

7 A. Yes, I can see that.

8 Q. And, firstly, is that what you told the investigators? Are you satisfied that they
9 recorded correctly what you told them?

10 A. Yes.

11 Q. And is that true, or is that false, that you were living in location number 1
12 in 2007 and 2008?

13 A. No.

14 Q. You mean it's not true that you were living there?

15 A. It is true that my parents went to Turbo. Part of that statement in relation to
16 location number 1 is incorrect. We did not move to location number 1. We moved
17 to location number 3 instead. The location which is not mentioned is the location to
18 which my parents moved before I went to number 3 after my marriage. The name of
19 that location is not on the PIS form and it is after I got married that I moved to
20 location number 3. The date mentioned is in relation to the time when I was in
21 location number 3, instead of location number 1 as appears on the document.

22 Q. So it's not correct that your parents bought land in location number 1 in 1997; is
23 that what you're saying?

24 A. It is not correct.

25 Q. Can you please explain -- well, firstly, is this false statement about where you

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1 were living something that you made up, or is this something you were told by
2 persons number 1 and 3 to tell the investigators?

3 A. This is what I would like to say. Paragraph 15, which you have just read out to
4 me, tallies with what I discussed with number 1 and number 3; namely the
5 information that I was supposed to provide.

6 Q. And can you explain why it was necessary for you to lie to the investigators
7 about the place where you were living in 2007 and 2008?

8 A. Yesterday I already stated what I am going to repeat now. What happened is
9 that number 1 and number 3 told me that, even if I lied, I did not have to live in
10 location number 3. I had mentioned that I would be -- that I was living at location
11 number 1, but that thereafter I will be relocated. And so in any event I would
12 receive something that would put all of this matter in the past and that would enable
13 me to move forward; to move away.

14 Q. Well, I'm afraid that doesn't make much sense to me and so let me ask you some
15 further questions.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, let's avoid the commentary. If
17 you don't understand you can ask another question to try and clarify it, but let's not
18 tell witnesses that what they've said makes no sense to you.

19 MR STEYNBERG: Very well, your Honour.

20 Q. Mr Witness, the lies that you were to tell the investigator -- just let me start from
21 the beginning. What was the reason why you were going to lie to the investigators?

22 A. I do not understand your question. I still do not understand your question.

23 Q. All right. Mr Witness, do you normally tell lies for no reason, or if you tell lies,
24 as you did to the investigators in this statement, is there a reason for telling those lies?

25 A. Yesterday I gave the first reason and I'm going to repeat it now; namely that

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1 when number 1, number 3 and I met in a hotel in Eldoret we had discussions for a
2 period of three hours. They told me that I would be relocated and that I would be
3 given a new name. I would go abroad. I would be given money, my children
4 would be able to go to school and other benefits will flow from that relocation to my
5 benefit and to the benefit of my family.

6 So we were poor people, unemployed, living in those circumstances and for those
7 reasons I felt that I was going to have a better life. I had no choice. That was an
8 opportunity for me not to miss in order to benefit from all those promises.

9 Let me say this, with your leave -- did you ask me to stop?

10 Q. No, I haven't, but have you finished answering the question?

11 A. Now, if you look at the statement you would notice that number 1 and number
12 2 used -- or rather number 1 and number 3 used all possible strategies to train me to
13 say what needed to be said and I bought into it. So without that trap I would not be
14 here before you testifying.

15 Q. So why was it necessary, according to persons number 1 and 3, for you to lie
16 about the place where you lived?

17 MR KIGEN-KATWA: With your permission, Mr President, before the witness
18 answers, may I take issue with the issue of translation. At line -- the witness said
19 that with person number 1 and number 2 used every strategy to persuade me and not
20 to train me. "Kusha wishi," that is the Kiswahili word. I think there is a total
21 difference between "training" and "persuading" and I thought it's something that I
22 really need to highlight.

23 PRESIDING JUDGE EBOE-OSUJI: Witness, we want to clarify --

24 THE WITNESS: (Speaks English) Yes, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Yes, we want to clarify from you something you

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1 said in your last answer in relation to person number 1 and number 3. Did you say
2 that they used all strategy to train you or did you say they used all strategy to
3 persuade you? Which was it that you said?

4 THE WITNESS: (Interpretation) Mr President, when I used the word "kusha
5 wishi," it means having a discussion with somebody wherein there is an intention to
6 share ideas in such a way as to convince the other persons that what he is being told is
7 true so that the person may change his or her position. So that is -- that was in
8 relation to the stakes or promises that I mentioned in the statement.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you. So the words you used was "kusha
10 wishi"?

11 THE WITNESS: "Kusha wishi." (Speaks English) "Convince" in English.

12 PRESIDING JUDGE EBOE-OSUJI: "Convince," thank you.

13 THE WITNESS: (Speaks English) Yeah.

14 PRESIDING JUDGE EBOE-OSUJI: And we will continue, Mr Steynberg.

15 MR STEYNBERG: Thank you, Mr President.

16 Q. Mr Witness, my last question was not answered yet, and that is, why was it
17 necessary according to persons number 1 and 3 for you to lie to the investigators
18 about the place where you lived?

19 A. You just put a question to me to find out whether I am the one who made the
20 statement -- my statement, and I said "Yes." Then you asked me whether I had
21 anything to say about the statement, and I said that "Some of the information in the
22 statement is correct, while some of the information is incorrect."

23 Now, regarding paragraph 15, let me state again and provide further explanations.
24 Number 1 and number 3 gave me some information and told me that this was the
25 information that I should give to the investigators when they ask me questions

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1 amounting to a false statement, but that I should make the statement to appear to be
2 credible. I did not understand why they brought me into this arrangement. What
3 they told me on that day when we met at that hotel is that I should make or give a
4 statement which is incorrect, and that was in relation to the -- to a business pertaining
5 to two people. It is as if one were adding some salt to a story and I don't know what
6 further information I can provide.

7 Q. Well, Mr Witness, I'm afraid you've given a long explanation, but you haven't
8 addressed the question which I put to you, and I will -- I won't move on until we have
9 an answer. So I'm not asking you about the circumstances in which you came to
10 make the statement. All I want to know from you is why was it necessary to lie
11 about the place where you were living? Can you just answer that question, please?

12 A. The reason is as follows -- the reason is as follows: Persons number 1 and 3
13 provided me with information for this statement against a promise. I don't know
14 how else I can explain this to you. Maybe you want me to give me -- you want to
15 give me a little more time to think through a possible answer for you?

16 PRESIDING JUDGE EBOE-OSUJI: All right, Witness. The Prosecutor is asking this:
17 Did person number 1 and person number 2 tell you to lie about where you lived? If
18 they did, why would they do that? Do you know why they would tell you to lie
19 about where you lived?

20 THE WITNESS: (Interpretation) Yes, you know, there was no difference between a
21 lie and the truth. They had made promises to me. And even if everybody was
22 going to know that information, I would be -- I would still be relocated and I would
23 have another name and the statement would completely be meaningless. They told
24 me that I was going to be relocated, I was going to have money, my life was going to
25 improve and that is why I said that with or without the lies there would be no

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1 consequences because no one would come after me and because I would be living in
2 another place.

3 MR STEYNBERG: Thank you, your Honour.

4 Q. So, Mr Witness, it is correct, isn't it, you -- well, can you confirm that you've
5 never lived in location number 1? You've never lived there; is that right?

6 A. I have never lived there.

7 Q. You've told us on a number of occasions today and yesterday that it was
8 important that your statement should seem credible; is that right?

9 A. That is correct.

10 Q. And the benefits that you were expecting to get from the investigators and from
11 the Prosecution - relocation, education, et cetera - was it important that the
12 investigators believed what you told them?

13 A. Yes. Mr President, I would like to elaborate here.

14 PRESIDING JUDGE EBOE-OSUJI: Go on, but remember we are in public session.
15 So try not to put in identifying information, but go on.

16 THE WITNESS: (Interpretation) I wanted to explain paragraph 15. I said that
17 when I had a discussion with these two people we agreed that all three of us -- well,
18 they told me that they would be leaving the country, and I was also misled into
19 believing that I would also be relocated.

20 Yesterday, as I said, these people had already been admitted into a programme that
21 I was not aware of, and this programme (Redacted) These people
22 were receiving money. I do not know whether this was money for the victims. No
23 one was really aware of everything that was going on. That is why these people
24 misled me and I believed that we would be relocated. That is why I gave that
25 statement.

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1 When I left the location --

2 PRESIDING JUDGE EBOE-OSUJI: One second now. Let us return to the
3 Prosecutor's question. What he's asking you is this: Keeping in mind -- keeping in
4 mind the benefits you were expecting to receive from the investigators, from the
5 Prosecution, benefits like relocation, education and things like that, keeping those
6 benefits in mind, was it important to you that investigators should believe the story
7 you were telling them? That's the question Mr Steynberg is asking you.

8 THE WITNESS: (Interpretation) Mr President, can you kindly repeat your
9 question please?

10 PRESIDING JUDGE EBOE-OSUJI: Yes. It's this, that you were expecting certain
11 benefits from the Prosecutor -- or from the Prosecution office and investigators, you
12 were expecting certain benefits from them, benefits like relocation, education and
13 things of that nature. Keeping those things in mind, keeping that sort of benefit or
14 those benefits in mind, was it important to you that the story you told the
15 investigators is a story they would believe?

16 THE WITNESS: (Interpretation) One of the reasons for that was that they asked
17 me to give a false statement because everything we discussed was related to the case
18 that we had in mind. We -- I was told that if you said this, it will seem credible, it
19 would mean that you have information for the testimony. That is what they said.

20 PRESIDING JUDGE EBOE-OSUJI: Does that mean that you wanted to tell the
21 investigators a story or stories that would seem credible to them?

22 THE WITNESS: (Interpretation) Who is supposed to believe my statement, the
23 investigators or those two persons?

24 PRESIDING JUDGE EBOE-OSUJI: The investigators. Was it important to you for
25 the investigators of the Office of the Prosecutor to believe you? Was that something

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1 you wanted?

2 THE WITNESS: (Interpretation) Yes, this was supposed to give some weight to my
3 statement.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

5 MR STEYNBERG: Thank you, your Honours.

6 Q. And bearing in mind you had never lived in location number 1, what do you
7 think would happen if investigators went to location number 1 and asked the people
8 living there if they knew you?

9 A. It would be a mistake.

10 Q. A mistake by who?

11 A. On my part.

12 Q. And if the investigators found that you did not, in fact, live in location number 1,
13 do you think you still would have got all the benefits you were expecting?

14 A. Well, you know, based on what they told me -- well, let me explain. They told
15 me all those things because investigations had been carried out at location 4. If the
16 investigation had been carried out correctly, they would have gone to where we were
17 and in all the surrounding areas, but these people told me that "Those other people
18 are very far away, they will not come here," and it is for that reason that we gave that
19 statement the way we did.

20 Q. All right. Let me just clarify two things: Firstly, when you say "they told me,"
21 you're referring to persons 1 and 3; is that right?

22 A. Yes.

23 Q. And then you said that "They told me ... those things because investigations had
24 been carried out at location 4." Is that what you meant to say, location 4 on the PIS?

25 A. Yes.

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1 Q. I see. One last question before I move on: Between location 3 and location 1,
2 which one is closer to Turbo town centre?

3 A. Location 3.

4 Q. Yes, in fact, if I understand your evidence, location 1 is quite far away from
5 Turbo town centre; is that right?

6 A. That's correct.

7 Q. When you gave your statement to the investigators and when you were having
8 these discussions with persons 1 and 3, were you aware that the charges in this
9 case -- or, the relevant charge in this case relates to Turbo town itself? Did you know
10 that?

11 A. Yes.

12 Q. All right. The last sentence of paragraph 15 reads, "In the past, the population
13 of ..." location 1 "... was mixed but after the violence in 1992, most of the Kikuyu had
14 left ..." location 1 "... and some had gone to Turbo town." Is that correct, or is that
15 incorrect?

16 A. Are you referring to paragraph 16?

17 Q. No, I said paragraph 15, and it's the last sentence. Just listen to the interpreter.
18 I'll read it out: "In the past the population of ..." location 1 "... was mixed but after the
19 violence in 1992, most of the Kikuyu had left ..." location 1 "... and some had gone to
20 Turbo town." Is that right?

21 A. That is correct.

22 Q. And is that what you told the investigators?

23 A. Regarding the movement of the population, that is true. Even though I was
24 not present there at that time, I heard that those people moved at that time because of
25 the war.

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- 1 MR STEYNBERG: Your Honours, may we go briefly into private session for the first
2 two sentences of paragraph 16, please.
- 3 PRESIDING JUDGE EBOE-OSUJI: Private session.
4 (Private session at 10.45 a.m.) * Reclassified as Open session
- 5 THE COURT OFFICER: We are in private session, Mr President.
- 6 MR STEYNBERG:
7 Q. Mr Witness, at paragraph 16 you told the investigators, "(Redacted)
8 (Redacted)
9 (Redacted)?
- 10 A. (Redacted)
- 11 Q. (Redacted)
12 (Redacted) That's correct, is it?
- 13 A. That is true.
- 14 Q. (Redacted)
15 (Redacted) Is that right?
- 16 A. That is true.
- 17 Q. Skip the next sentence and at the very end of the page you say, going over to the
18 next page, "In Turbo town, the Kikuyu are the majority though it is a Kalenjin area
19 originally." Is that right?
- 20 A. Yes.
- 21 Q. "The Kalenjin lived in the farms outside town." Correct?
- 22 A. That is true.
- 23 Q. "(Redacted) from Turbo town." I think you've already
24 confirmed that; is that right?
- 25 A. That is correct.

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1 Q. And you say, "I have drawn a sketch for this area to mark these locations." Did
2 you draw a sketch for the -- for the investigators?

3 A. Yes, that is true.

4 Q. All right. We'll have a look at that in a moment, but while we're in private
5 session I just want to clarify two more aspects: Firstly, the next paragraph,
6 paragraph 17, it starts, "Asked why I wanted to speak to the OTP of the ICC ...", that's
7 the Office of the Prosecutor of the ICC, "... I explained that (Redacted)
8 (Redacted) Is that true?

9 A. (Redacted) in Turbo town, yes.

10 Q. (Redacted) in Turbo town?

11 A. Yes, all the houses there were burnt down. (Redacted)

12 (Redacted) Even the houses of (Redacted) people were (Redacted) burned.

13 Q. Thank you. And finally you say, "(Redacted)
14 (Redacted) Is that right?

15 A. That is not correct.

16 Q. I see. Why did you tell that to the investigators?

17 A. This was simply to enhance my statement, but that detail was not true.

18 Q. All right. And finally in private session, you mentioned earlier that -- while we
19 were in public session that your parents had moved to a location that was not on the
20 PIS sheet. Can you tell us what was that location, please?

21 A. Can you explain to me from where they left?

22 Q. Well this is information that you told us, Mr Witness, but when I asked you
23 about paragraph 15 whether your parents had bought land in location 1 you told
24 me -- and I don't have it in front of me, but you told me words to the effect that they
25 moved to another location which is not on the PIS. I want to know from you what

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1 that location was. It appears to be between the years 1997 and 2008.

2 A. The location at which they went to live is not on the PIS, but it is in (Redacted).

3 Q. Is that --

4 THE INTERPRETER: It is actually (Redacted), corrects the Swahili interpreter.

5 MR STEYNBERG: Yes, and we've had that before. (Redacted)

6 Q. Is that the correct spelling?

7 A. It is (Redacted)

8 Q. And just to locate it, is (Redacted) location 1 and Turbo town?

9 A. Yes, that is correct.

10 MR STEYNBERG: All right. Your Honours, I intend to deal with the sketch map at

11 tab 2. I believe we can do this in public session with reference to the PIS.

12 Q. Mr Witness, we're going to look at the sketch map that you drew now. I just

13 want to remind you that we will do this in public session, so when you are pointing

14 out locations please try to use the PIS as long as possible. And can I please ask you,

15 if the court officer can provide you with a pen, if you can add to the list of your

16 locations on the PIS -- if you can add as location number 5 (Redacted)? Could you

17 write that in underneath location 4? Can you do that?

18 A. Yes.

19 MR STEYNBERG: Your Honours, may we then go back into private (sic) session for

20 the remainder of the session?

21 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.

22 (Open session at 10.56 a.m.)

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

24 MR STEYNBERG: Madam Court Officer, can you please either call up or provide a

25 copy of annex 1 to the statement -- to the witness's statement? That's

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1 KEN-OTP-0087-0054. As I said previously, that's at tab 2 of the Prosecution bundle.

2 THE COURT OFFICER (via video link): Mr Steynberg, an electronic copy of

3 KEN-OTP-0087-0054 is presented to the witness.

4 MR STEYNBERG: And can I just confirm that this is not broadcast outside the
5 courtroom?

6 THE COURT OFFICER: Mr President --

7 THE COURT OFFICER (via video link): No, Mr Steynberg. This document is only
8 shown to the witness from our side.

9 THE COURT OFFICER: And, Mr President, I confirm that likewise here.

10 MR STEYNBERG: I'm grateful. Thank you.

11 Q. Mr Witness, if you look at the bottom right-hand corner of this sketch, is that
12 your name and signature that appear there?

13 A. Yes.

14 Q. And is this the sketch that you -- we referred to a moment ago when we were
15 reading your -- your statement; is that right?

16 A. Yes.

17 Q. Can you confirm, sir, whether the details contained in this sketch are correct
18 and accurate as far as you are aware, or if there's anything in here which is false or
19 inaccurate?

20 A. Some of the details are correct, while others are not.

21 Q. I'd like you to please point out to us those details that are not correct.

22 Remember we're in open session, so please be careful.

23 A. I do not understand you. We are in open session. How do you expect me to
24 give you explanations about this?

25 MR STEYNBERG: Your Honours, it seems we will have to do this in private session,

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- 1 but I note the time. Perhaps we can resume this after the short adjournment?
- 2 PRESIDING JUDGE EBOE-OSUJI: Yes, we will take our morning break now and we
- 3 will come back in 30 minutes.
- 4 The Court will rise.
- 5 THE COURT USHER: All rise.
- 6 (Recess taken at 11.00 a.m.)
- 7 (Upon resuming in open session at 11.37 a.m.)
- 8 THE COURT USHER: All rise.
- 9 Please be seated.
- 10 THE COURT OFFICER: We are in open session, Mr President.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 12 Mr Steynberg, please continue.
- 13 MR STEYNBERG: Thank you, your Honours. Just before the adjournment it
- 14 became apparent that the issue I need to deal with about the sketch map will have to
- 15 be done in private session. May we please proceed to private session?
- 16 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 17 (Private session at 11.38 a.m.) * Reclassified as Open session
- 18 THE COURT OFFICER: We are in private session, Mr President.
- 19 MR STEYNBERG: Thank you.
- 20 Q. Mr Witness, do you have the sketch map annex 1 before you?
- 21 Mr Witness, do you hear me?
- 22 A. (Speaks English) Yes.
- 23 Q. Do you have the sketch map in front of you?
- 24 A. (Speaks English) Yeah.
- 25 Q. All right.

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1 A. (Speaks English) Yes, sir.

2 Q. You told us before the break that there were certain things on the sketch map
3 that were incorrect and I asked you to point those out, please. Please go ahead.

4 A. Can I mention the names?

5 Q. Yes. We're in public session. You may speak -- sorry, private session. You
6 may speak freely.

7 A. Where you have (Redacted) there is a sketch behind. That is the
8 location at which I used to live, which is -- that is not true. That is not the location at
9 which I used to live. Then where you see "Farouk Kibet house," that also is incorrect.
10 Then if you look slightly above "Turbo Center," where you see "GSU Station," that is
11 not true. Nothing of that sort exists. Then where you see Ruto's house, I am not
12 sure about that.

13 Q. All right. Are those all the things that are incorrect on this map?

14 A. The items in annex 1 as I have identified are incorrect, but if you give me a little
15 more time I will tell you whether there are other items which are also incorrect.

16 Q. Well, let's just -- let's just deal firstly with those three you've identified so far
17 and then we can -- four and then we can look at more. The first one you pointed to,
18 (Redacted) now we understand that you say today that you did not live there,
19 but what I'm interested in is: Is it correct that (Redacted) is located where
20 you have drawn it on the map?

21 A. Yes, that's correct.

22 Q. So looking at this map, if one starts at Turbo Centre and heads in a downward
23 direction, you cross a bridge over the Sosiani River; is that correct, or is that incorrect?

24 A. From Turbo Centre down to the bridge, that is correct. The road is correct.

25 The only problem is with the approximate distance. I'm not sure about that. In any

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1 event, the sketch as it is in that area is accurate.

2 Q. Okay, thank you. And travelling -- (Redacted)

3 (Redacted) you pass the Turbo Police Post where you've drawn it
4 there?

5 A. Please repeat your question. I did not quite understand it.

6 Q. Yes. I'm following your map and I'm following the road you've drawn
7 heading downwards towards what you've marked as (Redacted)

8 Your map indicates that you would then pass on your left-hand side as you are
9 travelling the Turbo Police Post; is that correct?

10 A. As I already told you, I do not live in (Redacted) I live next to the (Redacted)
11 (Redacted)

12 (Redacted)

13 Q. All right. Now, Mr Witness, I did not ask you where you live. Can I ask you
14 please to listen to the question and focus on the question I'm asking you, all right?

15 I'll repeat. Is the map correct when it indicates, as you head downwards towards
16 (Redacted) you will pass the Turbo Police Post on the left? Is that right?

17 A. Well, the manner in which you are asking your questions is difficult for me to
18 understand. Now, you say "passing." Where am I passing and where am I going
19 and where am I coming from?

20 PRESIDING JUDGE EBOE-OSUJI: Now, Witness, can you look at that sketch. Do
21 you see "Turbo Police Post"? Do you see it on the sketch?

22 THE WITNESS: (Interpretation) Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Is it correct where it is on the map?

24 THE WITNESS: (Interpretation) Yes, it is at that spot indicated on the sketch.

25 PRESIDING JUDGE EBOE-OSUJI: And downward you also see (Redacted) Do

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- 1 you see that, (Redacted)
- 2 THE WITNESS: (Interpretation) Yes, I can see it.
- 3 PRESIDING JUDGE EBOE-OSUJI: And on top, on top above "Turbo Police Post," do
- 4 you see "Turbo Center"? Do you see that?
- 5 THE WITNESS: (Interpretation) Yes, I can see it.
- 6 PRESIDING JUDGE EBOE-OSUJI: Now, keeping in mind where Turbo Centre is, as
- 7 you've said you've seen it, and where (Redacted) is, are you saying that the police post
- 8 is correct where it is?
- 9 THE WITNESS: (Interpretation) Yes, that's exactly the location.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 11 MR STEYNBERG: I'm grateful, your Honour.
- 12 Q. (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 A. Yes, that is correct.
- 16 Q. All right. And (Redacted) according to this map, lies in the -- (Redacted)
- 17 (Redacted) is that right?
- 18 A. Yes, that's correct.
- 19 Q. Just above (Redacted), you've drawn what I
- 20 assume are supposed to be some buildings and next to one appears the word
- 21 (Redacted) Do you see that?
- 22 A. Yes, I do.
- 23 Q. Is that correct what appears there?
- 24 A. Yes, that's correct.
- 25 Q. (Redacted) Can you tell the Chamber?

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1 A. (Redacted) is someone who used to live in that location (Redacted)

2 Q. I see. Now, I'm going to ask you please to add that name to the PIS as name
3 number 13 so that we can also refer to him in public session. I see the record has the
4 spelling correctly.

5 All right, I'm nearly done with this exhibit, Mr Witness. If we follow the road down
6 (Redacted) we pass what is labelled as "Another Ruto's Farm;" is that
7 correct?

8 A. That Ruto's farm is no longer Ruto's farm, but the road still exists.

9 Q. In 2007, did it belong to Mr Ruto?

10 A. I am -- I'm not sure. I don't know whether he had bought that piece of land.

11 Q. And below that we see a square with (Redacted) written under it. What does
12 that represent?

13 A. (Redacted)

14 (Redacted)

15 Q. I see. Just one point of clarification. (Redacted) what ethnicity was he?

16 A. He was Nandi.

17 Q. Thank you. (Redacted)

18 (Redacted) is that right?

19 A. I know that the name is Turbo Police Post but because (Redacted)

20 (Redacted) it is also that way, but on the signpost at the location what is written is
21 "Turbo Police Post."

22 Q. All right, but what I'm trying to understand is that area where you've indicated
23 the Turbo Police Post, (Redacted)

24 A. Yes, that's correct.

25 Q. I see. So just to clarify then the two other things or the other things you

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1 mentioned. Farouk Kibet's house on the left, what is incorrect about that? You said
2 that that was not true where you've written it there.

3 A. It is not correct to state that Farouk Kibet lived there or lives there.

4 Q. So where on this map, if it is on this map, would Farouk -- did Farouk Kibet
5 live?

6 A. I personally never set foot at Farouk Kibet's house, but I had asked someone
7 who told me that he used to live at Chepsaita.

8 Q. And the place you've indicated on the map as Farouk Kibet's house, is that at
9 Chepsaita?

10 A. Yes, it is in that area, although I never went to his house, but he lived in
11 Chepsaita.

12 Q. We had -- I see they've got the correct spelling now, great.

13 So if I understand you that the location is correct but this is information that was told
14 to you by somebody else; is that right?

15 A. Yes, that is correct. It is someone else who told you. I never went to his
16 house, but someone else told me that he used to live in Chepsaita.

17 Q. And similarly with what you've indicated as Ruto's compound, what is correct
18 about what is recorded on the map -- what is incorrect about what is recorded on the
19 map?

20 A. When I went to his house, I did not go there through the road which appears on
21 the sketch; I went by a shortcut and (Redacted) to go to his compound. So I
22 do not know exactly where the house or the compound is located. I went to his
23 compound a very long time ago, a long time ago when he invited people to come to
24 his compound.

25 Q. In what year was that approximately?

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1 A. I believe it was in 2002.

2 Q. I see. So if I have you correctly, Mr Ruto's compound is somewhere in that
3 area but you're not sure if the precise location on the map is correct; is that right?

4 A. Yes. I went thereby a shortcut. I never went there by the two roads indicated.
5 When we went there it was by a shortcut. There are a number of shortcuts that lead
6 to that compound, but when I went there I never went through the main road.

7 Q. All right. Finally before we move on, you've indicated along the
8 Uganda-Nairobi Road three locations: From the left "Mwamba Centre,"
9 M-W-A-M-B-A; then to the right of Turbo there is "Kosachei," K-O-S-A-C-H-E-I; and
10 then to the right of that "Juakali," J-U-A-K-A-L-I. Are those correct on the map?

11 A. Yes.

12 Q. Thank you. I think we can move on from that for the moment.

13 PRESIDING JUDGE EBOE-OSUJI: Are you able to do better with the location of
14 (Redacted)?

15 MR STEYNBERG:

16 Q. One further question, Mr Witness. Can you indicate exactly on this map where
17 (Redacted)? And if
18 you like -- well, no, you can't write on it, try to describe to us where it is, please.

19 A. Yes, I can. You see where it is written "Turbo Police Post", it's around there.

20 THE INTERPRETER: The Swahili interpreter points out that there were overlapping
21 speakers and thus some microphone cut out.

22 MR STEYNBERG:

23 Q. All right. Just to make sure we got everything, you say it's near where the
24 words "Turbo Police Post" appears on the map. Is there anything else that you
25 added?

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1 A. No.

2 MR STEYNBERG: Does that answer your Honour's question?

3 PRESIDING JUDGE EBOE-OSUJI: Let me try.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 THE WITNESS: (Speaks English) (Redacted) (Interpretation) (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: What about on the other side of the road where

13 the map indicates (Redacted)?

14 THE WITNESS: (Interpretation) Yes, yes. However, over there on that side there

15 are two different places where it is written (Redacted) There is a name that I forget,

16 but the two parts -- well, one part is called (Redacted), and the other is (Redacted) but

17 with something added to it, something -- another word is added to (Redacted) for that

18 particular location.

19 PRESIDING JUDGE EBOE-OSUJI: What I'm trying to determine now is this: To

20 the extent that you can help, how far (Redacted) could go in all directions? The

21 (Redacted) you had in mind where you live, where you lived, (Redacted)

22 (Redacted) Do you see

23 that?

24 THE WITNESS: (Interpretation) No.

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

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1 MR STEYNBERG: Thank you, your Honour.

2 MR KHAN: Mr President, can I just note that your last comments were not picked
3 up on the microphone; your last observations.

4 PRESIDING JUDGE EBOE-OSUJI: I merely said, "I leave it there." Yes.

5 MR STEYNBERG: All right.

6 Q. Now, I'm going to move onto the next section of your statement --

7 MR HOOPER: Before my friend does that, and I assume you want to exhibit the
8 sketch map, would it be helpful if we had some explanation as to the red and the blue
9 and what appears to be different writing and different spelling, tellingly "centre" is
10 spelt in different ways, and how the sketch actually came into existence? We know
11 the witness has adopted it largely with those exceptions, or with those comments, but
12 it would be helpful, perhaps, just prior to -- if there's yet to be a request for it to be
13 exhibited to just understand how it came into existence.

14 MR STEYNBERG: Well it seems to me that that might be a fruitful area for
15 cross-examination, but let me confirm one or two aspects.

16 Q. Mr Witness, when we were looking at paragraph 16 of your statement, the last
17 sentence I read out, which you confirmed, was "I have drawn a sketch of the area
18 (Annex 1) and marked these locations."

19 So I suppose the question is: Is this this sketch map that you drew that I've just
20 shown to you as annex 1?

21 A. Yes, I did.

22 Q. And you can see as it's a colour copy that there are different coloured pens that
23 are used. There is a red pen, a blue pen and possibly even a green pen. Why are
24 there different colours on this sketch plan; sketch map?

25 A. I was asked to do it that way, but there was no reason provided to me. Some

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1 places show roads, there are some bridges in other places, police post. I was asked
2 to do the sketch with different coloured pens, but I don't know why.

3 MR STEYNBERG: Thank you, your Honours. I'm content to leave it at that.

4 Q. Now, before we go back into private session, can I take you back to your
5 statement, page 4, the ERN is 0034 at paragraph -- well, at the heading "NGOs and
6 other organisations".

7 Now, at paragraph 19 you talk about working for (Redacted) and I don't think
8 it's necessary to go through that, but what I'm interested in is paragraph 20 and you
9 can tell me which of this is correct and which is incorrect. I'll read from the first line,
10 "Then, in August of 2007 I (Redacted)

11 (Redacted) Is that correct, or is
12 that incorrect?

13 A. That is not true.

14 Q. And why is it that you -- well, did you tell that to the investigators what's
15 recorded here?

16 A. Yes, I told them that.

17 Q. Why did you tell them that; that lie?

18 A. As I told you yesterday, (Redacted) was represented by two individuals, person
19 number 3 and person number 2 on the PIS form, the persons on that list. I don't
20 know what number 3 had produced by way of a report for what I wrote would
21 corroborate with what he wrote, but I didn't know what (Redacted) did, and I didn't
22 know about its headquarters. I was asked not to talk about (Redacted)
23 (Redacted) but rather to talk about (Redacted) and that happened when I was with
24 person number 1 and person number 3 in a hotel.

25 Q. Thank you, Mr Witness.

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1 A. I was asked --

2 THE INTERPRETER: Overlapping speakers.

3 "I was asked to leave (Redacted) and then go to (Redacted), " correction from the Swahili
4 interpreter.

5 MR STEYNBERG:

6 Q. All right. Now, Mr Witness, there's no need to keep repeating what happened
7 at the meeting in Eldoret. You've told us that many times. Please just listen to the
8 questions. What I want to know again is why was it necessary to falsely tell the
9 investigators that you were working for the (Redacted)? What was the purpose of
10 that lie?

11 A. It was for the simple reason that person number 3 had made a statement, and it
12 was necessary for my statement to bear out person number 3's statement.

13 Q. So -- so -- do I have the floor? So, Mr Witness, you confirm, do you, that
14 person number 3 had made a statement already, is that what you're saying, and that
15 you needed to corroborate that statement?

16 A. Yes.

17 THE INTERPRETER: Interpreter correction: At the end of the previous reply the
18 witness said, "I learned that later."

19 MR STEYNBERG: Sorry, I'm not quite sure I follow.

20 Q. What did you learn later, Mr Witness?

21 A. I learned about it later because what was written in my statement, and the
22 statement is the statement of person number 1 showing -- even person number 1
23 didn't know what -- so I produced a statement that was incorrect, because I didn't
24 know anything about (Redacted) I belonged to (Redacted).

25 Q. All right, Mr Witness. Please listen to the question. You haven't answered it.

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1 What did you learn about later? What was it that you learned later? I need to
2 follow that, please.

3 A. I learned that person number 3 had produced a statement.

4 Q. And when you say you learnt about it later, when was that? What was the
5 date more or less that you learnt that piece of information?

6 A. I don't remember, but when I left place number 4, I then learned that that person
7 had already left.

8 Q. So was it only after you left place number 4, after having made your statement,
9 that you found out person number 3 had made a statement? Is that what you're
10 telling us?

11 A. Yes.

12 Q. So when you said earlier that it was important that you corroborate person
13 number 3's statement, when did you find that out?

14 A. I'm saying that the person who involved me in this whole scheme, I didn't know
15 the people who were interviewing me. He was the one who got me involved in all
16 of this. Through him those people called me on the telephone and sent me money
17 for transportation. He was aware of everything that was going on because he knew
18 how to plan this whole scheme, this whole story.

19 Q. Now, Mr Witness, I'm not asking you about what person number 3 knew. I'm
20 asking you about what you knew. Do you understand the difference?

21 A. Sir, please ask your question again.

22 Q. Earlier, and I'm looking at page 40 from line 12, I asked you why it was
23 necessary to falsely tell the investigators that you were working for the (Redacted)
24 Your response was, "It was for the simple reason that person number 3 had made a
25 statement, and it was necessary for my statement to bear out person number 3's

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1 statement." In fact I heard "corroborate," but "bear out" might be correct as well.

2 So my question is did you -- when did you find out that it was necessary for your
3 statement to bear out or to corroborate person number 3's statement?

4 A. (No audible response)

5 Q. I see the interpreters are finished interpreting. What's your answer?

6 A. I haven't really understood your question. I only half-understood it. If you
7 could kindly repeat it, please?

8 MR STEYNBERG: Your Honour, I think the point is made. I'll move on.

9 MR HOOPER: Well, may I say that my friend's questions, first of all, are not clear
10 and they weren't clear particularly yesterday with respect, but yesterday we went
11 through this at considerable length.

12 Now, we bear in mind this is his witness and, though I haven't been getting on my
13 feet when there's been leading questions because I appreciate the position and the
14 degree of -- shall we say, we're not objecting over much, but it was quite clear
15 yesterday that this witness was saying, "It seemed to me they knew what was going
16 on." This is when he was asked if he knew they'd made -- made statements. "It
17 seemed to me they knew what was going on. They didn't tell me everything about
18 their statements, but they told me how my statement should be produced so they'd
19 look credible and told me how to get in contact with investigators."

20 He made it plain yesterday what the position was and that he thought also that
21 number 3 I think had already met or spoken to the Prosecution.

22 We're going over this again, which is a deeper form of cross-examination to which my
23 friend should, in fairness to the witness, conduct knowing full well the context,
24 eventually at great length, of the witness's testimony yesterday.

25 MR STEYNBERG: Your Honours, my learned friend quotes one portion of the

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1 witness's testimony yesterday. In other places in the testimony, I think if he reads
2 further, he will find that the witness said something to the opposite. The reason why
3 I revisited this issue was because in an earlier answer the witness indicated that he
4 had in fact made a statement when that was not his position yesterday, but perhaps
5 this is a matter which can be rather more fully addressed in argument and I was in
6 fact moving away from this issue. I'm not sure why my learned friend is objecting
7 now when I was actually moving away from the issue.

8 PRESIDING JUDGE EBOE-OSUJI: All right, then let's move away.

9 MR KIGEN-KATWA: Mr President, may I draw your attention to the witness. He
10 has kept his hand up. I think he wants your attention.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, Witness, you want to speak to the Judges?

12 THE WITNESS: (Interpretation) Your Honour, as I said yesterday, I am here to tell
13 the truth and I am sticking by that. I'm asking the Prosecutor, the question that he
14 put to me I understood it differently. I asked him to repeat his question and put it
15 differently so I could answer.

16 So, your Honour, please help me, because yesterday you said to me that if I didn't
17 understand a question I had to ask for it to be repeated so I could give a proper
18 answer. Otherwise, I might give an answer that doesn't correspond to the question
19 asked of me. So once again I'd like to ask for him to repeat his question.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Your position is noted,
21 but the Prosecutor wants to move away from this subject and we will move away,
22 unless -- we do want to move away, right, Mr Steynberg?

23 MR STEYNBERG: I confirm that, your Honours. I think this --

24 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. We'll move away from this. We've
25 noted what you've said.

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1 MR STEYNBERG:

2 Q. Mr Witness, to wrap up the issue of paragraph 20 of your statement, all the
3 other details that follow about your work - alleged work - for (Redacted) I presume also
4 you say that's also false? Do you confirm that?

5 A. Yes, it is not true. I never worked for (Redacted).

6 Q. All right. Then in paragraph 21 you say, "After the violence in 2007-2008, I was
7 (Redacted)" Is that correct?

8 A. That is correct.

9 Q. And for which organisation were you doing that (Redacted)?

10 A. It was within the organisation called (Redacted)

11 Q. And that was in 2007 and 2008, was it? Is that correct?

12 A. Yes, that's right.

13 Q. Because I have it -- and correct me if I am wrong, but I have it that you told us
14 earlier that you worked for the (Redacted). Which is correct?

15 Did you work there in 2007, 2008 or 2009?

16 A. I no longer remember clearly, but I think I worked for (Redacted) after the 2007/2008
17 conflict. After that conflict I started to work for them, but I no longer remember the
18 exact year. All I know is that it was after the conflict that I started working for (Redacted)
19 and (Redacted).

20 Q. I see. Now, I know we've been in closed session for a long time, but let me
21 deal with just one more matter. Can you please --

22 MR HOOPER: Could I just point out line 45, line 10?

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, do you see what Mr Hooper is
24 referring to?

25 MR STEYNBERG: Yes, yes. I don't recall hearing that, but I see it on the transcript

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1 and so let me just clarify.

2 PRESIDING JUDGE EBOE-OSUJI: Actually I did recall hearing that and you said I
3 was coming back to it, but Mr Hooper caught it.

4 MR STEYNBERG:

5 Q. So your earlier answer is recorded, when I asked you if you were -- what
6 organisation were you working for when you were (Redacted) you said, "It
7 was within the organisation called (Redacted)" Which organisation was it, sir?
8 Was it (Redacted), or (Redacted)?

9 A. I used to work for two different organisations, (Redacted) and (Redacted) was
10 (Redacted) whereas (Redacted)

11 Q. Yes, we've understood that, Mr Witness. What I want to know is which of
12 those two organisations were you working for when you were (Redacted)
13 (Redacted)?

14 A. I was working for (Redacted)

15 MR STEYNBERG: Thank you, your Honour. I'll move on.

16 Q. Please turn over the page to ERN-0035 and look at paragraph 25.

17 PRESIDING JUDGE EBOE-OSUJI: Do we remain in private session, or go to public?

18 MR STEYNBERG: Your Honour, this deals with the witness's political affiliations, so
19 for this one question I think we should.

20 Q. I'm going to read you the first paragraph here and you can tell me if it's correct
21 or incorrect. Quote, "In 2007 when the election was approaching, I went to a meeting
22 at Ruto's place and thereafter (Redacted)
23 (Redacted)" and

24 then you give some examples. Did you tell that to the investigators, firstly?

25 A. Yes.

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1 Q. And was that correct or incorrect?

2 A. Part of that answer is incorrect, while the other part is correct. The incorrect
3 part is the reference to the point that I went to Mr Ruto's place, whereas I did not go
4 there.

5 Q. Why did you tell the investigators that you went to Mr Ruto's place?

6 A. As I've already told you, it was following our discussion with persons number 1
7 and 3.

8 Q. Yes, we know that you were told to say these false statements and once again
9 I'm interested to know why? Why was it necessary for you to lie on this point and
10 say that you went to Mr Ruto's house?

11 A. It was in order to embellish my story when I met the interviewer so that I
12 should appear to be credible in my narration. You see, I also had to be -- to appear
13 to be credible personally, and my story also had to be or had to appear to be credible
14 particularly in relation to those persons who had been accused in this case.

15 Q. If I understand your evidence, the whole purpose of this statement you were
16 giving was in order to give evidence against Mr Ruto and against Mr Sang in this case.
17 Did I understand you correctly?

18 A. Personally I did not want them to be prosecuted or charged but, according to
19 what they told me, if I made such a statement they -- I was going to enjoy all the
20 benefits they had mentioned to me, but deep down within me I knew that I was lying.

21 Q. So the false evidence you were going to give was evidence to be used in the
22 charges against them? Do I understand you correctly?

23 A. Yes.

24 Q. What -- what were the charges against them as you understood it at the time
25 you gave your statement?

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1 A. They had been charged with all that had happened during the conflict.

2 Q. And the evidence you -- the false evidence you were going to go and give the
3 investigators, was that evidence you intended to prove that they were guilty or to
4 prove that they were innocent of those charges?

5 A. It was designed to prove their guilt or their criminal responsibility.

6 Q. All right.

7 MR STEYNBERG: Your Honours, I think that we can probably safely go back into
8 public session for the next little while.

9 PRESIDING JUDGE EBOE-OSUJI: Public session.

10 (Open session at 12.41 p.m.)

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

12 MR STEYNBERG:

13 Q. Thank you, Mr Witness. You had just confirmed, before we left the private
14 session, that the reason why you had gone to give false evidence to the investigators
15 was to provide evidence that was designed to prove that the two accused were guilty
16 of the charges.

17 MR HOOPER: That doesn't fairly represent the whole thrust of this witness's
18 position.

19 PRESIDING JUDGE EBOE-OSUJI: And also -- and also to gain some benefits that
20 were promised to him.

21 MR HOOPER: His primary purpose he has told us was in order to qualify for
22 benefits that he was informed would accrue to him --

23 PRESIDING JUDGE EBOE-OSUJI: We've got the point, Mr Hooper.

24 MR HOOPER: -- and in order to do that he had to come up with incriminating
25 material in a credible way and that he did not wish himself, the prosecution of either

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1 accused.

2 MR STEYNBERG: Yes, your Honour, and almost all of that has been said in public
3 session already. I was merely trying to include in the public session a matter which I
4 should have actually dealt with in the open, but -- but that represents a fuller
5 summary of, I think, the witness's evidence, for what it is worth.

6 Q. All right. Now, if we can turn over then to page 6, 0036, from paragraph 31,
7 there is a title above that reading "Meeting at Ruto's place," and I'll read out the first
8 sentence of paragraph 31, "In 2007, as part of his campaign, Ruto called three
9 meetings at his compound in the old part of the ..." -- I won't read the area, you can
10 see that -- "... which I've marked on annex 1. The meetings were on three
11 consecutive days and were for the youth, the women and the elders."

12 So far is that correct or is that incorrect?

13 A. It is correct in part and incorrect in part.

14 Q. All right. What part is correct?

15 A. The part which states that I went to that place is incorrect. I never went there.
16 What is correct is that I heard from those who were there who told me that meetings
17 had been organised within the framework of a campaign and nothing more.

18 Q. All right. Now, Mr Witness, you really must listen to the questions. I didn't
19 ask you anything about whether or not you had attended. We'll get to that?

20 MR HOOPER: That's not quite fair. He asked the witness -- my friend's asked the
21 witness which part was correct and which part was incorrect and there is, what, three
22 sentences, and he said, well, it's correct, except I didn't attend. He's answered the
23 question.

24 MR STEYNBERG: That's not what the witness said, your Honours. What the
25 witness said was part of what I read out was correct and part was incorrect, and then

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1 he started going on about whether or not he'd attended, but that was not the question.

2 So I think the interruption is really unnecessary at this stage.

3 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Steynberg.

4 MR STEYNBERG:

5 Q. All right. So we have to go over that again. From what you had heard, is it
6 correct that Mr Ruto called three meetings at his compound in the area mentioned as
7 part of his 2007 campaign; is that right?

8 A. It is true that I learnt about this from someone else. I did not go there myself.

9 Q. All right. You've told us twice now that you did not attend.

10 The description then of the events at that meeting in the rest of paragraph 31, 32, 33
11 and 34, the information there, is that information that you heard from somebody that
12 attended these meetings, or is that false information that you made up as part of
13 your -- as part of your plan to obtain benefits from the ICC?

14 A. Please kindly repeat your question. I did not understand it.

15 Q. In the paragraphs that follow the sentences I've just read, you describe the
16 events that occurred at the meeting at Mr Ruto's compound, which the statement says
17 you attended. Is that information correct or is it incorrect?

18 PRESIDING JUDGE EBOE-OSUJI: Let's do this, Mr Steynberg. Where the witness
19 had anticipated the part about whether or not he attended, and twice he said he did
20 not attend, and you seemed to have difficulty that he had said that before you asked
21 the question. Perhaps we should start from that so the witness -- so we're now, it is
22 your position -- let's start from that point about whether he attended or not so that
23 he's not confused because he might have thought you didn't want him to answer that
24 question, but now you're implying it in your question. So let's clear it up so that
25 we're all on the same page, including the witness, and move on.

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1 MR STEYNBERG: Very well, your Honour.

2 Q. So let's just confirm that then. Did I understand you correctly that you did not
3 attend any of these meetings, these three meetings at Ruto's -- Mr Ruto's house in
4 2007; is that right?

5 A. Yes.

6 Q. All right. In paragraph 32, you mention that you arrived at 11 a.m. and then
7 you describe that there were approximately 2,000 youths attending. Is it correct that
8 from what you heard that 2,000 youths attended, or is that something which is false?

9 A. I'm not sure about the figure 2,000, but what I know and what I learnt is that a
10 political meeting had taken place.

11 Q. All right. Let's move on to paragraph 34. This paragraph you describe
12 people who spoke at the meeting, and you refer to an aspiring ODM -- sorry, "The
13 aspiring ODM councillors spoke. Farouk Kibet, who was the master of ceremony,
14 also talked." Is that true, or is that untrue? Did Mr Farouk Kibet speak at this
15 meeting?

16 A. It is incorrect.

17 Q. You then say a certain Mutai spoke; is that correct?

18 A. It is incorrect. I have already told you that I did not attend.

19 Q. And you then go on to say that Mr Ruto spoke for approximately half-an-hour,
20 and you give some details about what he is supposed to have said. Is any of that
21 correct?

22 A. It is incorrect because I did not go there, and I know nothing about it.

23 Q. What was the purpose of your telling the investigators about what was said at
24 this meeting? What did you want to achieve by that?

25 A. My goal was to receive the benefits that I mentioned earlier.

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1 Q. And how was telling the investigators about what was said at this meeting
2 meant to achieve that goal?

3 A. Those people told me something, but I was not aware of what the outcome was
4 going to be.

5 Q. Please explain that.

6 A. What I'm saying is that at the time of the discussion with number 1 and number
7 3, they told me something, and what they told me made me to think that, one, the
8 location where I lived did not have to be known; two, my statement needed to be
9 credible in order for the impression to be given that I knew what I was talking about.
10 But the reality was absolutely not in those terms.

11 Q. All right. Let's try and move on a bit more swiftly.

12 The next heading is -- above paragraph 35 is "Meeting at Farouk Kibet's home." I'll
13 read the first couple of sentences of paragraph 35, quote, "I attended another meeting
14 that took place at Farouk Kibet's home. I do not remember when it took place but I
15 think ..." that "... it was between September and November 2007 ..." and I will stop
16 there because the rest may be identifying.

17 Is that correct? Did you attend a meeting at Farouk Kibet's home between
18 September and November 2007?

19 A. No, that is incorrect. That information came from person number 3.

20 Q. And thereafter you go on to describe in a further 10 paragraphs the events that
21 took place at this alleged meeting. Where did that information come from?

22 A. That happened when we were at the hotel with person number 1 and number 3.
23 So the information comes from those two persons.

24 Q. So to confirm my question, is it all -- all the information in this section came
25 from those two persons; is that right?

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1 A. Yes, Mr Prosecutor. Let me explain myself. Person number -- well, I see
2 somebody's name here. I don't know this person's name and I have never been to
3 that person's house.

4 Q. All right. Well, I'm interested for the moment in what happened at Mr Farouk
5 Kibet's house.

6 MR STEYNBERG: If the Court will bear with me, please. Your Honours, I see, as
7 I'm searching for my next question, that it's 1 o'clock. Perhaps we can take the
8 adjournment now?

9 PRESIDING JUDGE EBOE-OSUJI: Yes. We will take the adjournment here and
10 come back in one-and-a-half hours.

11 Witness, we will take a break and that will give you some time to rest and we will
12 come back in one-and-a-half hours. Hopefully the Prosecution will finish by the end
13 of the day, we hope, but we expect you back in one-and-a-half hours. During that
14 time, during the time of break, do not discuss your testimony with anybody, all right?
15 Thank you. So we'll see --

16 THE WITNESS: (Interpretation) Yes, I've understood. (Speaks English) Mr
17 President --

18 MR HOOPER: It's a very much -- it's a tiny matter for the Court, but it might be
19 helpful for my friend, for everyone, if the witness reminds himself of the contents of
20 his statement. He's been through it -- well, he may have been through it. He said
21 he didn't go through it adequately with VWU.

22 PRESIDING JUDGE EBOE-OSUJI: Do you have any difficulty with that suggestion,
23 Mr Steynberg?

24 MR STEYNBERG: No, your Honours, if it removes any doubt as to the adequacy of
25 this witness's preparation to the extent that such doubt might exist, I'm happy with

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1 that.

2 PRESIDING JUDGE EBOE-OSUJI: Witness, do you have the paper copy of your
3 statement?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Yes. Yes. You may take it along and review it
6 during the lunch-break if you like, but take care to not leave it lying around all over
7 the place, depending on where you go. Do you understand?

8 MR HOOPER: Can I just say --

9 THE WITNESS: (Interpretation) Yes, I have understood, your Honour.

10 MR HOOPER: -- in doing that I don't -- I don't intend or hope the witness feels
11 under pressure. He should have a proper break between now and this afternoon's
12 session and there's 14 pages here, I appreciate that, but it may be of some assistance.

13 MR STEYNBERG: Thank you, your Honour. Just one other thing, I suppose it goes
14 without saying that he's not to discuss the contents of it with anybody else.

15 PRESIDING JUDGE EBOE-OSUJI: Yes. Yes, do not discuss the content of that
16 statement with anybody. And also, do not feel that you must review the statement.
17 It's up to you if you want to do it. We want you to return in one and a half hours to
18 continue your testimony, so do try and get some break during that time. If you want
19 to have your break and not look at your statement, that's entirely up to you, but you
20 have the statement with you, you should feel free to review it if you want during the
21 break. All right?

22 MR KHAN: Mr President --

23 PRESIDING JUDGE EBOE-OSUJI: I think we have to go.

24 MR KHAN: -- just one very brief matter.

25 THE WITNESS: (No interpretation)

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1 MR KHAN: I wonder if we could have five or ten minutes, either before -- just after
2 lunch or at the end of the day, to address you on a scheduling matter? I had
3 discussions with my learned friend, Mr Steynberg, yesterday, so if that could be
4 accommodated it would be very much appreciated.

5 PRESIDING JUDGE EBOE-OSUJI: We should do that towards the end of the day.

6 MR KHAN: I'm grateful.

7 PRESIDING JUDGE EBOE-OSUJI: Yes, the Court will rise now.

8 THE COURT USHER: All rise.

9 (Recess taken at 1.04 p.m.)

10 (Upon resuming in open session at 2.36 p.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

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

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

15 And, Witness, welcome back.

16 Mr Steynberg, please continue.

17 MR STEYNBERG: Thank you, your Honours. If I may just before I continue confirm one
18 matter with the court officer in Nairobi?

19 Madam Court Officer, can you please confirm that the version of the statement that
20 you've given to the witness is redacted version 5? R05?

21 THE COURT OFFICER (via video link): Yes, Mr Steynberg, I confirm that the witness has
22 redacted version number 5 in front of him and during the break.

23 MR STEYNBERG: Thank you very much. Can you confirm that the witness had access to
24 the statement over the lunch-break?

25 THE COURT OFFICER (via video link): The witness was provided with the redacted

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1 version number 5 of the statement during the lunch-break.

2 MR STEYNBERG: Thank you very much.

3 Q. Now, Mr Witness, I'd like to move on in your statement then to meeting -- sorry, to page
4 0039, that's page 9 of the statement, from paragraph 46 to 48. The heading there is "Meeting
5 in Beshiebor" and I'll read out the first few lines, "The next meeting that took place in my area
6 was in Beshiebor on 20 November 2007. I remember that date because by then I was on
7 my ..." -- and I'll not read out the next word. You can read that yourself. "I have marked
8 Besiebor on annex 1. It is 2.5 kilometres from Turbo centre."

9 You go on to say towards the end of that paragraph, "I did not go to this meeting
10 because I thought it was going to be dangerous for me."

11 The things I've read out to you, did you tell that to the investigators?

12 A. Yes.

13 Q. And is that correct, that what you told them, was there such a meeting in Beshiebor on
14 20 November?

15 A. It was true. There was a meeting, but I'm not sure about the date exactly.

16 Q. Is it correct that you did not attend that meeting?

17 A. No, I did not take part in the meeting.

18 Q. Is your statement correct when it states that the reason why you did not go to the
19 meeting was because you thought it was going to be dangerous for you?

20 A. Yes.

21 Q. All right. I'll come back to that. You also state in this paragraph that you heard that
22 Mr Ruto arrived by helicopter and you saw the helicopter yourself. Is that true?

23 A. Yes, I saw it in the air.

24 Q. I see. Moving on to paragraph -- well, the end of that paragraph you say, "Beshiebor is
25 a place where 100 percent of the people are for Ruto. Other parties like KANU cannot be

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1 found there." Is that true?

2 A. Yes, that's right. Most people supported Ruto and his party in that area.

3 Q. At paragraph 47 you then describe how two of your friends, who should be on the

4 PIS -- yes, persons 6 and 7 on the PIS came to Turbo town that evening and told you what

5 happened at the meeting. Is that correct? Did those two people tell you what happened at

6 the meeting?

7 A. Yes. But I just met one person. Even though several people went by there, I just knew

8 one person. And it is person who is mentioned at -- on the list, person number 6.

9 Q. Very well. Then the part that I'm really interested in is, from midway down the

10 paragraph, the sentence starting "At Beshiebor ..." The statement says this, "At Beshiebor,

11 Ruto was speaking in proverbs. He was saying ...", quote, "... 'I do not want any stains'"

12 unquote. "He used the word 'madoadoa,' which in Kalenjin means 'a stain.'"

13 Is this correct according to person number 6 or is this incorrect?

14 A. It is correct, but I have to explain something, if you don't mind.

15 Q. Please try to be brief.

16 A. "Madoadoa" didn't mean anything else. It would mean that there were several political

17 parties, because the person who was mentioning madoadoa was referring to political parties,

18 because there were several political parties and each political party was campaigning in

19 accordance with its own ideology. (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted) we are stains ..." comma

23 "... unwanted people." Was that correct what you told the investigators?

24 PRESIDING JUDGE EBOE-OSUJI: Now, before the witness answers that question, let's go

25 into private session.

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1 (Private session at 2.46 p.m.) * Reclassified as Open session

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Witness, the Prosecutor moved on because he did not want to draw the attention of
5 everyone to the fact that you mentioned (Redacted) in public. We were in the public
6 session. So at this stage be careful, when we're in the public session. Do not
7 mention information that will identify who you are.

8 The reference to (Redacted) will be deleted from --

9 THE WITNESS: (No interpretation)

10 PRESIDING JUDGE EBOE-OSUJI: -- reference all the way (Redacted) --

11 THE WITNESS: (Interpretation) Excuse me.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Well, let me finish, Witness. From the
13 public -- from the delayed broadcast will be deleted the witness's answer from his mention he
14 (Redacted)

15 We'll go back to public.

16 Witness, we're going back out to the public session. Be careful, okay?

17 (Open session at 2.47 p.m.)

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

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR STEYNBERG: Thank you, your Honours.

21 Q. So just to go back to the sentence I just read out, I won't read it out again, the sentence
22 that goes "I think this meant that if we ..." and finishes with "... we are stains, unwanted
23 people." Is that correct, what you told the investigators? Is that what you thought it meant?

24 A. That's what I said, but that's not correct.

25 Q. All right. And then you continue with it appears the narrative of what was told to you

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1 about the meeting by person number 6 and you state, quote, "Some people were yelling out
2 asking whether if someone was found to not vote for the ODM, they should kill him. Ruto
3 said that when the time reaches he would tell the people what to do." Firstly, did you tell
4 that to the investigators?

5 A. That is what I said.

6 Q. And does that accurately reflect what person number 6 told you, or was it incorrect?

7 A. They didn't say that to me.

8 Q. So is that something you were told to add by persons number 1 and 3?

9 A. Person number 1 was the one who told me to say that.

10 Q. I see. Is there any reason why you did not tell the investigators that you yourself
11 attended that meeting and heard those words?

12 A. Repeat your question, please. It hasn't been asked properly.

13 Q. What is the reason that you did not tell the investigators that you attended the meeting
14 personally and heard the words which you state in your statement?

15 A. Those are the words that number 3 reported to me; me and number 1. He said that
16 they needed information having to do with meetings. We were supposed to say that Ruto
17 had said such things.

18 Q. Yes, I understand that, but what I want to know is why -- if you were going to make up
19 this story for the investigators, why do you tell them that this is something that was reported
20 by other people and not tell them that this is something you heard personally at that meeting?

21 A. First of all, I did not attend that meeting. Secondly, some things that are said here I
22 heard about them from another person. Everything that I added later was just to make my
23 statement reliable. That is why I said someone had told me about this, but the last remarks
24 I was the one who added them so that my account would be credible. So there were some
25 things that I added myself.

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1 Q. All right, I'd like to move on then. Could I ask you to turn -- I'm not going to deal with
2 the day of the announcement of the election results. I'll move on to paragraph 56, which is
3 headed -- falls under the heading "First day at (Redacted)" although the heading
4 isn't entirely accurate. Do you have that place? Paragraph 56, page --

5 A. I'm with you.

6 MR STEYNBERG: All right. For the record, it's ERN-0040.

7 Q. You say at paragraph 56, quote, "Early on the next morning ...", and this will be the two
8 days after the -- sorry the day after the announcement of the election results, so 31 December.
9 "Early on the next morning at about 7 a.m., I heard from my brother on the phone that there
10 was going to be a meeting that day to discuss what ..." happened "... and the way forward. It
11 was going to take place in Beshiebor centre at the place of the late (Redacted)...", and then you
12 mention the location of that place. Did you tell that to the investigators?

13 A. Yes, I did tell them that.

14 Q. And is it true, or is it not true, that your brother told you about such a meeting?

15 A. It is not true because everything here had to do with (Redacted)
16 (Redacted) so it is not the case. At that time I was at the police post.

17 Q. I'm going to move on now, but just remind you please to refer to your PIS if necessary in
18 public session.

19 Now, you told the Chamber yesterday, if I'm not mistaken, that you only went to the
20 police post two days after the announcement of the election results, the presidential
21 election results; isn't that correct?

22 A. Could you kindly repeat your question?

23 Q. You told the Chamber yesterday that you went to the police post, the Turbo Police Post,
24 two days after the announcement of the election results. Do I have it correctly? Is that what
25 you told us yesterday?

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1 A. Yes, that's right.

2 Q. So on the day after the -- the first day after the announcements you were still staying at
3 your home, is that right, which you now say is in location number 3?

4 MR HOOPER: In fact, again to be fair to the witness, did the witness not say yesterday that
5 he was staying at the -- the police post at night, not during the day?

6 MR STEYNBERG: Yes, I think my learned friend has it right.

7 Q. Let me reframe the question. You told the Chamber yesterday that it was two days
8 after the announcement of the election result that you began to spend the nights at the Turbo
9 Police Post, or what we now know is the Turbo Police Post; is that correct?

10 A. Yes, we would go there in the day and do some work and at night we would sleep there.

11 Q. Let's just get clarity by what you mean by "there". Where did you go in the day and
12 where did you sleep at the night, remembering to use the PIS if necessary?

13 A. We went to sleep in that compound.

14 Q. Please be precise, Mr Witness. Which compound?

15 A. The police post compound.

16 MR HOOPER: The difficulty is we don't have it on our PIS.

17 MR STEYNBERG: I don't see that there's any difficulty. The Turbo Police Post has been
18 used in public session. There's nothing identifying there.

19 MR HOOPER: I'm not -- I'm not sure that that's the case. We are in open at the moment.

20 PRESIDING JUDGE EBOE-OSUJI: Let's go to private to have this discussion.

21 (Private session at 3.01 p.m.) * Reclassified as Open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, what was the concern?

24 MR HOOPER: (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE EBOE-OSUJI: Witness, how many people were at the police post with
7 you when you were taking refuge there?

8 THE WITNESS: (Interpretation) I did not count them because some people were coming in
9 while others were leaving, and you could not be told to stay or leave. If you wanted to
10 guarantee your security, you would stay. Everyone -- everything depended on yourself.
11 I cannot tell you that there were many people or few people. Some were coming and some
12 were leaving.

13 MR HOOPER: Your Honour, if I --

14 PRESIDING JUDGE EBOE-OSUJI: One second, please.

15 MR HOOPER: Sorry.

16 PRESIDING JUDGE EBOE-OSUJI: If you were to give an estimate of the number of people
17 you would have seen coming and going and staying, can you estimate just -- we're not going
18 to hold you to it. Just I want to get an idea of approximately how many people might
19 have -- you might have seen coming and going at the police station to take refuge and staying.

20 THE WITNESS: (Interpretation) I would say about 80 to 100. Some other people were at
21 the Catholic church, so there were some people going to the church and other people coming
22 from the church. That is what happened.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

24 MR HOOPER: All I'm saying is that yesterday Mr Steynberg, very fairly and correctly, said
25 to the witness, just before we go, this is at T-142, at page 25, "Your Honours ... just before we

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 PRESIDING JUDGE EBOE-OSUJI: Yes, that's fair enough.

6 MR HOOPER: That's the position.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Let's leave the debate there.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 We'll go back to the public session.

14 Witness, again try to be careful and the Prosecutor as well will do the same.

15 MR STEYNBERG: Your Honour, perhaps before we go back into public, the next issue I'm
16 going to come to will require private session anyway, so if we can stay in for approximately
17 the next five minutes.

18 PRESIDING JUDGE EBOE-OSUJI: All right. We will remain in private session.

19 MR STEYNBERG: All right.

20 Q. I'd like to move on to the next page, please, of your statement, it's page 11, at 0041, to the
21 portion headed (Redacted) which again is somewhat misleading.

22 Do you have that, paragraph 61?

23 A. Yes.

24 Q. I'll --

25 A. Yes, I can see it.

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- 1 Q. I'll start from paragraph 61 which reads as follows: "On the next morning ...", this is
2 now two days after the election results, " just after my family and I had woken up, (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted) Did you
6 tell that to the investigators?
7 A. Yes, I told them that.
8 Q. Was that correct, did that happen?
9 A. It is not true.
10 Q. In the next paragraph you go on to say that (Redacted)
11 (Redacted) Is that also something
12 you told them falsely?
13 A. Yes.
14 Q. I see. You then say that (Redacted) Did that happen?
15 (Redacted)
16 A. No.
17 Q. (Redacted)
18 (Redacted)
19 (Redacted)
20 A. (Redacted)
21 Q. (Redacted)
22 A. (Redacted)
23 (Redacted)
24 (Redacted) Another problem is that
25 I was separated from my family. This is a problem because you are no longer free, which

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1 means that you are no longer in touch with people as it should be. Those are the problems
2 that I had.

3 Q. What do you mean that you are no longer in touch with people as you should be?
4 What do you mean by that?

5 A. In a nutshell, this is what I want to say: As you know, in the community there are
6 several things that happen in day-to-day life, for example, during a wedding ceremony, or
7 during meetings, you cannot have that freedom to be together with those other people, with
8 the other people because you have been separated. (Redacted)
9 (Redacted) You are away from the group.

10 Q. (Redacted)
11 (Redacted)

12 A. Yes --

13 MR KIGEN-KATWA: With your permission, Mr President --

14 THE WITNESS: (Interpretation) -- that is my community of origin.

15 MR KIGEN-KATWA: -- may I make the observation that line 9, at page 69, what the witness
16 had said is not that he was no longer in touch with other people, it's more lack of association,
17 their company, their communion, their fellowship as opposed to not being in touch.
18 That -- that's what I heard him say. The word used is "tengamana", and probably if -- if that
19 could be addressed it would help.

20 PRESIDING JUDGE EBOE-OSUJI: The word used was what?

21 MR KIGEN-KATWA: Tengamana, T-E-N-G-A-M-A-N-A which should mean associating
22 with people, work, staying with people.

23 PRESIDING JUDGE EBOE-OSUJI: Is it as strong as ostracism?

24 MR KIGEN-KATWA: What he meant is that, at least the way I understood it, is that he
25 wasn't able to say with people, as opposed to not being in touch with people, which is what

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1 line 9 says, not being in touch with people.

2 MR STEYNBERG: Thank you, your Honours.

3 Q. And --

4 PRESIDING JUDGE EBOE-OSUJI: Do you want to clear that up with the witness, or you're
5 prepared to move on?

6 MR STEYNBERG: Your Honours, I'm prepared to accept my learned friend's clarification
7 and his expertise on these matters.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Be careful how much you accept his expertise
9 in these matters.

10 MR STEYNBERG: In this instance, I'm prepared to accept it.

11 Q. All right. I'd like to move on then in your statement. (Redacted)

12 (Redacted)

13 (Redacted) Was that correct or was that incorrect?

14 A. That is not true. I did not go to (Redacted) place.

15 Q. So do I have it correctly that at no time during January 2008 did you go to (Redacted)

16 (Redacted)

17 MR KIGEN-KATWA: Mr President, I thought we had discussed --

18 THE WITNESS: (No interpretation)

19 MR STEYNBERG: Can we just get the answer first.

20 Q. Sorry, Mr Witness, please complete your answer.

21 A. I never went to (Redacted) place. During that entire period I was in the police
22 compound.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, before you pose your next question, may I
24 go back to, this is for the court reporters, page 70, line 8. I usually hesitate to do this, but
25 where I'm shown as saying "You were saying," what I had actually said was, "Is that as strong

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1 as ostracism?" It's a long sentence. It's different from what appears there. I thought I
2 should mention that. We can move on, please.

3 MR STEYNBERG: Thank you, your Honours.

4 Q. Now I think we can move on quite swiftly because the next -- in paragraph 64 of your
5 statement all the way to paragraph 113, you speak about events which took place according to
6 your statement while you were at (Redacted) Do you say that none of that is
7 correct, none of that is true?

8 MR HOOPER: Isn't that just too general a question, with respect? It's -- you know, if there's
9 any particular feature of that material that my friend wants to go and ask him about, that's the
10 appropriate way of dealing with it. We've got the general picture. He wasn't, he tells us, at
11 (Redacted) at all.

12 In terms of the individual, the events that occur there, if my friend has got any
13 particular, a focus on any particular part, he should go to it, in my respectful
14 submission, not just ask such a general question.

15 MR STEYNBERG: I'm grateful for my learned friend's advice. And I will go to certain
16 particular aspects, but I'd just like to get the general picture as to whether the remaining
17 narrative of events which took place while he was supposed to be at (Redacted) was
18 true or not true.

19 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

20 MR STEYNBERG:

21 Q. Mr Witness, from paragraph 64 to paragraph 113, and we'll come to the details, but you
22 told the investigators, is it correct, about a number of events which took place while you were
23 supposed to be at (Redacted) Did you tell them about those events?

24 A. Yes, I told them.

25 Q. And can you tell us whether any of anything that you told them was true or is it all

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1 untrue, the events which happened while you were supposed to be at (Redacted)?

2 A. I would like to explain myself regarding this statement so that it should be fully
3 understood. From the paragraph where (Redacted) is mentioned, this statement
4 was made up by number 1 and number 3, because they are the ones who told me this. They
5 said they wanted to have a statement about meetings showing that I took part in those
6 meetings, and that is what happened. I have explained to you at length.

7 What is true is that what is written here is what numbers 1 and 3 asked me to go and
8 say. The truth is that after two days, I went to the police compound and I never left
9 that compound until the end of the conflict.

10 Q. So all of the details we see in these 50-odd paragraphs are details that were told to you
11 by persons number 1 and persons number 3; do I have you correctly?

12 A. Yes, that is correct.

13 Q. All right. Thank you. Just one or two aspects. At paragraph 67 and in fact
14 paragraph 65 as well, you mentioned a person by the name of Solomon Tirop. (Redacted)
15 (Redacted) Do you know
16 that person, Solomon Tirop?

17 A. I do not know him. I do not know Solomon Tirop.

18 Q. Was this a name you were asked to mention by persons 1 and 3?

19 A. Yes, that is correct.

20 Q. And all the other names mentioned in paragraph 65, were these people you knew or
21 were these people you were told to mention by persons 1 and 3?

22 A. I do not know these people. It was person number 1 and person number 3 who asked
23 me to mention these names.

24 Q. The person mentioned here (Redacted) you don't know where he lives?

25 A. That person is (Redacted)

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1 Q. So you do know that person?

2 A. Yes, I know him.

3 Q. And (Redacted), do you know where he lives?

4 A. I know where he lives.

5 Q. So, again, you do know this person; is that right?

6 A. You asked me the question about (Redacted) I know them.

7 MR STEYNBERG: All right. At this point can I just ask the court officer to call up annex 2
8 to the witness's statement, that's KEN-OTP-0087-0055 and it's at tab 3 of the Prosecution
9 bundle.

10 THE COURT OFFICER (via video link): Mr Steynberg, document KEN-OTP-0087-0055 is
11 (indiscernible) to the witness.

12 MR STEYNBERG: Thank you.

13 Q. Mr Witness, you see again your name and signature on that document?

14 A. I can see the name, the date and my signature.

15 Q. And is this another sketch that you drew for the investigators during the course of your
16 interview?

17 A. Yes.

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 A. Yes, that is what I meant and that is how it is. And I am speaking about those two
22 people.

23 Q. Just one detail on (Redacted)?

24 A. I don't know that woman's name.

25 Q. All right. I think we can move off from this annex now.

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1 If I can return back to your statement, just one or two other details of the (Redacted)
2 story. From paragraph 73 onwards you describe an event where you witnessed the
3 house of one (Redacted) being burnt. Did you tell the investigators about that?

4 A. Yes.

5 Q. And were you, in fact, present when the house of Mr (Redacted) was burnt?

6 A. I wasn't there. It was those people who told me about it, person number 1 and person
7 number 3.

8 Q. Do you know a person by the name of Mr (Redacted) who lived in (Redacted)?

9 A. Sir, I don't know that person. I was just told to say that. I don't know that person.

10 Q. And apart from your discussions with persons 1 and 3, have you ever heard from
11 anybody else about Mr (Redacted)'s house being burnt in (Redacted)?

12 A. No, I didn't learn about that from anyone else because after -- after the event there were
13 people who were living at the IDP camp. When it was all over, I left the place and I went
14 and lived elsewhere. I went back after 2008, when people had already gone back home and
15 the conflict was over and people no longer spoke about it. I went back to live in (Redacted)
16 (Redacted)

17 MR STEYNBERG: Madam Court Officer, can you please call up annex 3,

18 KEN-OTP-0087-0056?

19 It's at tab number 4, your Honours.

20 THE COURT OFFICER (via video link): Mr Steynberg, the document is presented to the
21 witness.

22 MR STEYNBERG: Thank you.

23 Q. Now, Mr Witness, you will note your name and signature again on this annex. Is this
24 another sketch you drew for the investigators?

25 A. Yes, that is my name. That is also my signature and also the date.

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1 Q. And you drew this for the investigators?

2 A. Yes, I was the one who drew this sketch.

3 Q. Now, in the centre of this sketch is a drawing or a plan of what is labelled as "(Redacted)'s
4 house in (Redacted) village." How did you know what to put in this sketch if you didn't know
5 Mr (Redacted), Mr Witness?

6 A. I beg your pardon? I'll repeat what I said before.

7 Q. No, don't do that. Let me ask you the question again. If you don't know Mr (Redacted)'s
8 house and you don't know Mr (Redacted), where did all the information contained on this sketch
9 come from? Tell us briefly, please.

10 A. That information came from person number 1.

11 Q. I see. So the location of the "Cattle House," the location of the "Main House," the
12 location of the "Maize Store" and the "Main Gate" and the position of this house, is that all
13 information you got from person number 1?

14 A. Yes, it is the sketch that was made for me and I memorized it and that is why I was able
15 to sketch it.

16 Q. I see. So during your three-hour meeting with persons 1 and 3 in October, you were
17 shown certain sketches. Do I understand correctly?

18 A. That's right.

19 Q. And you were able to memorize these and reproduce it when you eventually met with
20 the investigators, correct?

21 A. That's right.

22 MR STEYNBERG: All right. I don't think we need to go into any further details of the
23 (Redacted) events. Before I go to the last section of the statement, I'd just like you to have a
24 look at annex 5.

25 And, Madam Court Officer, can you call up the first page of annex 5, at tab 6, and the ERN is

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1 KEN-OTP-0087-0058? There are several pages, but I'm just going to show you the first page
2 to start with.

3 THE COURT OFFICER (via video link): Mr Steynberg, the first page of document
4 KEN-OTP-0087-0058 is presented to the witness.

5 MR STEYNBERG:

6 Q. Mr Witness, is that your handwriting?

7 A. Yes, it is my handwriting.

8 Q. And can you tell the Chamber what -- what's in this document? What is this
9 document?

10 MR HOOPER: Objection.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.

12 MR HOOPER: My understanding is that -- my understanding is that this is a product of a
13 redacted paragraph.

14 MR STEYNBERG: My learned friend has the wrong annex. I've skipped that one. We're
15 on annex 5 now.

16 MR HOOPER: That is my annex 5.

17 PRESIDING JUDGE EBOE-OSUJI: 0058.

18 MR HOOPER: Oh, right. No, all right. Yes, my friend's right. I was right, but he's right
19 and it's not the document that concerns me. This is a -- this is a document that we know
20 nothing about. It's here, a multi-page document, but it's provenance we don't know, but I
21 don't stand in the way of my friend asking questions about it.

22 PRESIDING JUDGE EBOE-OSUJI: So you are withdrawing your objection?

23 MR HOOPER: I am, yes.

24 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.

25 MR STEYNBERG: Just for the record, your Honours, there is an annex 4 at tab number 5

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1 which I've deliberately skipped over consistent with the undertaking I gave at the outset of
2 this witness's evidence.

3 Q. So, Mr Witness, you may answer the question. What is this document that's before you?

4 Well, perhaps firstly, do you recognize this?

5 A. Yes, I do recognize this document.

6 Q. And tell us what it is, please?

7 A. It is a document that we used to explain the person -- to the person who is taking notes
8 so that person would write down things properly, things that he or she might have missed,
9 and it was also used to provide the spelling of some words. It was a draft.

10 Q. And was this document written during the course of your interview with the
11 investigators, or at some other time?

12 A. It was the same day, from the 20th to the 23rd, at that time when I met those people at
13 place number 4.

14 MR STEYNBERG: All right. And I don't know that it's necessary to go through every page,
15 but can we call up the third page, 0060, of the same series?

16 THE COURT OFFICER (via video link): Page 0060 is presented to the witness.

17 MR STEYNBERG:

18 Q. And I observe, or do you see, on this page that there are also two colours of pens that
19 are used: A blue pen and a red pen? Is there anything on this page that you did not write?

20 A. Mr Prosecutor, I don't remember very well because there's no sentence. I don't know.
21 I don't remember what I jotted down on this piece of paper.

22 Q. Perhaps I can ask you this: The handwriting you see on this piece of paper, do you
23 recognize the handwriting?

24 A. Yes.

25 Q. Whose is it?

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1 A. It is my writing.

2 MR STEYNBERG: All right, let's just look at one or two more pages. Can we call up the
3 fifth page, 0062?

4 THE COURT OFFICER (via video link): Page 0062 is presented to the witness.

5 MR STEYNBERG:

6 Q. Is that also your handwriting, Mr Witness?

7 A. Yes, it's my handwriting.

8 Q. And the last page, 0065, please identify again if that's your handwriting?

9 A. Yes, it is my handwriting.

10 MR STEYNBERG: Thank you.

11 Your Honours, I have not gone through every page in order to try and be as efficient
12 as I can. May I just inquire if my learned friends will accept that this document - the
13 entire document - is the product of this witness?

14 MR HOOPER: I'm not in a position to say that. He's not my witness and I don't know the
15 provenance of this document, as I've made clear. So if you want to rely or may rely on any
16 other page, you better present it.

17 MR STEYNBERG: All right. It seems we'll have to do it the long page.

18 Madam Court Officer, the remaining pages please. 0059.

19 Q. Is that your handwriting, Mr Witness?

20 A. Yes.

21 MR STEYNBERG: 0061, please.

22 Q. Confirm if that's your handwriting?

23 A. Yes.

24 Q. 0063, is that your handwriting?

25 A. Yes.

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1 Q. And 0064, there really isn't very much handwriting on it, it's just a sketch, but do you
2 recognize that as being something you might have produced?

3 A. I don't remember.

4 Q. All right. That's good enough. Thank you, Mr Witness, you can put that aside for the
5 time being. There's one last portion of your statement I'd like to deal with and that's
6 paragraph 125, page 0051.

7 PRESIDING JUDGE EBOE-OSUJI: What do you intend to do with these documents
8 appearing at tab 6?

9 MR STEYNBERG: Your Honour, I am going to ask that the statement and the annexes be
10 handed in. I thought I might just finish with the -- with the statement first.

11 PRESIDING JUDGE EBOE-OSUJI: Are these documents necessarily annexed to the
12 statement? Necessarily, I mean.

13 MR STEYNBERG: Well, your Honours annexes 1, 2 and 3 that I've referred to are, I believe, I
14 speak under correction, but I believe they are specifically referred to in the statement and
15 ascribed. The last one, annex 5, is not specifically referred to and, as the witness has said, it
16 appears to be notes that the witness made during the course of his interview that have been
17 annexed for the sake of completeness.

18 PRESIDING JUDGE EBOE-OSUJI: Why don't you deal with it now -- deal with them at this
19 point.

20 MR STEYNBERG: As the Court pleases.

21 Since the witness has confirmed the four annexes I have dealt with, I ask that they be
22 admitted as Prosecution exhibits, annexes 1, 2, 3 and 5. I suppose for the record,
23 I had better read in the ERN numbers again.

24 PRESIDING JUDGE EBOE-OSUJI: Yes, that's much better.

25 MR STEYNBERG: Annex 1 KEN-OTP-0087-0054. Perhaps we can take them one at a time.

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- 1 PRESIDING JUDGE EBOE-OSUJI: So this is the one that is annexed to his statement, is it?
- 2 MR STEYNBERG: Your Honours, they're all annexed to the statement but annexes 1, 2 and 3
- 3 are specifically referred to in the body of the statement.
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes. What I mean is why don't we skip those for now
- 5 and deal with the ones at tab 6.
- 6 MR STEYNBERG: Very well, your Honour. That is one document in eCourt, although
- 7 there are several pages, so I ask then that annex 5 be admitted. It's KEN-OTP-0087-0058 and,
- 8 for the record, the ERN range is 0058 to 0065, but it's all one electronic document.
- 9 PRESIDING JUDGE EBOE-OSUJI: The witness did not remember 0064. Are you also
- 10 seeking for that to come in in the range?
- 11 MR STEYNBERG: Your Honour, as I said, this is all captured as one electronic document.
- 12 I'm not sure whether it would be possible to exclude one of the pages in that range, but, your
- 13 Honour, the caveat is on the record. I'd ask that it be admitted. What weight will be placed
- 14 on that page, I -- I know not at the end of the day, but the other -- the remaining pages have
- 15 been identified by the witness.
- 16 PRESIDING JUDGE EBOE-OSUJI: Any objection?
- 17 MR HOOPER: No objection to any of those matters going in, albeit not for the truth of their
- 18 contents, whether it be a sketch or whatever. Thank you.
- 19 MR KIGEN-KATWA: I will take the same position, no objection with the same caveat.
- 20 PRESIDING JUDGE EBOE-OSUJI: The documents are hereby admitted as the next in the
- 21 Prosecution exhibits.
- 22 THE COURT OFFICER: Item KEN-OTP-0087-0058, confidential item, will be attributed
- 23 reference EVD-T-OTP-00173.
- 24 MR STEYNBERG: Thank you, your Honour.
- 25 Q. The last aspect then, Mr Witness, is --

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1 MR KHAN: I do apologise. I know my learned friend is exhibiting certain documents, but
2 before we move on to the new topic I wonder if we can have five minutes to discuss the issue
3 I raised at the outset. Your Honour, if we continue with my learned friend's questioning
4 perhaps we can sit another five minutes at the end.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, how does that fit into your plan,
6 movement so far with the witness?

7 MR STEYNBERG: Your Honours, I will give a road map of what I still hope to achieve with
8 this witness. I'm on the last aspect I intend to cover relating to the statement, I then have an
9 application to make and, depending on the outcome of that application, I expect that I will
10 have approximately an hour to an hour-and-a-half at maximum to deal with the issues that I
11 hope to traverse in the subsequent phase of my questioning. I regret that I have not been
12 able to keep to my word and finish today but your Honours will have noted the pace that I've
13 been moving at, which is much slower than the pace other witnesses have been moving at,
14 and your Honours will also note that I have been trying to push along but unfortunately
15 without great effect.

16 MR HOOPER: If it's of any assistance, while there may be an argument on the issue of
17 adverse or not, it might be that that issue could be overcome because, as you've already seen
18 this afternoon and other parts of today, both Defence teams have not sought to interfere with
19 the Chamber's margin of tolerance in terms of the questions or the leading nature of the
20 questions that have been asked. And if my friend wants to progress and ask more direct
21 questions in respect of matters relating to (Redacted) and the like relating to this
22 witness, then I for my part won't stand in the way of that by way of objection. So in that way,
23 perhaps the argument as to hostility or not we can overstep, in other words I have no
24 objection insofar as I understand the areas that my friend intends to go to through the service
25 of the documents we've got, I have no objection to my friend questioning the witness in

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1 respect of those -- those matters. Of course if I'm surprised by the extent of any matters, then
2 I can address the matter further with the Chamber.

3 In the event that my friend can conclude his questions by the morning break
4 tomorrow at 11 o'clock, for our part, having discussed it with Ms Buisman and
5 Mr Katwa, I would have thought that we could conclude this witness tomorrow. I
6 don't want to have that as a copper bottom, as it were, because there's always unseen
7 matters, but at the moment, considering what we want to put, I would have thought
8 it's possible that we can finish this witness's evidence by tomorrow if we have those
9 two sessions.

10 MR KHAN: I do apologise. So, Mr President, your Honours, just to get back to the issue
11 and the application, it seems clear with the Court's leave that we're not going to be able to
12 discharge the witness today. It will have to go over to tomorrow, so what I'd ask if the Court
13 would be so kind as -- the witness be released for today, coming back tomorrow and we can
14 address your Honours for five minutes or so on the issue of the Court's schedule. It's
15 important, obviously, to all matters.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, it would seem that it should make sense to
17 release the witness for the day now. You've heard Mr Hooper's observations and
18 undertakings. We do take those undertakings on the record. And then you can think about
19 that overnight and see how you react to that by tomorrow morning before we start the
20 questioning of the witness. Is that something that -- I assume that Mr Katwa-Kigen that
21 Mr Hooper spoke on your behalf as well; is that the case?

22 MR KIGEN-KATWA: That's true, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MR STEYNBERG: Your Honours, I will think on it overnight. I think I already know what
25 my position will be, but I'm also reluctant to debate too much in the presence of the witness.

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1 PRESIDING JUDGE EBOE-OSUJI: Yes, okay. Let's release the witness for today.

2 Witness, we will now let you off for today and then you come back tomorrow at the
3 same time so we can continue the questioning of Mr Steynberg and the Defence
4 lawyers as well.

5 In the meantime, remember my caution to you overnight, do not discuss your testimony with
6 anybody while you are off the witness stand, as it were. Do you understand?

7 THE WITNESS: (Interpretation) I've understood, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you, and we'll see you and Mr Karathe tomorrow.

9 Mr Karathe, you may remain if you like but the witness can be excused for now. Mr Karathe,
10 remember tomorrow please be on time as scheduled.

11 Ms court officer --

12 MR KARATHE (via video link): Mr President, I undertake to do that and I'm sorry about
13 today.

14 PRESIDING JUDGE EBOE-OSUJI: Yes.

15 Ms Toumaj, if you could escort the witness out of the courtroom for now, please.

16 THE COURT OFFICER (via video link): Yes, I will, Mr President.

17 MR STEYNBERG: Your Honour, I believe I know the issue my learned friend is going to
18 raise, it's a scheduling issue dealing with subsequent witnesses so, I don't know, Mr Karathe
19 can probably also be excused as well. I don't think it really concerns him.

20 PRESIDING JUDGE EBOE-OSUJI: Yes. Do you mind him staying?

21 MR STEYNBERG: Your Honour, I would prefer that -- I'm going to ask that the discussion
22 be held in private session due to certain details I will have to bring to the Court's attention.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Karathe, your job has been made easier. The
24 Prosecutor prefers that, due to the nature of the discussion, you may as well leave us. Do
25 you understand me? Did you hear me? Mr Karathe, did you hear me?

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- 1 MR KARATHE (via video link): Yes, I have and thank you.
- 2 PRESIDING JUDGE EBOE-OSUJI: All right. So if you --
- 3 MR KARATHE (via video link): I hear you, yes.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 (The witness and Mr Karathe exit the video-link room)
- 6 THE COURT OFFICER (via video link): Mr President, both the witness and Mr Karathe
- 7 have left the room.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 9 MR STEYNBERG: Your Honours, before my learned friend starts perhaps I can just explain
- 10 my concerns, and that is that certain of the witnesses -- (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 MR KHAN: Mr President, if it helps, I have no objection to that.
- 18 PRESIDING JUDGE EBOE-OSUJI: We are in private session, so we remain in private
- 19 session.
- 20 Mr Khan.
- 21 MR KHAN: I'm grateful, Mr President.
- 22 PRESIDING JUDGE EBOE-OSUJI: We don't have a lot of time.
- 23 MR KHAN: Yes, I'll be brief.
- 24 PRESIDING JUDGE EBOE-OSUJI: So make it very quickly.
- 25 MR KHAN: Mr President, as you know, the Court session was due to end on 2 October.

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1 And it seems the way things are going that the earliest we will finish with the present witness,
2 516, is on end of tomorrow.

3 Your Honours, the next witness, (Redacted) has -- there's a lot of reading material. There's
4 846 pages of transcripts, 846 pages of transcripts with that witness. And it seems
5 that if we are fortunate enough to start on Friday, which is the date that the summons
6 has been served that he has to appear on, we're going to struggle to finish by the end
7 of the current trial session.

8 But, your Honour, even if things moved exceptionally well and we finished at the
9 beginning of Thursday, it appears to me, and I've had discussions with my learned
10 friend, that there is no realistic prospect that we would be able to make inroads on
11 (Redacted) That's a very significant witness in terms of volume of material. I know my
12 learned friend would not want to go part heard as it were, in other words, finish
13 examination-in-chief and then adjourn until 17 November for cross-examination.

14 And I must confess, particularly given the allegations that have been raised in this
15 case, I would also rather have the evidence-in-chief and cross-examination together.

16 In light of that, your Honours, my application and it's supported by my learned
17 friend Mr Katwa Kigen, and I understand it's also supported by my learned friend
18 Mr Steynberg, that we have some clarity; and for that witness, given the amount of
19 time he will take, estimates vary between three to four weeks, that he's listed to
20 commence on 17 November so we can deal with him in one block without pause, but
21 there is no realistic prospect we say that the witness will be able to come at this
22 session even if it's extended.

23 Your Honours, in addition to that, of course, we do note that there are listings in the
24 Kenyatta case, in the Bemba case and others for this courtroom. So that makes it
25 even more problematic to have a realistic hope of finishing (Redacted)

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1 I took the liberty of speaking to my learned friend, because your Honours' wish and
2 desire to deal with that witness may have been predicated, it appears, on maybe a
3 concern that because the witness is willing, we should get him out of the way, so to
4 speak, as quickly as possible, and of course we would support that. But, your
5 Honours, I spoke to my learned friend Mr Steynberg. There's no reason to believe
6 that the witness would not be available and willing to come at the beginning of
7 November, 17 November.

8 We say it would be far preferable, particularly because this witness was not listed for
9 this session, (Redacted) was of course, and that was the other witness that we have prepared
10 for and are ready to cross-examine.

11 But, your Honour, in all the circumstances, the application, really, I understand it's
12 joint, is that we can rest, so to speak, and commence our preparations with the
13 understanding that Witness (Redacted) is due to come on 17 November. It will allow all
14 parties that clarity.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MR KHAN: And that's the application.

17 PRESIDING JUDGE EBOE-OSUJI: Yes, we've got the point.

18 MR KHAN: I'm grateful.

19 MR STEYNBERG: Yes, your Honour, I confirm everything my learned friend has said. I
20 confirm that Witness (Redacted) is likely to be a lengthy witness. He has a lot of material, also a
21 lengthy transcript.

22 I have also, it's been conveyed to me that the witness would prefer to testify in the
23 next session. We obviously hope that he will remain willing, (Redacted)
24 (Redacted) And it would appear that it's unlikely that we will be
25 able to start with any other witness before the end of the scheduled session.

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1 What I can advise, and I must apologise, I have not had the opportunity to discuss
2 with my learned friends at all --

3 PRESIDING JUDGE EBOE-OSUJI: Before you go and do that, when you say "We're unlikely
4 to start with any other witness before the next session," do you -- have you accounted for (Redacted)?

5 MR STEYNBERG: Sorry, your Honours. I meant after (Redacted) I do expect that we will be
6 able to, if we push, finish both of those witnesses in this session. I certainly hope that I will
7 not or we will not need to go through 800 pages of transcript during his evidence. I'll
8 certainly try to avoid that. But it does not seem that we will have spare days as it were in
9 which we could start -- well, or certainly not start and finish (Redacted).

10 PRESIDING JUDGE EBOE-OSUJI: Is that what you wanted to say? I know I interrupted
11 you.

12 MR STEYNBERG: Yes. No, your Honours, there was one other issue. I'm informed that
13 on (Redacted) the investigators from the OTP have again been in contact with (Redacted)
14 I'm advised that the witness has again indicated that he is prepared to testify. It would be
15 logistically possible to have him available to testify after (Redacted) commencing the
16 following week if the Chamber were so minded to push on. I note that the 7th and the 8th
17 are not available due to the commitments of members of the Chamber, but it would be
18 possible to commence with that witness on the 9th.

19 I've not had the opportunity to discuss with my learned friend, and I apologise for
20 that, but I was occupied with the current witness.

21 PRESIDING JUDGE EBOE-OSUJI: Are you in a position to respond to that last --

22 MR KHAN: Mr President, our preference would be, in fact, to have a -- to start on the 17th
23 and have (Redacted) commence immediately after (Redacted) As indicated, and we've said it
24 from the outset, that we focused our investigations on the witnesses to be called in this session,
25 including (Redacted) who the summons has not been served.

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1 So, your Honours, what I would ask is we take the break at the end of (Redacted),
2 once (Redacted) evidence is completed, and then we come back in November and we
3 deal with the next set of witnesses that we're given notice about. That would be my
4 very clear preference, particularly as we've seen with this witness and the previous
5 witness, that the testimony of (Redacted) the new issues that have arisen, may be
6 matters that the Defence would require to investigate.

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

8 MR KIGEN-KATWA: Yes, on our part we would also prefer that (Redacted) together with
9 (Redacted) comes after the 17th date, in that session of 17 November.

10 MR KHAN: Mr President, just in relation to that last point, of course, we've been getting,
11 and I haven't mastered it at all, (Redacted)

12 (Redacted) I

13 haven't looked at it. And that is another matter that militates in my submission to putting it
14 back to the next session.

15 (Trial Chamber confers)

16 PRESIDING JUDGE EBOE-OSUJI: We've heard the remarks of the parties in the case. We
17 will adjourn now, and tomorrow we will give you our indication of where things stand as a
18 result of your observations.

19 Court is adjourned.

20 Mr Katwa Kigen, yes?

21 MR KIGEN-KATWA: Mr President, if for whatever reason it is decided that this session be
22 extended, we are aware that we are to break on 2 October, and then there is the Kenya II on
23 the 7th and 8th, and there is the hearing on Monday. If for any reason any extension is made
24 to this session, we would pray for a break on the Monday, Monday the 6th, please.

25 PRESIDING JUDGE EBOE-OSUJI: We will also think about that and revert to you.

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- 1 We adjourn.
- 2 THE COURT USHER: All rise.
- 3 (The hearing ends in private session at 4.12 p.m.)
- 4 RECLASSIFICATION REPORT
- 5 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 6 2013, and the instructions in the email dated 23 January 2015, the version of the
- 7 transcript with its redactions becomes Public.