

Trial Hearing
Witness: KEN-OTP-P-0637

(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 Thursday, 2 October 2014
10 (The hearing starts in open session at 9.06 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, the case please.
16 THE COURT OFFICER: Thank you, Mr President.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We're in open session, your Honours.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 I see that appearances remain the same for the Prosecutor, is that the case?
22 MR STEYNBERG: Correct, your Honours.
23 PRESIDING JUDGE EBOE-OSUJI: And for victims' counsel?
24 MR NARANTSETSEG: The same, your Honours.
25 PRESIDING JUDGE EBOE-OSUJI: Yes. And Mr --

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1 MR KIGEN-KATWA: The same for Mr Sang, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 MR FAAL: Mr President, the Honourable Ruto team has been joined by Ms Leigh
4 Lawrie. Otherwise, representation remains the same as yesterday.

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

6 For the record it's helpful to note that, following the Prosecution application
7 yesterday for declaration of hostility and the submissions heard from parties, we had
8 indicated -- the Chamber had indicated that we would be reconvening within the
9 hour to render the ruling, at which time it was expected the witness would
10 immediately continue testimony, but I needed -- I need to note on the record that we
11 did not reconvene as indicated yesterday because the witness had remained at that
12 time unavailable to testify because he was consulting with a doctor.

13 So it was thought more efficient to not reconvene until we had the witness on the
14 stand. Now we do. So we have reconvened. Just the reason for indicating it is so
15 that we're not looking for what happened in the meantime some time down the line
16 on the record.

17 We will now render the ruling on the Prosecution application.

18 The Prosecutor applied orally to have Witness 637 declared as a hostile witness. This
19 will be the fourth application of the Prosecution in that manner. The three preceding
20 witnesses had similarly -- similar applications had been made in relation to them:
21 Witness 604, 495 and 516.

22 The grounds for the Prosecution application in relation to 637 include first the
23 witness's consistent and significant departure during his testimony from previous
24 statements given to the Prosecution. That's the first ground.

25 The second ground being that the witness had filed, or rather sworn to an affidavit by

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1 virtue of which he resiled from the statements he had given to the Prosecution before.
2 And the third reason indicated was that the witness had made allegation of bad faith
3 against Prosecution investigators in their dealings with him.
4 In their responses the Defence counsel for Mr Ruto and Mr Sang agreed that there is
5 merit to the Prosecution application on this occasion, but only to the extent that there
6 has been consistent significant departure from previous statements. The Defence
7 agree that there has been such a departure, but the Defence do not accept the other
8 grounds indicated for the Prosecution application.
9 In addition to the agreement of the parties on the first ground of the Prosecutor's
10 application, the Chamber too is satisfied that the circumstances of this witness's
11 testimony thus far do satisfy the test of consistent and systematic divergence between
12 testimony of a witness and the witness's previous statement thus warranting the
13 declaration of hostility. On that basis, the application of the Prosecutor is granted.
14 So the witness may continue the testimony. I see that the witness is in the
15 transmission room.
16 Court officer, you can now unmute the witness's speaker system.
17 THE COURT OFFICER (via video link): Yes, Mr President. I will unmute right
18 now.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 Witness, welcome back.
21 WITNESS: KEN-OTP-P-0637 (On former oath)
22 (The witness speaks Swahili)
23 (The witness gives evidence via video link)
24 THE WITNESS: (Interpretation) Good morning.
25 PRESIDING JUDGE EBOE-OSUJI: I understand you are feeling better today.

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- 1 Welcome back. Do your best to stay the course. The sooner we finish the sooner it
2 will be over obviously for you, so let's try and persevere and get it over with.
3 Ms Zago, you have so far had six --
4 MR FAAL: I was just going to raise that same point your Honour just started to
5 discuss.
6 PRESIDING JUDGE EBOE-OSUJI: Yes.
7 You've had six sessions. We will want you to complete in just the next session.
8 MS ZAGO: Thank you, Mr President. Good morning, your Honours.
9 PRESIDING JUDGE EBOE-OSUJI: Thank you.
10 I mean the current session, let me be clear. I don't mean next session. In the current
11 session you need to complete.
12 MS ZAGO: I will endeavour to accomplish that. Thank you, Mr President.
13 QUESTIONED BY MS ZAGO: (Continuing)
14 Q. Good morning, Witness.
15 A. Good morning.
16 MS ZAGO: Mr President, I would like to ask the first question in private session. It
17 will take no more than three minutes, depending on the witness's answer.
18 PRESIDING JUDGE EBOE-OSUJI: Private session.
19 *(Private session at 9.14 a.m.) Reclassified as Open session
20 THE COURT OFFICER: We're in private session, your Honours.
21 MS ZAGO:
22 Q. Witness, I'd like to ask you a couple of questions now, and we are in private
23 session so feel free to name persons and give your full answers to the Court freely.
24 I'd like you to -- I'd like to bring you to something that you told the investigators
25 during your interview in June 2008 -- sorry, 2012, and I'll give the reference for your

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1 Honours and the party. I'm referring at tab number 3, transcript 0085-0103. It's
2 bundle number 1, lines 110 and following.

3 Witness, in this part of your interview you spoke about (Redacted) and in your
4 interview you said that his first name was (Redacted). Did (Redacted) told you as well that
5 (Redacted) first name was (Redacted)

6 A. Yes, they told me (Redacted)

7 Q. Did they also tell you that (Redacted) -- that you knew (Redacted) from
8 the (Redacted) because (Redacted)?

9 A. What I can say is that these persons of number 19 had a report on (Redacted)
10 (Redacted) with regard to the relationship between us. They already had that
11 information.

12 Q. I understand, but please answer the specific questions that I am asking you. So
13 did they tell you to say that you knew (Redacted) from the (Redacted) because you
14 (Redacted)

15 A. All they told me related only to what I had to say about what (Redacted) did during
16 the election period.

17 Q. So did they tell you, or not, to say that (Redacted) -- that you knew (Redacted)
18 from the (Redacted)?

19 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, I think you have to move on.

20 MS ZAGO: As the Court pleases.

21 Q. Witness, in the same transcript - and for the record I'm referring at line 597 - you
22 told the investigators that (Redacted) was also known as (Redacted). Was he known also
23 as (Redacted)

24 A. When they talked to me about the name of (Redacted) I did not recognise that
25 name; the name of this person living in that town. It took me some time. And these

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1 persons in number 19 told me that he was living somewhere near the road. They
2 took me in their vehicle and we went there and they showed me that person.

3 Q. But the question was about the name (Redacted). Did the organisation number 19,
4 (Redacted), tell you that (Redacted) was also known as (Redacted)?

5 A. When they showed me that individual, when they showed me the person's
6 photograph, they asked me to say his name and I found only that name.

7 Q. Witness, did you provide the name (Redacted) to the investigators - sorry, to
8 (Redacted) - or did they provide it to you?

9 A. It was (Redacted). It was those people who gave me the name (Redacted).

10 Q. And what about the name (Redacted)? Did they also give you the name (Redacted)?

11 A. The name (Redacted)? Well, I was the one who gave them that name after they
12 asked me to do that.

13 MS ZAGO: Mr President, I believe we can go back to public session. Thank you.

14 PRESIDING JUDGE EBOE-OSUJI: Public session.

15 (Open session at 9.22 a.m.)

16 THE COURT OFFICER: We're in public session, your Honours.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Witness, we're back in public session. This is where you again need to be careful to
19 not give identifying information and also listen carefully to the question and just
20 answer the question asked.

21 Thank you.

22 MS ZAGO: I'm now referring to another section of the same transcript, but
23 concerning another topic, and it's at line 277 and following -- sorry, line -- correction,
24 line 558 and following for the record.

25 Q. Witness, do you have the PIS in front of you; the protection sheet in front of you?

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1 A. Yes, I do.

2 Q. You told the investigator that you met person 18 at location 17 on October 14,
3 2007, at around 10 a.m. in the morning.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Let's make sure he has the PIS in front
5 of him and he has identified the persons and locations being talked about.

6 Ms Zago, can you make sure he has found the locations and the persons.

7 MS ZAGO: Yes, your Honours.

8 Q. Witness, could you please look at page 2 and 3 of this protection sheet. Do you
9 see them?

10 A. Yes, I have that sheet of paper.

11 Q. Do you see the page entitled "Locations" and the page entitled "Persons"?

12 A. Yes.

13 Q. So my question was: You told the investigators during your interview that
14 you met person 18 at location 17 on 14 October 2007 at around 10 in the morning. Is
15 this correct?

16 A. That is not correct. That is information they invented. That's what I can say.

17 Q. Is it correct that you told the investigators about this? This is my question.

18 Did you tell the investigators that you met person 18 at location 17 on
19 14 October 2007?

20 A. Yes, that is what I told them.

21 Q. And this information had been provided to you by the organisation number 19,
22 correct?

23 A. That is right. That is the information given to me by organisation number 19.

24 Q. And did organisation number 19 tell you to say that the meeting took place at
25 10 a.m. in the morning?

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1 MR FAAL: Excuse me, Mr President. I think there is something that's not so clear
2 in the question. The initial meeting I understand was 10 a.m. in the morning,
3 wherein the two individuals discussed to be at another meeting.

4 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait, wait. Let's -- if it's about the
5 content of the question, let's not do it while the witness is on the stand.

6 MR FAAL: Mr President, I'm guided. All I wanted was for my learned colleague to
7 clarify the question, which meeting she was referring to.

8 MS ZAGO: Your Honours, might I respond?

9 PRESIDING JUDGE EBOE-OSUJI: It's up to you. He's requesting clarification.

10 MS ZAGO: I believe my --

11 PRESIDING JUDGE EBOE-OSUJI: Yes, if you think you need to clarify, go ahead.

12 If you think -- if you insist on your question, it's up to you.

13 MS ZAGO: Thank you, your Honours. I think the question was sufficiently clear
14 and the answer as well, so I can move to another part of the examination.

15 Q. Witness, in the same transcript, at line 277 and following for the record, you told
16 the investigators that you met person 18 outside the court premises at location
17 number 4 and that this person 18 at that meeting told you that he had been given
18 money by person 2. Do you follow me?

19 A. Yes, I follow you.

20 Q. Did you recall telling the investigators this information?

21 A. Yes, I gave it to him.

22 Q. And was this information correct, or incorrect?

23 A. It was false information forged by number 19 so that I would say the same
24 thing.

25 Q. And did organisation 19 tell you the amount of money that person 18 would

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1 have received from person number 2?

2 A. They told me -- they spoke to me about a large sum of money, but they did not
3 give me the exact amount.

4 MS ZAGO: Mr President, I'd at this point like to make an application and tender
5 into the record the statement - written statement - provided by the witness to the
6 Prosecution, together with the transcripts and the audio files of the subsequent
7 interview with -- with the Prosecution.

8 At this stage the purpose of this application is to tender this document for the
9 purposes of impeaching the witness without prejudice to a later application under
10 Article 68, but I want to be clear that at this point the application is circumscribe to the
11 purpose of impeachment of the witness.

12 We had an opportunity, but I invite my learned colleague from the Ruto Defence to
13 correct me if I'm wrong -- we had an opportunity yesterday to discuss and my
14 understanding was that for the limited purpose of admission of these documents for
15 impeachment there would be not an objection to our application. I haven't had the
16 chance to discuss it with the Sang Defence, but I invite them to express their views on
17 this matter. We're trying to be as efficient as possible and try to conclude the
18 examination by 10.30.

19 MR FAAL: That is indeed correct, Mr President, only for the limited purpose of
20 impeachment.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

22 MR KIGEN-KATWA: Mr President, to that same extent we have no objection and,
23 yes, we leave it there, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: How many -- you said transcripts and audio files.
25 How many? You speak in the plural there. How many are we looking at?

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1 MS ZAGO: We are looking at one written statement and 28 transcripts with
2 corresponding audio files, and I understand that the court officer has indicated that
3 there is a possibility that this list will be subsequently filed in the record with
4 attribution of EVD numbers, but I invite the court officer to clarify if that is indeed
5 possible.

6 PRESIDING JUDGE EBOE-OSUJI: What we will try to avoid is, in light of the time
7 squeeze that we're under, to take up a lot of time doing that on the record. Let's see
8 the most efficient way of doing it in the circumstances, whether it is to file it in the
9 manner of what we colloquially call the bar table motion, noting that counsel for the
10 Defence do not object, so it becomes a mere formality of ruling on it on record later.
11 Why don't we do it that way?

12 MS ZAGO: Very well. Thank you, your Honours.

13 PRESIDING JUDGE EBOE-OSUJI: Proceed.

14 MS ZAGO:

15 Q. Witness, apart from organisation number 19 and protection officers that you
16 mentioned on Tuesday, did anybody else offer you money in connection to your
17 testimony in this case?

18 A. Nobody.

19 Q. And is it correct that everything you told the investigators concerning Mr Sang
20 and Mr Ruto and his subordinates, including person number 18, was provided to you
21 by organisation number 19?

22 MR FAAL: Mr President, I think that question is a bit unfair. We have on the
23 record where the witness said some things they provided. Others he himself
24 provided. One example is the sum of money. He said he was told a large sum of
25 money and he gave the figure in his interview. So a question suggesting that

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1 everything he said about these people was from organisation 19 would, in view of
2 that answer I have just cited, be a bit misleading. So perhaps the question should be
3 clarified.

4 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

5 MS ZAGO: I believe the witness gave clear answers on Tuesday during the
6 examination on this point. I can ask the question to the witness again. It was
7 explored extensively on Tuesday. I can give the references to the specific portions of
8 the transcripts, but I can clarify if your Honours wish me to clarify?

9 PRESIDING JUDGE EBOE-OSUJI: You can ask the question to the witness and
10 stress to him that you're talking about everything, if that is what you're interested in.

11 MS ZAGO:

12 Q. Witness, is everything you told the investigators concerning Mr Sang, Mr Ruto
13 and his subordinate coming from organisation number 19?

14 A. No, not all the information. Among the information there is information that's
15 correct, such as the conflict. The conflict did take place in that place.

16 Q. Yes, but my question was limited to the information concerning Mr Sang,
17 Mr Ruto and his subordinate. Did that information concerning these individuals
18 come from organisation number 19?

19 A. Yes, all the information came from organisation 19.

20 Q. And is it correct that you were supposed to incriminate all these people?

21 A. I wasn't there in order to incriminate them. I was there to say what I'd been
22 instructed to say.

23 Q. And what were you told to say about these people?

24 A. They told me the following: I had to say that Mr Ruto and his subordinate was
25 responsible for attacking people.

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1 MS ZAGO: Witness, I'd like you -- to show you an item and I'd like the court officer
2 to please assist us in Nairobi with that. It has to be found in bundle -- OTP bundle
3 number 2, tab 7, and the ERN number is 0072-0463. Can I ask the court officer to
4 confirm whether the document -- or when the document is in front of the witness,
5 please?

6 THE COURT OFFICER (via video link): The document is being shown to the
7 witness; the document ending in page 0463.

8 MS ZAGO:

9 Q. Witness, can you see the document, or at least the first page? Can you see the
10 first page of this document?

11 A. Yes, I can see the page.

12 Q. Do you recognise it?

13 A. Yes, it was among the books I was brought when they were giving me the
14 instructions.

15 Q. Is this the book that you showed the investigators during your interview?

16 A. Yes, it is indeed this book.

17 Q. And is the name and signature that we can see on the left side centre of this
18 document yours?

19 A. Yes, it is indeed mine. Yes, it is indeed my name and signature.

20 MS ZAGO: Can I ask the court officer to please turn the page to 0464, 0465, 0466,
21 0468 up to 0477 for the witness to look at all these pages?

22 THE COURT OFFICER (via video link): All the pages that you mentioned before
23 were shown to the witness.

24 MS ZAGO: Thank you, Mr Court Officer.

25 Q. Witness, is the handwriting that we see in this book yours?

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1 A. Yes. Yes, it's my handwriting.

2 Q. And I know that not all the pages are being made available to you, but to the
3 best of your recollection can you confirm whether the pages shown to you right now
4 are the only pages that you filled in this notebook and the rest of the book are just
5 blank pages?

6 A. (No audible response)

7 MS ZAGO: Mr President --

8 MR FAAL: Mr President, I wonder how the witness can confirm that if he didn't see
9 the entire book? It is difficult as it is to just see photocopies of these pages and
10 determine whether all of it were in fact included here. Perhaps it would have been
11 more efficient if -- if at least some arrangement was made for the witness to perhaps
12 ascertain that in advance, but as it is it's a bit difficult.

13 PRESIDING JUDGE EBOE-OSUJI: The witness can answer the question.

14 MS ZAGO: I believe we have --

15 PRESIDING JUDGE EBOE-OSUJI: The record needs to note that we lost connection
16 to the remote location.

17 (Pause in proceedings)

18 PRESIDING JUDGE EBOE-OSUJI: Court officer, can you hear me in Nairobi?

19 THE COURT OFFICER (via video link): Mr President, I cannot hear anything --

20 PRESIDING JUDGE EBOE-OSUJI: Can you hear me now?

21 THE COURT OFFICER (via video link): -- but we can see you.

22 PRESIDING JUDGE EBOE-OSUJI: We can see you too. Can you hear me now?
23 I can hear you and I can see you.

24 THE COURT OFFICER (via video link): Yes, Mr President. It seems we can hear
25 you. I am going to reconnect, but myself and counsel can hear you and I can follow

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- 1 the transcripts.
- 2 PRESIDING JUDGE EBOE-OSUJI: So you can hear me?
- 3 THE COURT OFFICER (via video link): (No audible response)
- 4 PRESIDING JUDGE EBOE-OSUJI: Can you still hear me?
- 5 THE COURT OFFICER (via video link): We will try to disconnect and reconnect
- 6 again in order to re-establish the audio for the witness.
- 7 (Pause in proceedings)
- 8 PRESIDING JUDGE EBOE-OSUJI: Nairobi, can you hear me? We can see you.
- 9 THE COURT OFFICER (via video link): Mr President, we can see you and hear you.
- 10 However, the quality of the audio is not very good.
- 11 PRESIDING JUDGE EBOE-OSUJI: The quality of the audio from here to there is not
- 12 good? Is that what you're saying?
- 13 THE COURT OFFICER (via video link): (No audible response)
- 14 PRESIDING JUDGE EBOE-OSUJI: Well, we have to persevere.
- 15 Ms Zago, in the meantime this document, where is the actual document appearing at
- 16 tab 7? The actual material, the actual exhibit?
- 17 MS ZAGO: It is with the CMS here at HQ.
- 18 MR FAAL: Mr President, I had asked the court officer to bring the document in
- 19 court because we would be needing it. Thank you.
- 20 (Pause in proceedings)
- 21 THE COURT OFFICER (via video link): It seems we are connected again,
- 22 Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: Can you -- can you hear me now and what's the
- 24 quality of the audio coming in from me to you?
- 25 THE COURT OFFICER (via video link): Yes, Mr President. The quality is much

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1 better and the connection was re-established.

2 PRESIDING JUDGE EBOE-OSUJI: All right, thank you very much. We have to
3 continue.

4 Ms Zago?

5 Witness, can you hear me?

6 THE WITNESS: (No interpretation)

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

8 Ms Zago will continue.

9 THE WITNESS: (Interpretation) Yes, I can hear you.

10 MS ZAGO: Thank you.

11 Q. Witness, before we were disconnected I asked you a question about this book
12 and I'll repeat the question for you so that you can answer now. You told us already
13 on Tuesday that the book that you gave the investigators was halfway completed, or
14 filled out. Now that you've reviewed this document, can you confirm to the best of
15 your recollection that the pages that were shown to you are the only pages that you
16 filled out in that specific book?

17 A. Yes.

18 MS ZAGO: Mr President, I'd like to seek to tender this document into evidence with
19 the corresponding English translation which can be found at tab 15 of the same
20 bundle, and for the record the ERN number of the translation is 0086-0302. For
21 efficiency purposes, and if you allow, we could add this document, if there are no
22 objections on the other side, to the bar table motion, together with the statement and
23 transcripts of the witness's interview, provided that the Defence does not object.

24 MR FAAL: No objection from the Mr Ruto team.

25 MR KIGEN-KATWA: We do not object, Mr President.

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1 PRESIDING JUDGE EBOE-OSUJI: The document -- are you going to ask questions
2 about -- on this document? Any more questions on it?

3 MS ZAGO: No, your Honours.

4 PRESIDING JUDGE EBOE-OSUJI: Yes, then add it to the bar table motion.

5 MS ZAGO: I'm guided. Thank you.

6 Now, court officer, I'd like to ask you for assistance to show the witness

7 another -- another document, which is 0125-0230 and which can be found at tab

8 number 2 -- sorry, tab 18 in the bundle number 2.

9 THE COURT OFFICER (via video link): The document KEN-OTP-0125-0230 is being
10 presented to the witness.

11 PRESIDING JUDGE EBOE-OSUJI: One second. Where did you say this document
12 is?

13 MS ZAGO: It is in bundle number 2, tab number 18.

14 PRESIDING JUDGE EBOE-OSUJI: And you say the ERN is what?

15 MS ZAGO: 0125-0230. This should be the witness's affidavit.

16 PRESIDING JUDGE EBOE-OSUJI: That is not what I have in bundle number 2. At
17 tab 18 is an investigator's report, 0130-04 -- 0641.

18 MS ZAGO: Might I inquire if the affidavit in the other bundles is under tab 18?

19 MR FAAL: It is so in our bundle.

20 MS ZAGO: We have a spare copy in case it is of assistance to your Honour?

21 PRESIDING JUDGE EBOE-OSUJI: I have seen the affidavit some time ago. Ah, it's
22 at tab 17 in mine. It's okay.

23 MS ZAGO: I apologise.

24 PRESIDING JUDGE EBOE-OSUJI: It's all right. These things happen. Proceed,
25 please.

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1 MS ZAGO:

2 Q. Witness, have you seen the document?

3 A. Yes, I do see it.

4 Q. What was the reason why you decided to attest to this affidavit?

5 A. I decided to make this affidavit to show the Chamber, or to show the Court, that
6 I am withdrawing from this case and I even wrote down the reasons that drove me to
7 do this.

8 Q. And once you made the resolution to attest to this affidavit, you chose the
9 lawyer yourself, correct?

10 A. I had difficulties finding a lawyer because I was afraid. I was wondering how
11 I was going to get a lawyer because the lawyer will then know my identity. I
12 decided to go to location number 4, and I was wondering how I could go to some
13 other place different from location number 4 where no one would identify me.

14 Q. Yes, I understand, but was the lawyer you went to a lawyer of your own choice?

15 A. When I arrived at that location, I had difficulties getting a lawyer. However,
16 fortunately I found a bus driver - a taxi bus driver - and I asked him who the best
17 lawyer was on the spot, the best lawyer he knew, and that taxi driver gave me two
18 names; two lawyers' names. When I went to see the first lawyer, whose name I have
19 forgotten, I did not find him in his office. I then went to see the lawyer who
20 produced this affidavit and I found him. He even had difficulties drafting this
21 document because, if he had entrusted that task to his secretaries, the secretaries
22 would then know my identity.

23 Q. And you were able to converse with this lawyer in your language and
24 understand each other, correct?

25 A. What language are you talking about? I do not understand. Which language

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1 are you referring to?

2 Q. Which language did you speak with the lawyer?

3 A. We communicated in Swahili.

4 Q. And you were able to understand each other perfectly?

5 A. Yes, we perfectly understood each other.

6 Q. And did you give him instructions on what to include in your affidavit in
7 Swahili?

8 A. Yes, I explained to him all the reasons that had brought me to him and I did this
9 in Swahili.

10 Q. And all the information to be included in the affidavit came from you, correct?

11 A. Yes, all the information was provided by me.

12 Q. And the lawyer explained the content of the affidavit to you before you signed
13 it, correct?

14 A. Yes, the lawyer explained everything to me and he gave me time to digest all
15 this information and I did confirm the content.

16 Q. And after you confirmed you signed it, right?

17 A. Yes, that is right.

18 MS ZAGO: Mr President, I'd like to ask the next question in private session please.

19 PRESIDING JUDGE EBOE-OSUJI: Private session.

20 *(Private session at 10.11 a.m.) Reclassified as Open session

21 THE COURT OFFICER: We're in private session, your Honours.

22 MS ZAGO:

23 Q. Witness, you told today that nobody else promised you, or offered sorry, money
24 in connection to this case. Other --

25 A. Yes, I did say that no one promised me money. No other person.

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1 Q. Just to confirm, no one other than (Redacted) and the protection unit?

2 A. That is correct. It was only these two organisations which promised me
3 money.

4 Q. Witness, in paragraph 24 of your affidavit you say -- you said, (Redacted)
5 (Redacted)

6 (Redacted)

7 (Redacted) What's the truth, what you told us today or what
8 you have written in your affidavit?

9 A. (Redacted)

10 (Redacted)

11 (Redacted).

12 PRESIDING JUDGE EBOE-OSUJI: Do we mean paragraph 24?

13 Witness, what came across in your answer was page 24. Did you mean to say page
14 24, or paragraph 24? The Prosecutor's question to you was about paragraph 24 of
15 your affidavit. Can you look at paragraph 24?

16 THE WITNESS: (Interpretation) Yes, I do understand.

17 PRESIDING JUDGE EBOE-OSUJI: Can you look at paragraph 24 of your affidavit?
18 Are you looking at it?

19 THE WITNESS: (Interpretation) Yes, I have the page in front of me.

20 PRESIDING JUDGE EBOE-OSUJI: Paragraph 24. Are you looking at paragraph 24?
21 Not page 24, but paragraph?

22 THE WITNESS: (Interpretation) Yes, I do have it before me.

23 PRESIDING JUDGE EBOE-OSUJI: I don't think your affidavit has page 24 at any
24 rate. The question is this: Looking at what is at paragraph 24 of the affidavit, what
25 are you saying? (Redacted)

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1 THE WITNESS: (Interpretation) They introduced themselves to me as employees
2 (Redacted).

3 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

4 MS ZAGO:

5 Q. Witness, why paragraph 24 in your affidavit says (Redacted)?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Witness, you said on Tuesday that the first time that you discussed the Ruto
10 case with organisation number 19 was at location number 19 on (Redacted).

11 In paragraph 1 of your affidavit --

12 PRESIDING JUDGE EBOE-OSUJI: Wait. Let's make sure he's got both location 19
13 and paragraph 19, he's looking at them, then you can ask the question.

14 THE COURT OFFICER (via video link): The witness is looking at paragraph 1.

15 MS ZAGO: Yes. Can the witness also be shown, please, the protection sheet
16 document, page 2 and 3 please? Thank you.

17 THE COURT OFFICER (via video link): Yes, Counsel. I confirm the witness has at
18 all times the copy of the protection sheet, pages 2 and 3, before him.

19 PRESIDING JUDGE EBOE-OSUJI: Do we need to be in private session?

20 MS ZAGO: We can move to public session. Thank you, your Honours.

21 PRESIDING JUDGE EBOE-OSUJI: Public session.

22 (Open session at 10.20 a.m.)

23 THE COURT OFFICER: We are in open session, your Honours.

24 MR FAAL: Mr President, just perhaps a clarification for my learned friend. I think
25 the transcript suggests different dates. What I have is 9 and 10 September, not 19

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1 and 20 September, just for my learned friend to -- to clarify. It's in the transcript at
2 page 55. Transcript of 30 September 2014, page 55, line 25. That's what I have in
3 this transcript, if it helps.

4 MS ZAGO: Thank you, and thank you to my counsel on the other side.

5 Q. Witness, let me ask you the question again. You said Tuesday to the Court that
6 the first time that you discussed the Ruto case with organisation number 19 was at
7 location 19 on 10 September 2011. Now, if you turn to your affidavit at paragraph 1,
8 you said that you were, and I quote, "... identified by organisation 19 as a witness
9 against Honourable William Ruto and Joshua Arap Sang in the month of
10 August 2011." Please look at paragraph 5. I was misquoting. Paragraph 5 of your
11 affidavit.

12 A. Yes, I do see it.

13 Q. Again -- I ask you again, Mr Witness, when was it that you first discussed
14 matters related to the Ruto and Sang case? Was it in August or in September 2011?

15 A. As concerns Ruto and Sang, on Tuesday I told you that I started talking about it
16 bit by bit and it lasted for all that while.

17 Q. Yes, Witness, but my question is: When was it that you first discussed it?
18 Was it in August 2011, or September 2011? Please answer this question.

19 A. It was from the month of August that I was considered as a witness.

20 Q. So it was August, not September, 2011; is that correct?

21 A. I was with them in the month of August and the month of September at location
22 number 19.

23 MR FAAL: If it helps my friend, in the transcript of 30 September, page 52, the
24 witness did say, "I said that on that day we discussed everything concerning

25 Mr Uhuru Kenyatta's case. Afterwards, we went on 8 August and at that meeting on

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1 8 August we spoke about the case of Mr Ruto." That's what we have in this
2 transcript, if it helps my friend.

3 MS ZAGO: I can give a different quote, I think that the transcript speaks for itself at
4 page later on, subsequent to an inquiry from the Presiding Judge at page 66, line 1 to
5 9.

6 PRESIDING JUDGE EBOE-OSUJI: We have to move on.

7 MS ZAGO: Yes, your Honours.

8 Q. Witness, are you aware that in August -- Witness, when you met the
9 representative -- representatives of this organisation, why did they want you to
10 implicate Mr Ruto and Mr Sang when you met them the first time?

11 A. Personally I don't know the reasons which motivated organisation number 19 to
12 accuse Mr Ruto and Mr Sang.

13 Q. Did you know there was a pending case at the ICC against Mr Ruto and
14 Mr Sang?

15 A. I knew that there were many accused persons and there were many names
16 which were being circulated with respect to this matter.

17 Q. Yes, but my question is did you know that there was a pending case of
18 Mr -- against Mr Ruto and Mr Sang?

19 A. Yes, I knew about that.

20 Q. And did you know that at the time there was a third person charged in this case,
21 Mr Henry Kosgey?

22 A. Yes, I heard mention of that name.

23 Q. And did organisation number 19 ask you to implicate him as well?

24 A. No, that name was not given to me. They did not say anything about that
25 name.

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1 Q. Do you know why not Mr Kosgey and only Mr Ruto and Mr Sang?

2 A. I do not know. Only organisation number 19 would tell you more about that.

3 (Trial Chamber confers)

4 PRESIDING JUDGE EBOE-OSUJI: We've had difficulty with time occurrences that
5 we did not plan. Yesterday we indicated we would start and break at this point, at
6 10.30, but then we didn't know we were going to lose connection. So we lost
7 connection with Nairobi for ten minutes. In light of that we have to shorten our
8 break time. We will continue until 10.45 and then we will break at 10.45 for
9 15 minutes and then come back.

10 MS ZAGO: Thank you.

11 Q. Witness, on Tuesday you told the Court that representatives of organisation
12 number 19 told you to incriminate person 18 on the protection sheet. So please look
13 at protection sheet number -- page number 3. Sir, am I correct that there is no
14 mention of person 18 in your affidavit? And I specifically refer to you paragraph 12
15 of your affidavit, page 2.

16 A. Yes, I see page number 12.

17 Q. Are you looking at paragraph number 12? Not page, paragraph?

18 A. Yes, I see.

19 Q. Is it correct, sir, that person number 18 is not mentioned there?

20 A. Yes, nothing is written about him.

21 Q. And is it correct that person number 18 is nowhere mentioned in your affidavit
22 at all?

23 A. Yes, number 18 wasn't noted because I didn't recognise person 18 in our
24 community.

25 Q. We're speaking about people you were told to implicate by organisation 19.

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1 This is what you told us on Tuesday. So my question is: Why is he not mentioned
2 in your affidavit while he takes -- person 18 takes a central position in your narrative
3 to the investigators?

4 A. What I said is that, well, I didn't recognise this person because in our
5 community (Redacted). So I couldn't have known that person.

6 Q. Witness, you said on Tuesday that organisation number 19 instructed you to
7 implicate person number 3 on the protection list. Please look at the protection list
8 page 3, person number 3. Why is person number 3 also not mentioned in your
9 affidavit?

10 A. Yes, I don't see the name of number 3 because my report concerns several
11 persons. When I gave my account, I didn't remember all the names. Even the
12 names that are here, this list isn't exhaustive. I have more -- more names than those
13 mentioned here.

14 MR KIGEN-KATWA: Mr President, with your permission, if line 21 and 22 could be
15 revisited? The witness said that that name, being particularly (Redacted)
16 (Redacted) in our community. If that could just be clarified, because
17 the way it's written is not the way the witness said. My colleague can take the
18 witness back to that point.

19 PRESIDING JUDGE EBOE-OSUJI: No, let's not do that. Let's move on. If you
20 want to do that in your own re-examination, you may.

21 Please proceed, Ms Zago.

22 MS ZAGO: Thank you.

23 Q. Witness, you told the Court on Tuesday that organisation number 19 provided
24 you the names -- I'll reformulate. On Tuesday you told the Court that you yourself,
25 not organisation number 19, provided the names of person number 1, 11, 12 and 15 in

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1 the protection sheet and you said that the only reason you provided these names to
2 the organisation was because these people helped you in your region.

3 A. Yes, they helped people in this region.

4 Q. You said that the only reason you provided these names was because these
5 people help you in your region, but in your interview to the Prosecution you did
6 implicate these people directly in the post-election violence in your area. So the
7 question is: If it wasn't necessary to implicate these people, why did you implicate
8 them?

9 A. Yes, it's true that they were to be implicated because number 19 changed my
10 words. They wanted these people to become enemies and not people who had
11 helped the population.

12 MS ZAGO: Mr President, I'd like to show the witness certain items and then seek to
13 introduce those items into the record, so I propose to do it in the next remaining six to
14 five minutes.

15 PRESIDING JUDGE EBOE-OSUJI: Proceed.

16 MS ZAGO: Court officer, please could you pull up and show the following
17 document to the witness, 0072-0458, which can be found at tab number 2 of the
18 second OTP bundle?

19 THE COURT OFFICER (via video link): The document is being presented to the
20 witness.

21 MS ZAGO:

22 Q. Witness, do you recognise this document?

23 A. Yes. Yes, I recognise this document.

24 Q. This is the sketch that you drew for the investigators during your interview
25 with them, correct?

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1 A. Yes.

2 Q. And the signature we see at the top right-hand side of the document is yours,
3 correct?

4 A. Yes, it is indeed my signature.

5 Q. Where does the information reflected in the sketch come from?

6 A. I drew the sketch to answer questions that were put to me.

7 Q. So the information reflected in the sketch came from you?

8 A. Yes.

9 MS ZAGO: Next document, 0072-0459, can be found at the same bundle under tab 3.

10 THE COURT OFFICER (via video link): The document ending in 0459 is being
11 presented to the witness. One page.

12 MS ZAGO:

13 Q. This is also another sketch that you drew for the investigators, correct?

14 A. Yes, that's correct.

15 Q. And the signature at the top right-hand side of the page is yours, correct?

16 A. Yes, indeed.

17 Q. And the information reflected here also came from you, correct?

18 A. Yes, I noted that.

19 MS ZAGO: Next document tab 4, same bundle, ERN-0072-0460.

20 THE COURT OFFICER (via video link): The document is being presented to the
21 witness, 0460. One page.

22 MS ZAGO:

23 Q. And this is also another sketch that you drew from information that you had,
24 correct?

25 A. Yes, that's information that I already had with me.

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1 MS ZAGO: Tab 5, 0072-0461.

2 THE COURT OFFICER (via video link): The document is being presented to the
3 witness. Again, one page.

4 MS ZAGO:

5 Q. This is another sketch that you drew from information that you had, right?

6 A. Yes. Yes, that's my sketch in accordance with what I heard.

7 MS ZAGO: Finally tab 6, 0072-0462.

8 THE COURT OFFICER (via video link): The document is being presented to the
9 witness.

10 MS ZAGO:

11 Q. And again, Witness, this is another sketch that you drew for the investigators
12 from information that you had, yes?

13 A. Yes, it's the same sketch which came from information that I already had.

14 Q. And on -- just a clarification. On the sketch under tab 5, you said that the
15 sketch came -- that "My sketch ..." -- "It's my sketch in accordance with what I heard."
16 This is what the record reflects, but I want you to clarify. Is it information that you
17 had, or you heard?

18 A. I haven't understood your question. Please could you repeat it. You refer to
19 information that I had heard, or information that I had had?

20 Q. Witness, the sketch that we showed you at tab 5, the information that is
21 reflected there is information that was in your possession, that was -- you had
22 knowledge about yourself, or someone else told you about?

23 A. Number 19 told me about all that and asked me to note all of these places, and
24 they asked me to also go and visit these places so that I would have a mastery over
25 these places.

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1 MS ZAGO: Mr President, we seek to tender these sketches, if there are no objections,
2 into the record of the case. And I also omitted to indicate that we would like to seek
3 to tender the affidavit, which was mentioned previously and was MFI'd yesterday,
4 and now we would like to have an EVD number assigned.

5 PRESIDING JUDGE EBOE-OSUJI: Can we quickly get your reaction and then
6 decide whether we come back and do the formality?

7 MR KIGEN-KATWA: On our part we have no objection, Mr President.

8 MR FAAL: No objection.

9 PRESIDING JUDGE EBOE-OSUJI: All right. The document will be admitted on to
10 the record, but we will take our break now and the -- that can be done when we
11 return.

12 We will resume at 10-minutes-past-11.

13 Court will rise.

14 THE COURT USHER: All rise.

15 (Recess taken at 10.50 a.m.)

16 (Upon resuming in open session at 11.12 a.m.)

17 THE COURT USHER: All rise.

18 Please be seated.

19 THE COURT OFFICER: We're in open session, your Honours.

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

21 What we will do now is the affidavit will be converted into an actual exhibit. The
22 rest of the documents would also need to be added to the material you have filed so
23 we have it all in one system.

24 MS ZAGO: Thank you. Thank you, Mr President.

25 THE COURT OFFICER: The affidavit, KEN-OTP-0125-0230, will bear the following

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- 1 EVD number: EVD-T-OTP-00178.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 MS ZAGO: Mr President, can I also request a PIS number for the PIS that we used as
- 4 amended on Tuesday with the additional locations and individuals?
- 5 PRESIDING JUDGE EBOE-OSUJI: Yes, the document will be admitted as the next
- 6 Prosecution Protected Information Sheet.
- 7 THE COURT OFFICER: Thank you, Mr President.
- 8 The PIS related to Witness KEN-OTP-P-0637 will bear the following number,
- 9 KEN-PIS-0001-0090, and will be registered as confidential.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 11 MS ZAGO: And before we conclude our examination-in-chief right now, I just
- 12 wanted to correct the transcript, or what I misspoke this morning. I said "... an
- 13 application under Article 68." I meant to say Rule 68.
- 14 PRESIDING JUDGE EBOE-OSUJI: We know you meant Rule 68.
- 15 MS ZAGO: Thank you, Mr President.
- 16 And we have no further questions for this witness. Thank you.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 18 Witness, the Prosecutor has finished asking you their questions and now the Defence
- 19 lawyers will take their turn in asking you questions. I notice Mr Faal for -- who is
- 20 one of the lawyers for Mr Ruto looks like he's the one to begin.
- 21 Is that the case, Mr Faal?
- 22 MR FAAL: Indeed, Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.
- 24 Mr Faal will ask you questions.
- 25 Mr Faal?

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1 MR FAAL: Thank you, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: And we're in open session.

3 MR FAAL: Indeed. Thank you, Mr President.

4 QUESTIONED BY MR FAAL:

5 Q. Good morning, Mr Witness. My name is Essa Faal. I am one of the lawyers
6 for Mr William Ruto and I will be asking you questions on his behalf. Do you
7 understand?

8 A. Yes, I understand you.

9 Q. I would like to remind you of the advice you were given by the President to
10 listen carefully to the questions before you answer them. Do you understand?

11 A. Yes, I understand.

12 Q. And in the event that you do not understand a question I have asked, please ask
13 me to repeat it or to clarify it. Do you understand?

14 A. Yes, I understand you.

15 Q. We have also provided you with a PIS form, or we are going to provide you
16 with a PIS form. I understand it's not yet sent to you. It is a document similar to
17 the one you were shown by the Prosecution, and we have made sure that the
18 information contained in it to a considerable extent corresponds with what the
19 Prosecution has provided. We merely added to it those names and places that were
20 not included in the Prosecution's document. Do you understand?

21 A. Yes, I understand.

22 Q. I would endeavour to do most of my questioning in public and, if you intend to
23 refer to names, please first check them up in the PIS - and also locations, please check
24 them up first in the PIS - such that you would not -- at least you would use the
25 pseudonyms contained therein in order to avoid giving out in public information that

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1 may potentially identify you. Do you understand?

2 A. Yes, I understand.

3 MR FAAL: Mr President --

4 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, before you do that, there's something
5 that Mr Hooper did which in my view should be encouraged, and that was when he
6 tries to avoid multiplication of PISs by producing another one from the Defence. It is
7 something to be encouraged. That's what I say. So if the information is already in
8 the Prosecution document, we -- it makes sense to limit --

9 MR FAAL: What we did, Mr President, was --

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 MR FAAL: -- we repeated the information from the Prosecution's document --

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MR FAAL: -- so that the names and numbers correspond, only that we added to it.

14 PRESIDING JUDGE EBOE-OSUJI: You added to yours.

15 MR FAAL: We added more names and more places.

16 PRESIDING JUDGE EBOE-OSUJI: I see.

17 MR FAAL: But the rest of it is basically identical.

18 PRESIDING JUDGE EBOE-OSUJI: All right.

19 MR FAAL: Thank you, Mr President.

20 Mr President, at this stage may I ask that the PIS form be distributed?

21 Court officer, could you assist in passing it around?

22 THE COURT OFFICER (via video link): Mr President, for the record the witness has
23 been given a copy - hard copy - of the Defence PIS.

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

25 MR FAAL:

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1 Q. Mr Witness, you told the Prosecution when you were interviewed that you were
2 a youth leader in your location, that is location 4; is that right?

3 A. Yes.

4 Q. And you told them in your first interview that you were -- excuse me,
5 Mr President. Let me just -- you told them that you were a member of the
6 organisation listed under "People" at number 26. Could you look at the PIS number
7 26?

8 A. Yes, I can see it.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, one second so we straighten something
10 up on the record at this stage. It is the case that your own PIS, in terms of location,
11 has the additional -- additional locations, four of them, 20, 21, 22 and 23. That's the
12 case, isn't it?

13 MR FAAL: Yes, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: And in terms of people you have six more people?
15 You've added six more people and locations?

16 MR FAAL: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: Sorry, people and organisations --

18 MR FAAL: Indeed, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: -- under "People". So we have 23, 24, 25, 26, 27
20 and 28?

21 MR FAAL: Yes, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: That's --

23 MR FAAL: Yes, that's the case.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 THE INTERPRETER: Message from the interpreters: Could we also be provided

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1 with the PIS form please? Thank you very much.

2 PRESIDING JUDGE EBOE-OSUJI: Yes, that would be helpful for both the
3 interpreters and as well as the court reporters. It's always useful to let them have
4 materials we are using in court.

5 THE COURT OFFICER: Mr President, I've sent the interpreters and court reporters
6 an electronic version of the PIS, if that's okay with the Defence?

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR FAAL: Thank you, Madam Court Officer.

9 Mr President, may I proceed? Thank you.

10 Q. So, Mr Witness, during your long interview with the Prosecution you told
11 them -- I am referring, Mr President, to the OTP bundle. That is tab 1 of the OTP
12 bundle. That is KEN-OTP-0072-0397 at 0403. That is paragraph 30. You told them
13 this and I read, "I have been a co-ordinator of organisation 26 since 2001. This
14 organisation was created by me and two other people". The names of those people
15 would be person 23 and person 24. "The organisation is a peace building platform
16 for the youth. It's membership comprises the Kipsigis, Kisii, Kikuyu and Luhya
17 youths. It has offices in all six districts." I would not mention the districts. And so
18 you went on to say, "There is a chairperson, a secretary and treasurer in every district.
19 I normally move in all these districts when we organise activities, so I have developed
20 a region-wide network."

21 Do you remember that, Mr Witness?

22 A. Yes, that's right.

23 Q. And in paragraph 33 of the same statement you said, "In order for an individual
24 to join this organisation, they have to go through a vetting process. The vetting is
25 done by the chairperson, I and the treasurer. The applicant has to be neutral and

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1 should not belong to any political party. He should also have high ethical standards
2 and good behaviour. The organisation comprises around 1,200 youths contributing
3 100 Kenya shillings every month. It has no offices as such, because the
4 meeting/conference venues are only booked when required. The political
5 campaigners also contribute when they want the youth to campaign for them."

6 Do you also remember saying that?

7 A. Yes, that's right.

8 Q. And you went on to say that you were the secretary of the organisation and you
9 kept a book, or a book record, containing all the details of the members. Do you also
10 remember that?

11 A. Yes.

12 Q. And at paragraph 35 of the statement you said, "The organisation has a
13 constitution and regulations and was registered in 2002." Do you remember that?

14 A. That's correct.

15 MR FAAL: Private session, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Private session.

17 *(Private session at 11.27 a.m.) Reclassified as Open session

18 THE COURT OFFICER: We're in private session, your Honours.

19 MR FAAL: Thank you, court officer.

20 Q. Mr Witness, we are in private session. Could you kindly tell us the exact name
21 of the organisation to which you belonged at the time in (Redacted)

22 A. (Redacted)

23 MR FAAL: Mr President, we can go back to public session.

24 PRESIDING JUDGE EBOE-OSUJI: Public session.

25 (Open session at 11.28 a.m.)

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1 THE COURT OFFICER: We're in public session, your Honours.

2 MR FAAL:

3 Q. Mr witness, we are back in public session. If you want to refer to names of
4 individuals and organisations, please go back to the PIS form. Do you -- are we
5 together?

6 A. Yes, I am following you.

7 Q. As a secretary of this organisation I would imagine that you would know the
8 full and exact name of the organisation; is that right?

9 A. Yes.

10 Q. In your first interview with the Prosecution you told them that the name of the
11 organisation is what is contained under people number 26, persons 26; is that right?

12 A. Numbers 26, 27 and 28 all belonged to the same organisation.

13 THE INTERPRETER: Correction from the Swahili booth: It is number 27.

14 MR FAAL:

15 Q. Mr Witness, what I am trying to drive at here is that in your various interviews
16 you have given different names for this organisation; is that not correct?

17 A. Yes.

18 Q. And the reason you have given different names for these organisations is that
19 these organisations do not exist at all. What do you say to that?

20 A. I would say that organisations 27 and 28 divided, so the organisations 26 and 27
21 divided in order to create organisation 27.

22 THE INTERPRETER: Message from the English booth: Could the answer please be
23 repeated? It was very, very confused.

24 PRESIDING JUDGE EBOE-OSUJI: Witness, can you repeat your answer. The
25 interpreters did not follow it. Can you repeat it in a way they will understand.

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1 Thank you.

2 THE WITNESS: (Interpretation) I was saying as follows: Organisation number 26
3 and organisation number 28 made up organisation number 27.

4 MR FAAL:

5 Q. Mr Witness, could -- can you explain what you mean by that, that organisation
6 26 and 27 made up organisation 28? Excuse me, organisation 26 and 28 made up
7 organisation 27, could you explain that?

8 A. Yes, I can explain myself. We were supposed to make up one organisation and
9 that was organisation number 27.

10 Q. When did that happen? Remember, Mr Witness, we are in public session.

11 A. It was in 2002.

12 Q. Mr Witness, let me read out to you something you told the Prosecution in your
13 recorded interview.

14 Mr President, this is contained in tab 6 of the OTP bundle. It is KEN-OTP-0085-0166
15 at 0 -- at lines 0169 -- at pages, rather, 0169 to 170, lines 78 to 116, and I will read it out.
16 This is what you told the investigators.

17 PRESIDING JUDGE EBOE-OSUJI: Can we do that in public?

18 MR FAAL: I would endeavour, Mr President, to use the PIS if -- I'll do my best.

19 Thank you, Mr President.

20 Q. This is what you said. You were asked, "Who chose you?", and you said as
21 follows, "It was only the youth who sat down and appointed each other. I was
22 elected chairperson of the youth groups in these two places and was selected because
23 I was also the secretary of ..." and you mention an organisation. That is organisation
24 28.

25 PRESIDING JUDGE EBOE-OSUJI: Are you at 101?

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1 MR FAAL: Mr President?

2 PRESIDING JUDGE EBOE-OSUJI: Are you at line 101?

3 MR FAAL: Well, I excerpted it from the transcript in order to avoid going back and
4 forth, but I could -- I could check that, Mr President. Just give me a minute.

5 MS ZAGO: I can assist. It's line 94.

6 MR FAAL: Could you say again? 94, thank you. Thank you. Yes, it is indeed
7 line 94.

8 Q. So it's, "I was elected chairperson of the youth group." "And why were
9 you ..." -- "... in these two wards." "And why were you selected?" "I was selected
10 because I was secretary of the organisation ..." stated as under people number 28.

11 PRESIDING JUDGE EBOE-OSUJI: Now we're at 101. Line 101.

12 MR FAAL: Line 101, yes.

13 PRESIDING JUDGE EBOE-OSUJI: Yes, that's where I was when I said, "Are we at
14 line 101?"

15 MR FAAL: Yes, Mr President, you are right.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Now, the reason I say that, Mr Faal, is
17 in fairness to the witness you will notice the mixture of moving from Swahili to
18 English all along, then at line 101 the witness it appears does speak in English. Does
19 this --

20 MR FAAL: That's a good observation, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: Yes, okay. Whether you want to pursue that
22 question.

23 MR FAAL: Yes, Mr President.

24 Q. And, Mr Witness, on this occasion, at line 101 of the transcript, you actually
25 stated in English, not in Kiswahili this time, that, "I was selected because I was the

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1 secretary of the Youth Alliance in ..." and then a particular location. Do you recall
2 that?

3 PRESIDING JUDGE EBOE-OSUJI: Hold on, Witness.

4 The reason I pointed it out was to ask you whether you really want to pursue that line
5 of question if the witness moved from Swahili to English at one point. You can think
6 about what I'm getting at.

7 MR FAAL: Yes, Mr President. I would move away from this particular point.
8 Thank you, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR FAAL:

11 Q. So, Mr Witness, what I'm driving at here is you stated that this event now is
12 happening in 2006 and not in 2002. What do you say to that?

13 A. I didn't understand you when you said that this event occurred in 2006 and not
14 in 2002. I do not understand you. Could you explain a little further, please?

15 Q. Mr Witness, you told the investigators that in 2006 you were elected chairperson
16 of this group. Do you recall saying that?

17 A. Yes, elections were held on a yearly basis.

18 Q. Mr Witness, you said earlier in your statement that this organisation is
19 registered. It has a constitution. It has regulations. It is registered. Where was it
20 registered?

21 A. We registered it at location number 4.

22 Q. Mr Witness, we have checked at the registries in both --

23 PRESIDING JUDGE EBOE-OSUJI: That's not allowed. You cannot be giving
24 evidence, Mr Faal. You are the lawyer. Ask questions.

25 MR FAAL: I was going to ask a question. I have a reasonable basis for it.

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1 PRESIDING JUDGE EBOE-OSUJI: No, no, not about you have checked at the
2 registry. Just ask the witness questions, please.

3 MR FAAL: Thank you, Mr President.

4 Q. Mr Witness, would it surprise you to note that this organisation is not registered
5 at all at the NGOs Co-ordination Board in Kenya? Mr President, I am looking at tab
6 31 of the Defence bundle.

7 A. (No audible response)

8 Q. Mr Witness, what do you say to that, that this organisation at point 26 and the
9 organisation you said at 28 are not registered at all?

10 A. Well, I would say as follows: We would need to go to that office because we
11 registered it with a lady. I do not know whether she took it to the headquarters, or
12 not.

13 THE INTERPRETER: Rather, correction from the Swahili booth: "We gave this
14 information to the person concerned, not to a lady."

15 PRESIDING JUDGE EBOE-OSUJI: Yes, Ms Zago?

16 MS ZAGO: May I seek clarification from my learned colleague on the other side?

17 We have referred to different organisations, 26, 27, 28, and the document at tab 31
18 only refers to one organisation which is number 26. So I would like, probably in
19 fairness to the witness, to clarify which organisation my learned colleague is referring
20 to when he put the question to the witness. Thank you.

21 MR FAAL: Indeed. I did say organisation listed as 26 and organisation listed as 28,
22 and I refer you to tab 31 and tab 50 of the Defence -- Ruto Defence bundle. Tab 31,
23 the letter states that organisation 26 is not registered, and tab 50 says that organisation
24 28 is not registered.

25 Q. So, Mr Witness, at location 4, the office there also issued a letter saying that the

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1 organisation 26 and organisation 28 were not registered. What do you say to that?

2 Mr President, I am referring to tab 51.

3 MS ZAGO: I do apologise. I really do not want to interrupt my colleague, but the
4 document both at tab 31 and 50 say the organisation is not registered - is not
5 registered - and it's dated 26 August 2014.

6 PRESIDING JUDGE EBOE-OSUJI: Okay, let's just --

7 MS ZAGO: So I would --

8 PRESIDING JUDGE EBOE-OSUJI: This is for arguments. You can make that in
9 submissions. Thank you.

10 MS ZAGO: As the Court pleases.

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MR FAAL: Thank you, Mr President.

13 Q. So, Mr Witness, at the office in location 4 they also say that these organisations
14 are not registered. What do you say to that?

15 A. I would answer by saying the follows -- as follows: Not all three could have
16 been registered separately. They were registered one -- under one name only.

17 Q. Under which name, Mr Witness?

18 A. Organisation number 27. Under the name of organisation number 27.

19 Q. And, Mr Witness, does it occur to you that this is the first time you mentioned
20 this name? You first mentioned it in this courtroom?

21 A. I was aware of the existence of organisation number 27. The other
22 organisations existed before the disintegration happened resulting in the creation of
23 organisation number 27.

24 Q. Mr Witness, the simple truth is you're just making this up as you go along.
25 These organisations do not exist. Do you agree?

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1 A. I said the following: In 2008 these organisations disintegrated, but prior to that
2 date they did indeed exist.

3 Q. When did you say that?

4 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you have to move on.

5 MR FAAL: Mr President, perhaps before I leave this subject, may I ask that these
6 documents be admitted into evidence? The first item used is the letter from the
7 NGO Co-ordination Board contained in tab 31. It's KEN-D09-0041-0090. It's a letter
8 from the NGO Board dated 8 August 2014. Mr President, we ask that it be exhibited,
9 but if there is any difficulty with that we can settle for an MFI, but we believe that this
10 item of evidence could be admitted.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

12 MS ZAGO: We do not object to the MFI. We will object eventually if the
13 documents are tendered into evidence as exhibit.

14 PRESIDING JUDGE EBOE-OSUJI: You're objecting to it being tendered into
15 evidence at this time, but you do not object to it being marked for identification?

16 MS ZAGO: That is correct. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

18 MR KIGEN-KATWA: We would have no objection to it being marked as an exhibit,
19 Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: The document will be marked for identification.

21 THE COURT OFFICER: Thank you, Mr President.

22 Document KEN-D09-0041-0090 will bear the following number, MFI-T-D09-00269,
23 and will be registered as a confidential document.

24 MR FAAL: Mr President, may I ask that a letter from the NGOs Co-ordination
25 Board dated 26 August 2014, contained in tab 50, KEN-D09-0041-0176, be marked for

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1 identification?

2 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

3 MS ZAGO: No objection to the MFI.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

5 MR KIGEN-KATWA: We have no objection to it being marked as an exhibit,
6 Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: The document will be marked for identification.

8 THE COURT OFFICER: Thank you, Mr President.

9 Document KEN-D09-0041-0176 will bear the following number, MFI-T-D09-00270,
10 and will be registered as confidential.

11 MR FAAL: And the last item, Mr President, at tab 51 is a letter from the District
12 Social Development Office in location 4, dated 29 September 2014, it's
13 KEN-D09-0041-0268, be marked for identification.

14 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.

15 THE COURT OFFICER: Thank you, Mr President.

16 Document KEN-D09-0041-0268 will bear the following number: MFI-T-D09-00271.

17 MR FAAL: Thank you.

18 Q. Now, Mr Witness, you told the Prosecution that you were appointed youth
19 leader -- Mr President, I'm referring still to tab 6 of the Prosecution bundle, in
20 particular lines 117 to 143. You said you were appointed -- perhaps before I go to
21 that, Mr Witness, you said these organisations have merged into one. What position
22 did you occupy in these -- in the new organisation?

23 A. I was the secretary within the organisation.

24 Q. Did I hear the witness say in English "organising secretary"? Is that what you
25 said, Mr Witness?

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1 A. Yes.

2 Q. Not chairperson, as you said you were appointed in 2006?

3 A. No, I wasn't chairperson. I was the organising secretary for a long time.

4 Q. But you told the Prosecution that you were appointed as chairperson. Why
5 did you say that to them?

6 A. From the outset I occupied the position of organising secretary, but if they came
7 about that information by other means, well, I'm not aware of that.

8 Q. Are you disputing that you told the Prosecution that you were elected
9 chairperson?

10 A. Yes, I do dispute that. I was organising secretary.

11 MR FAAL: Mr President, the reference to where the witness said he was chairperson
12 is tab 6 of the Prosecution bundle, KEN-OTP-0085-0166, at page 169 and 170,
13 specifically lines 78 to 116.

14 Q. Mr Witness, I know that in your interview you talked about being organising
15 secretary, but that was for a different organisation. Do you remember that?

16 A. I would say the following: When I talked to the Office of the Prosecutor I said
17 that I was in charge of a group, but I don't know how they interpreted that, but my
18 position is that I was organising secretary.

19 Q. Have you ever heard of (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Can we stop now and go into private session.

21 *(Private session at 11.59 a.m.) Reclassified as Open session

22 THE COURT OFFICER: We're in private session, your Honours.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Faal --

24 MR FAAL: Mr President, the reason why I used the phrase or the term is because it's
25 a national organisation. That's why I used it.

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- 1 PRESIDING JUDGE EBOE-OSUJI: But we do not --
- 2 MR FAAL: We can redact it.
- 3 PRESIDING JUDGE EBOE-OSUJI: Fair enough. That's all right. We shall redact it,
- 4 but we also need to be careful. We do not know what answer may come up, unless
- 5 you have prepared the witness and know that it is safe to ask that kind of question in
- 6 cross-examination.
- 7 MR FAAL: I'm not in that --
- 8 PRESIDING JUDGE EBOE-OSUJI: Position.
- 9 MR FAAL: I don't have that luxury, Mr President.
- 10 PRESIDING JUDGE EBOE-OSUJI: Exactly. That is why we need to be careful.
- 11 We do not know what answer will come up.
- 12 MR FAAL: I am guided, Mr President.
- 13 Q. So, Mr Witness, while we are in private session, do you know of an organisation
- 14 called (Redacted)?
- 15 A. I am hearing talk of this organisation today for the first time.
- 16 MR FAAL: And let me, Mr President, take you to still tab 6 of the OTP bundle, line
- 17 204.
- 18 Q. This is what you told the Prosecution, (Redacted)
- 19 (Redacted) That's what you told the Prosecution, isn't it?
- 20 A. (No audible response)
- 21 Q. Are you with us, Mr Witness? This is what you told the Prosecution, that you
- 22 (Redacted)
- 23 (Redacted). Did you say that to the Prosecution?
- 24 A. (Redacted), but it wasn't (Redacted)
- 25 (Redacted).

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1 Q. All right, I'll leave it at that. So this is the first time you have heard of the term

2 (Redacted); is that right?

3 A. (Redacted), we didn't speak about the (Redacted). The name that was used was (Redacted)

4 (Redacted) and (Redacted).

5 Q. Mr Witness --

6 PRESIDING JUDGE EBOE-OSUJI: Can you get those on the record first, please.

7 MR FAAL: Yes, (Redacted) and then

8 (Redacted), and (Redacted) and then (Redacted).

9 Q. And Mr --

10 A. There was also (Redacted).

11 PRESIDING JUDGE EBOE-OSUJI: Now, let's -- Mr Faal, since this may be of interest

12 to you, you need to get clearly on the record what the witness said in terms of these

13 names. If you look at line 4, you will see the spelling that comes out there is not

14 what you spelled. So let us get it clearly from the witness what he said. I heard

15 (Redacted) --

16 MR FAAL: (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: -- (Redacted) I did not --

18 MR FAAL: (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: I did not hear whether he said "(Redacted)" or

20 "(Redacted)." Let's find it from him.

21 MR FAAL: Indeed, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Yes.

23 MR FAAL: Thank you.

24 Q. Mr Witness, you named three organisations. The first is (Redacted) and the

25 third is (Redacted). Which is the second one?

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1 A. (Redacted)

2 MR FAAL: (Redacted) And (Redacted) would be spelled (Redacted),

3 na is (Redacted) and then (Redacted).

4 PRESIDING JUDGE EBOE-OSUJI: What do all those things - those names - what do
5 they mean, or signify?

6 MR FAAL: (Redacted) --

7 PRESIDING JUDGE EBOE-OSUJI: Let the witness tell us.

8 MR FAAL:

9 Q. What does (Redacted) mean, Mr Witness?

10 A. (Redacted) refers to (Redacted).

11 Q. Does it also mean (Redacted)

12 A. Yes, it's the same thing. (Redacted)

13 Q. So (Redacted) would mean (Redacted); is that right?

14 A. Yes.

15 Q. And (Redacted) --

16 A. Yes, (Redacted), but it was not (Redacted).

17 Q. Thank you, Mr Witness. And (Redacted) would mean (Redacted)
18 (Redacted); is that right?

19 A. It means (Redacted).

20 Q. And (Redacted) would mean (Redacted); is that right?

21 A. Yes, it refers to (Redacted).

22 Q. So, Mr Witness, what existed was not in fact (Redacted), but (Redacted)
23 (Redacted); is that right?

24 A. That's correct.

25 Q. Why did you tell the investigators that you (Redacted)

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1 (Redacted)

2 A. When I talked to the investigators, my interpreter had difficulties in Swahili. I
3 pointed it out at the time, from time to time, and I corrected the interpreter.

4 Q. Mr Witness, the fact of the matter is you're making up your story as you go
5 along?

6 PRESIDING JUDGE EBOE-OSUJI: Mr Khan --

7 MR FAAL: Faal.

8 PRESIDING JUDGE EBOE-OSUJI: Sorry, Mr Faal. Mr Faal, is the question -- did
9 you get that from line 204?

10 MR FAAL: Yes, Mr President. It should be.

11 PRESIDING JUDGE EBOE-OSUJI: Who is indicated as speaking at line 204?

12 MR FAAL: Just a moment. Interpreter, Mr President, I would imagine, because he
13 was speaking through an interpreter.

14 PRESIDING JUDGE EBOE-OSUJI: Now, you do see that line 204 says "Interpreter"?

15 MR FAAL: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: And what does line 202 say, which is
17 "Interviewee"?

18 MR FAAL: Yes, because the witness spoke in Kiswahili, who is "Interviewee," and
19 the interpreter would interpret what the witness said into English.

20 PRESIDING JUDGE EBOE-OSUJI: Yes, the point is this. When we cross-examine
21 and we dwell on precise words of the witness on a previous occasion, we need to be
22 careful with these things and decide whether we want to press the matter or leave it.

23 Here you have the witness as saying that he said at the time the interpreter got it
24 wrong and he corrected it, and we do look at paragraph -- line 204 and do see that it is
25 indeed the interpreter that uses that expression.

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1 MR FAAL: I agree with that, Mr President, but clearly the witness himself used the
2 word "(Redacted)." He did not say (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: But one sees the occurrence of that word at
4 paragraph 202. I don't know what it means in the context in Kiswahili, or it means
5 the same thing. The point is really we need to be selective in what we press in
6 cross-examination. That's all.

7 MR FAAL: Yes, Mr President. What I am trying to do here is to show that these
8 organisations did not exist. This witness was just making them up as he went along
9 in his interview.

10 Q. And, Mr Witness, what do you say to that?

11 A. I would say that this group existed and this group (Redacted) for
12 a long time in this region.

13 Q. And in your interview you said (Redacted).

14 Do you recall saying that?

15 A. I said that (Redacted) every year and during all these years
16 (Redacted)

17 Q. For?

18 PRESIDING JUDGE EBOE-OSUJI: In fact let me correct one more thing, Mr Faal,
19 before we move on. If we return to 101, line 101, that you also had passed upon, you
20 also see it is "Interpreter" that is speaking there. Line 101 to 102. Yes, I just wanted
21 to note these things on record and move on.

22 MR FAAL: Yes, Mr President. The interpreter interpreted what the -- what he
23 understood the witness said.

24 PRESIDING JUDGE EBOE-OSUJI: Definitely.

25 MR FAAL: Yes.

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- 1 PRESIDING JUDGE EBOE-OSUJI: What he understood the witness to have said.
- 2 MR FAAL: Yes, indeed. And I wanted --
- 3 PRESIDING JUDGE EBOE-OSUJI: Okay, but the witness is now telling us his
- 4 own -- what the situation is. So the -- what I'm getting at is that, when we have that
- 5 sort of situation, it makes sense to explore with the witness, you know, "What is it?
- 6 Is it this then, or is it this now?", instead of presuming that the witness necessarily
- 7 changed the story in-between the two occasions.
- 8 MR FAAL: Perhaps, Mr President, we could leave that for address because it would
- 9 involve me otherwise having me to read out the Kiswahili.
- 10 PRESIDING JUDGE EBOE-OSUJI: Indeed. Yes, yes.
- 11 MR FAAL: Thank you very much, Mr President. I'm much obliged.
- 12 PRESIDING JUDGE EBOE-OSUJI: Can we go back to public?
- 13 MR FAAL: Yes, Mr President.
- 14 PRESIDING JUDGE EBOE-OSUJI: Public session now.
- 15 MR FAAL:
- 16 Q. So, Mr Witness --
- 17 (Open session at 12.13 p.m.)
- 18 THE COURT OFFICER: We're in public session, your Honour.
- 19 MR FAAL:
- 20 Q. So, Mr Witness, okay, at this time which organisation were you working for in
- 21 these two wards that you were at? What is the name of this organisation you were
- 22 working for, or you were youth -- you were organising secretary for? Could you tell
- 23 us the name of the organisation? Check it in the PIS.
- 24 PRESIDING JUDGE EBOE-OSUJI: Use the PIS if the information is there, Witness.
- 25 THE WITNESS: (Interpretation) That is at number 27.

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1 MR FAAL:

2 Q. Who appointed you as organising secretary for organisation 27?

3 A. The groups met, but only a few people presented themselves and there were
4 elections.

5 Q. Were you appointed? Excuse me, when did this happen? Could you tell us
6 the date this occurred?

7 A. You know, there were elections each year, but I don't know what year you're
8 speaking about.

9 Q. Which year did you become organising secretary?

10 A. Since the start; that's to say in 2007. We organised elections in January 2007.
11 The elections were carried out until this organisation disintegrated.

12 Q. In 2005 did you occupy any position?

13 A. Yes, I was still organising secretary.

14 Q. When did you first become organising secretary, because your last answer you
15 said that you became organising secretary since the start; that is to say 2007? When
16 did you first become organising secretary?

17 A. It was from 2002 onwards. That was the start.

18 Q. And you became organising secretary throughout that period to 2007; is that
19 right?

20 A. That's right.

21 Q. (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 (Redacted)

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 MS ZAGO: Mr President --
- 4 THE WITNESS: (Interpretation) No.
- 5 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?
- 6 MS ZAGO: Can we go to private session, please?
- 7 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 8 *(Private session at 12.19 p.m.) Reclassified as Open session
- 9 THE COURT OFFICER: We're in private session, your Honours.
- 10 MS ZAGO: The reason I requested private session is because, if I'm not mistaken, all
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted).
- 14 MR FAAL: I don't see how, Mr President, but I'm guided by your Honours.
- 15 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. Let's do this in private session and
- 16 you prepare the redaction request for delayed broadcast.
- 17 MS ZAGO: We will. Thank you, your Honour.
- 18 MR FAAL: Thank you, Mr President.
- 19 Q. Mr Witness, (Redacted)
- 20 (Redacted) prior to 2007 ?
- 21 A. Yes, at the time of the elections (Redacted).
- 22 Q. What is the (Redacted)?
- 23 A. (Redacted)
- 24 Q. Mr Witness, I am talking about prior to 2007?
- 25 A. Before 2007 (Redacted).

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1 Q. Mr Witness, why then did you tell the Prosecution that in (Redacted)

2 (Redacted)? Why did you say that to the Prosecution?

3 A. (No audible response)

4 MR FAAL: Mr President, the reference still is the same, tab 6, from lines 252 to 297.

5 Q. Why did you tell the Prosecution that (Redacted)

6 (Redacted)?

7 A. I would state the following: I got to know (Redacted) in (Redacted) at the time
8 of the general elections. He was (Redacted) of this locality.

9 Q. Mr Witness, the question is: Why did you tell the investigators that in
10 (Redacted)

11 A. If my memory serves me well I spoke to (Redacted), but in (Redacted) I
12 didn't even know who (Redacted) was. I didn't know him.

13 Q. And also, Mr Witness, in 2005 there was no PNU; is that right?

14 A. I can't remember, because in 2005 there was the constitutional referendum.

15 Q. Mr Witness, the PNU came into being on 16 September 2007.

16 And, Mr President, I am looking at tab 59 of the bundle. The PNU -- 59 of the
17 Defence binder. And, Mr Witness, the PNU came into existence on
18 16 September 2007. What do you say to that?

19 A. I can't remember the date of the creation of the PNU, but I know that I knew
20 (Redacted) or got to know (Redacted) at the time of the elections and at that time he
21 was the (Redacted) in the region.

22 Q. And, Mr Witness, you could not have (Redacted) the (Redacted) in February 2007
23 because the (Redacted) did not exist at the time. What do you say to that?

24 A. I said and repeated this: It was during the elections that I got to know (Redacted)
25 and I was entrusted with this task. but before that I belonged to this group.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Counsel, who is (Redacted)?
- 2 MR FAAL: (Redacted). Thank you,
- 3 Mr President.
- 4 Q. When you were (Redacted), as you said, were you (Redacted)
- 5 (Redacted)?
- 6 A. Yes, (Redacted).
- 7 Q. Why did you tell the Prosecution you were (Redacted)?
- 8 A. Well, you say that I (Redacted)
- 9 (Redacted). I told you that there was a problem
- 10 with the interpreter, (Redacted) (phon), and I didn't understand his Swahili.
- 11 Q. Well, Mr Witness, this is what you said to the Prosecution. This is paragraph
- 12 28 of the statement, tab 1. We are in private session. You said, (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted) And then you went on to say, (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 PRESIDING JUDGE EBOE-OSUJI: Did you note the tense? Did you note the tense?
- 22 MR FAAL: Well, it says, (Redacted)
- 23 (Redacted) which suggests to me that it's something
- 24 continuous, it's still happening, but --
- 25 Q. Mr Witness, so you told the investigators that you (Redacted)

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1 (Redacted). What do you say to that?

2 A. I would say the following: (Redacted)

3 (Redacted)

4 (Redacted) If the person who is writing said "(Redacted)" and he wrote that that was
5 the (Redacted), then that person committed an error.

6 Q. Mr Witness, was your statement read back to you after you gave it?

7 A. It was the 27th at the end of the day. The only thing that I put on it was my
8 signature. The page was turned, I signed, another page was turned, I signed and
9 then I left the place. I couldn't read everything because there were several pages.
10 There were a lot of pages.

11 Q. Are you suggesting that it was not read back to you? Are you suggesting that
12 it was not read back to you?

13 A. They did not read it back to me. I just signed every page. That was in the
14 evening.

15 Q. Mr Witness, I put it to you that the statement was read back to you, you were
16 satisfied with the contents and then you signed it.

17 A. It was at 4 p.m. and we didn't have the time to read through it all. They were
18 preparing the document for its signature. I appended my signature and then I left.

19 Q. Mr Witness, I put it to you that the reason why there are differences between
20 your testimony and what is contained in your statement is that you fabricated most of
21 what is contained in your statement. What do you say to that?

22 A. I came before this very Court to say all that I know about what occurred. This
23 is -- there were lots of things, there was a lot of propaganda in this statement.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, we have to take our break at this point.
25 How are we doing with time? When do you -- I hadn't asked you this question

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- 1 before because it would be too soon before now, but now I do. When do you
2 anticipate completing the cross-examination?
- 3 MR FAAL: Well, Mr President, I am hoping I can finish today. That is my objective.
4 I mean, but it's quite obvious that we have very little time. I mean, if we have to
5 finish with this witness in this session, definitely the time available to the Defence is
6 very, very short, but I understand the desire to finish with him this session so I am
7 going to do my best to see that I finish. I am hoping that by 5 o'clock I should be
8 able to wrap it up and -- I am just hoping, but in the event there are difficulties and in
9 the event we happen to need extra time, we may have to make that application later
10 for the Judges to accommodate us.
- 11 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, and you?
- 12 MR KIGEN-KATWA: Yes, Mr President. Out of concern for Rule 68, I will have a
13 few questions. My estimate is that it shouldn't be more than 40 minutes,
14 Mr President. Probably much less than that.
- 15 (Trial Chamber confers)
- 16 PRESIDING JUDGE EBOE-OSUJI: We are here, so if you -- you had applied -- the
17 Defence had applied to have a break on the 26th and we said no, we do not want to
18 truncate the testimony by having a break on the 26th, so that means we still have the
19 26th available -- sorry, the 6th. Did I say -- the 6th, 6 October, available for the
20 continued examination of the witness. So if you finish sooner, so the sooner we will
21 adjourn, that's the point. So we have the 6th still. We can continue today until
22 6 p.m., but you have to wrap the whole thing up, including Mr Kigen-Katwa if we are
23 to move 'til 6 p.m. If not, then we will not be sitting until 6 p.m. That's the
24 indication.
- 25 MR FAAL: If we are going to sit on the 6th?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes, exactly. If we're going to sit on the 6th,
2 then there's no point sitting today until 6 p.m.
- 3 MR FAAL: Indeed, Mr President, but I'll endeavour to.
- 4 PRESIDING JUDGE EBOE-OSUJI: But if we finish it up today and not sit on the 6th,
5 then we can push today's proceedings until 6 p.m.
- 6 MR FAAL: Much obliged, Mr President.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 8 We will rise now.
- 9 THE COURT USHER: All rise.
- 10 (Recess taken at 12.36 p.m.)
- 11 (Upon resuming in open session at 1.33 p.m.)
- 12 THE COURT USHER: All rise.
- 13 Please be seated.
- 14 THE COURT OFFICER: We're in open session, your Honours.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 16 So, Mr Faal, can you now indicate - we spoke vaguely about it - if you are going to be
17 done today, including the Sang Defence and any re-examination?
- 18 MR FAAL: That's my objective, Mr President, and I'll do my utmost to make it
19 happen. Like I said I cannot guarantee that it will happen, but I'll do my utmost.
- 20 PRESIDING JUDGE EBOE-OSUJI: If that's not the case, then we will have to stop at
21 4 today if we are continuing on Monday. That's if not -- if we're going to finish
22 today, I say it again, we can sit until 6.
- 23 MR FAAL: I thought the cutoff period was 5 o'clock, but --
- 24 PRESIDING JUDGE EBOE-OSUJI: No, no, no. If we're going -- that's working
25 overtime and pushing it. We have already pushed a lot today in overtime.

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1 MR FAAL: Because the reason why I say that, Mr President, is because between
2 now and 4 it will be difficult for me to ascertain whether I can finish, but if we can
3 push 'til 5 o'clock then there is a big likelihood that I may be able to do it, but at 4
4 really it will be difficult because I can't predict how the witness would -- and I have
5 videos and issues to deal with as well.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, what I'm saying is this: We started
7 today earlier than scheduled, we've taken shorter breaks than scheduled, all of that in
8 hopes of pushing until 6 p.m. and having it done with, but if we are not going to
9 finish today then we will have to stop at 4 and continue on Monday. That is --

10 MR FAAL: I am much guided, Mr President. I'm guided by your Honour's
11 decision. I would do my utmost to finish by 5 o'clock, so by 4 I should be able to
12 indicate to you whether -- depending on how much I have covered, whether that is an
13 optimistic assessment or not.

14 PRESIDING JUDGE EBOE-OSUJI: All right. Okay.

15 MR FAAL: Thank you, Mr President.

16 Mr President, before I resume my questioning, I would ask that the following
17 document be admitted into evidence. It's the document in tab 59 of the Ruto Defence
18 bundle. It's a public document showing the political parties in Kenya and
19 information about them. The point we used it for was to show when the PNU was
20 founded and it is KEN-D09-0041-0430. It's talking about the main parties in Kenya.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

22 MS ZAGO: We haven't really had the opportunity to look at the document, or
23 examine it. I don't -- at this stage we don't have a particular objection. I do note
24 that the document was not shown to the witness. There's no indication of the
25 reasons why this document should be introduced through the evidence of this

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1 witness, unless my learned friend can assist us.

2 PRESIDING JUDGE EBOE-OSUJI: Are you objecting, or not? I don't understand.

3 MS ZAGO: I do object to the tendering of this document through this witness.

4 MR FAAL: Mr President, this is -- this is a public document. It's not produced for

5 the purposes of litigation. It states an obvious fact about when a particular

6 organisation, or various organisations, in Kenya came into being. There is no reason

7 why this document should not be admitted in evidence. This is -- this is something

8 that is publicly known. It's -- I leave it at that, Mr President.

9 MR KIGEN-KATWA: For the record we have no objection to it being produced as

10 an exhibit, Mr President.

11 (Trial Chamber confers)

12 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, we will mark it for identification.

13 MR FAAL: As your Honours please.

14 THE COURT OFFICER: Thank you, Mr President.

15 Document KEN-D09-0041-0430 will be registered as follows: MFI-T-D09-00272. It

16 is a public document.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MR FAAL:

19 Q. Mr Witness, welcome back. Mr Uhuru Kenyatta is the President of Kenya and

20 he's a Kikuyu; is that right?

21 A. I would like to say something, Counsel. I have something to say.

22 PRESIDING JUDGE EBOE-OSUJI: Witness, is that in answer to this question?

23 THE WITNESS: (Interpretation) No, it is not in answer to the question. I wanted

24 to say that I have taken a lot of medication this morning and the medication is giving

25 me a number of side effects, so I'm not feeling very well. I would like us to stop at

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1 4 p.m. because I really do not feel well.

2 PRESIDING JUDGE EBOE-OSUJI: Private session.

3 *(Private session at 1.40 p.m.) Reclassified as Open session

4 THE COURT OFFICER: We're in private session, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, are you saying you are able
6 to continue for now until 4 p.m.?

7 THE WITNESS: (Interpretation) I shall be patient until 4 p.m., Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: I do not know whether you followed what I had
9 said earlier when I was talking to Mr Faal about the schedule. The hope of the
10 Chamber is that we should continue and finish today if possible, but if that's not
11 possible and we have to stop at 4 p.m. because the counsel have not finished their
12 questions it means we have to continue on Monday. You need to keep that in mind.
13 So if we stopped at 4, because you're feeling too unwell to continue, then we will have
14 to continue on Monday.

15 The reason I tell you this is not for you to feel that you must continue further than 4
16 today, but it's to also let you know that if you needed that break because you're really
17 unwell to continue then we will have to continue on Monday. So that will also give
18 you the weekend to recover a bit.

19 Do you understand?

20 THE WITNESS: (Interpretation) Yes, I do understand.

21 PRESIDING JUDGE EBOE-OSUJI: So we will continue the questions, but if you
22 really -- if (Redacted), do not
23 hesitate to let me know.

24 Okay?

25 THE WITNESS: (Interpretation) Yes. Well, (Redacted)

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1 (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: All right. Well let's continue and, if it becomes
3 too difficult, let me know.

4 Mr Mutai, also keep an eye on things. If you sense that it is helpful to revisit this
5 question -- this issue at any point, please do bring that to the attention of the Court.
6 You are there and you're getting a sense of what's going on. We don't see you
7 clearly. Sometimes the image flickers in with greater clarity. Other times it is
8 blurred. So we're not able to see the outlines of your faces at all points in time.
9 That's why I need to put you on that task, if you don't mind?

10 MR MUTAI (via video link): Yes, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 We will go back to open session.

13 (Open session at 1.44 p.m.)

14 THE COURT OFFICER: We're in public session, your Honours.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Mr Faal, continue.

17 MR FAAL: Thank you, Mr President.

18 Q. Mr Witness, the question -- the question I asked before we went into private
19 session was as follows: President Uhuru Kenyatta is a Kikuyu, isn't he?

20 A. Yes, he is Kikuyu.

21 Q. Would you agree with me that he will not organise or support an organisation
22 whose aim is to remove the Kikuyu from Kenya?

23 A. He would not be in a position to.

24 Q. I want to understand what you mean. My proposition to you was Uhuru
25 Kenyatta will not participate in an organisation, or support an organisation, which is

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1 planning to remove Kikuyus from Kenya. What do you say to that? Do you agree?

2 A. I do agree.

3 Q. Now, Mr Witness, I want to read out something that you told the Prosecution in
4 your interview.

5 Mr President, I am referring to tab 1 of the OTP bundle, paragraph 50.

6 And this is what you told the Prosecution:

7 "The year 2005 was the year of the new constitution. In February 2005, the new
8 constitution campaign started. There was a political campaign against the Kikuyu.
9 The main statement was that the Kikuyu must go. At that time, Ruto came to
10 location 4 for this campaign. Technically there was no party, but two movements:
11 The Orange movement led by Ruto and Raila and the Banana movement led by
12 Uhuru and Kibaki. The Orange movement was against the new constitution and the
13 Banana movement was in favour of the new constitution. The Orange movement
14 wanted to evict the Kikuyu from the Rift Valley. The proposed constitution
15 intended that everybody was entitled to stay where they were, but the Orange
16 movement was against that because the constitution implied that the Kikuyu would
17 remain in the Rift Valley which was what they did not want at all."

18 This is what you said to the Prosecution. It is false, isn't it?

19 A. With reference to what I said to the Prosecutor, these were words that were
20 attributed to me by number 19 on the list.

21 Q. And these words are false, do you agree?

22 A. These were words or a statement that was prepared by somebody else.

23 Q. The question is not who prepared the statement. The question is that the
24 statement is false. Do you agree?

25 A. No, I do not agree.

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1 Q. Mr Witness, what I am trying to say to you is that what is contained in this
2 statement -- this statement you said was prepared by 19. I am putting it to you that
3 the statement is false?

4 A. Yes, these words are a lie.

5 MR FAAL: Mr Witness, I would like to play a video for you to take a look at and
6 then I would ask you some questions.

7 Could you kindly play, Shalini, this video? It's KEN-D09-0041-0780. This was a
8 rally in Kisumu, and Mr President the transcript is contained in tab 7 of the Ruto
9 Defence bundle and the ERN number is KEN-D09-0041-0781.

10 Please play the video.

11 (Viewing of the video excerpt KEN-D09-0041-0780)

12 MR FAAL: Mr Witness -- perhaps we should move it back a little bit. Shalini,
13 could you kindly move it back a little bit? Yes, stop it there.

14 Q. Mr Witness, do you recognise this person?

15 A. Yes, I do recognise him.

16 Q. And who is he?

17 A. It is Uhuru Kenyatta.

18 Q. And you agree with me that he's wearing a yellow shirt with the word "No"
19 written at the back?

20 A. Yes, I can see that he's wearing something orange.

21 Q. With the word "no" written at the back of his shirt.

22 A. Yes.

23 MR FAAL: Could you kindly continue playing the video?

24 (Viewing of the video excerpt KEN-D09-0041-0780)

25 MR FAAL:

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1 Q. And, Mr Witness, could you -- did you hear what he was saying? Could you
2 tell the Court?

3 A. Yes.

4 THE INTERPRETER: Overlapping of microphones.

5 THE WITNESS: (Interpretation) He was refusing the Wako constitution that had
6 been proposed.

7 MR FAAL:

8 Q. So are you saying that Mr Kenyatta was supporting the "No" camp?

9 A. At that moment in time when he said "No," he was on the other side.

10 Q. Could you tell us which side he was?

11 A. He was on the Orange side.

12 Q. And what was Orange advocating for? Were they for the constitution, or
13 against?

14 A. They were saying "No" to the constitution.

15 MR FAAL: Could you kindly continue playing the video, please?

16 (Viewing of the video excerpt KEN-D09-0041-0780)

17 MR FAAL: There's no audio it seems.

18 PRESIDING JUDGE EBOE-OSUJI: Does the other part of the video make a different
19 point from the one you've just made?

20 MR FAAL: Well, not so much. There is a speech that I wanted your Honours to
21 hear.

22 (Viewing of the video excerpt KEN-D09-0041-0780)

23 MR FAAL: Stop it.

24 Q. Mr Witness, who was the last person we saw speaking?

25 A. That was Mr William Ruto.

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1 MR FAAL: Mr President, I'm looking at the transcript, in particular lines 56 to 63.

2 Q. And, Mr Witness, could you tell the Court what you heard Mr Ruto say?

3 A. He said as follows: He said that he wanted peace. He said he wanted people
4 to live in peace.

5 Q. And, Mr Witness, is it correct, is it not, that he said, "All of us as Kenyans we do
6 not want tribalism"? Is that what you -- would that be what he said?

7 A. Yes, and then to finish he said, "Let us live in peace."

8 Q. So, Mr Witness, you agree that on this day of this rally ODM was launched with
9 Uhuru Kenyatta as one of the members? Do you agree?

10 A. Yes, I am in agreement with you.

11 MR FAAL: Mr President, may I ask that the video be admitted into evidence? The
12 reference is KEN-D09-0041-0780.

13 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

14 MS ZAGO: No objections, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

16 MR KIGEN-KATWA: We have no objection.

17 PRESIDING JUDGE EBOE-OSUJI: The video is admitted as the next in the Ruto
18 Defence exhibits.

19 THE COURT OFFICER: Thank you, Mr President.

20 The video KEN-D09-0041-0780 will be registered as EVD-T-D09-00273 and will be
21 referred to as Ruto Defence Exhibit Number 273. The video is a public video.

22 MR FAAL: Mr President, may I also ask that the transcript - the translation of the
23 video - contained in tab 7, KEN-D09-0041-0781, be admitted into evidence?

24 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

25 MS ZAGO: No objections, with the usual caveat with respect to the accuracy of the

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1 translation. Thank you.

2 MR KIGEN-KATWA: We do not object, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.

4 THE COURT OFFICER: Thank you, Mr President.

5 The transcript KEN-D09-0041-0781 will be registered as EVD-T-D09-00274 and will

6 also be referred to as Ruto Defence Exhibit Number 274.

7 MR FAAL: Thank you, Madam Court Officer.

8 Mr Witness, before I leave this topic, I would like to -- I'd like you to see another

9 video. It's KEN-D09-0041-0249. And, Mr President, your Honours, the transcript is

10 contained in -- a minute, Mr President. I'll consult. It should be in tab 14 of the

11 bundle, Mr President.

12 (Viewing of the video excerpt KEN-D09-0041-0249)

13 MR FAAL:

14 Q. Mr Witness, you agree that the person we last saw on that video is also Uhuru

15 Kenyatta, right? The time stamp is 01.01.

16 PRESIDING JUDGE EBOE-OSUJI: In this video?

17 MR FAAL: Yes, it's 01.01 in the time stamp. That's what I have in my transcript. I

18 want to believe that is correct.

19 PRESIDING JUDGE EBOE-OSUJI: The question was what was seen on the video.

20 MR FAAL: Yes. The person we have last seen on the video, that person is Uhuru

21 Kenyatta.

22 Q. Mr Witness, do you agree?

23 A. Yes, I agree.

24 Q. Do you agree that in this video he was campaigning for the "No" camp?

25 A. Yes, he was campaigning for the "No" camp.

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1 Q. And, Mr Witness, you would agree with me that the first place showed on the
2 video is location 4?

3 A. Yes.

4 Q. And, Mr Witness, you agree with me that in this video you did not see person
5 13? Please refer to the PIS for person 13?

6 A. No, you cannot see that individual.

7 MR FAAL: Mr President, may I ask that this video be admitted into evidence? The
8 reference number is KEN-D09-0041-0249.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

10 MS ZAGO: We would like to have the time stamps because the witness has been
11 asked whether a person appears in this video in its totality, but as far as I understand
12 we haven't watched the video in its completeness. And so maybe we can have the
13 time stamps and we do not object to the time stamps selected by the counsel to go in,
14 but in its entirety, yes, we do object.

15 MR FAAL: Mr President, we are trying to save time here and the provenance of this
16 video cannot be doubted. It's a news report that was aired on Kenyan TV and it's a
17 rally that took place at several locations.

18 If the Prosecution's only objection is that they haven't seen the entire video we can
19 play it, but the fact of the matter is it would waste time and all we are trying to show
20 is that a particular person, Uhuru Kenyatta, was in the "No" camp, contrary to what
21 the witness told the Prosecution, and this witness -- this video amply demonstrates
22 that. I mean, they can --

23 PRESIDING JUDGE EBOE-OSUJI: But, Mr Faal, was that point not made before in
24 your last video?

25 MR FAAL: Yes, Mr President, and there is a reason why I played this particular one.

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1 The reason is (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: All right.

3 MR KIGEN-KATWA: We have no objection to it becoming an exhibit, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: The witness does identify that (Redacted)

5 (Redacted). On that basis we will admit the material as the next Ruto Defence exhibit.

6 THE COURT OFFICER: Thank you, Mr President.

7 The public video KEN-D09-0041-0249 will be registered as EVD-T-D09-00275 and will

8 also be referred to as Ruto Defence Exhibit Number 275.

9 MR FAAL:

10 Q. Mr Witness, I have -- I have several newspapers.

11 Mr President, perhaps before that I should ask that the translation of the video be also

12 admitted into evidence. It is contained in tab 14. It is KEN-D09-0041-0250.

13 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

14 MS ZAGO: No objections, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

16 MR KIGEN-KATWA: No objection, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.

18 THE COURT OFFICER: The translation KEN-D09-0041-0250 is admitted as

19 EVD-T-D09-00276.

20 MR FAAL:

21 Q. Mr Witness, having seen this videos - and you have agreed that Honourable

22 Kenyatta was indeed in the "No" camp - why did you tell the Prosecution that he was

23 in the "Yes" camp?

24 PRESIDING JUDGE EBOE-OSUJI: Has he not answered that question before, before

25 you even asked it?

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1 MR FAAL: Well, he did say that what he told the Prosecution in that paragraph was
2 false. He did say that.

3 PRESIDING JUDGE EBOE-OSUJI: Do you want him to give you a different answer
4 now?

5 MR FAAL: Not necessarily. I just wanted to know why he said that.

6 PRESIDING JUDGE EBOE-OSUJI: We have time running down.

7 MR FAAL: But I --

8 PRESIDING JUDGE EBOE-OSUJI: Let's move on.

9 MR FAAL: I withdraw the question, Mr President, and I will move on.

10 Q. Mr Witness, the evidence you gave the Prosecution was that the campaign - the
11 "No" campaign - was that the Kikuyus must go. Do you recall that?

12 A. Yes, I did say that.

13 Q. That too was false, correct?

14 A. Yes, that was advice given to me by number 19.

15 Q. And you stated -- Mr President, I am looking at paragraph 52 of this statement.
16 You stated that:

17 "In either May or June 2005 there was a rally at the stadium ..." located at location 3.

18 Location 3. Take a look at the PIS, please. The stadium at location 3:

19 "... and that Ruto and ..." person 13 "... were the main speakers that day and Ruto said
20 that Kikuyus must go. They should leave the Rift Valley. And ..." person 13 "...
21 who spoke after him concurred with him and said the same. Both Ruto and person
22 13 spoke in Kiswahili. They said it plainly and many people were surprised by
23 this -- by this so obvious language they had used. They said, 'They must go, dead or
24 alive.' The stadium was full of people. I can estimate the number of people who
25 attended this rally were about 20,000 to 30,000. I don't think that the Kikuyus

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1 attended this rally because it was dangerous for them. (Redacted)

2 (Redacted)

3 You told this to the Prosecution, didn't you?

4 A. Yes, that's correct.

5 Q. This statement is false, isn't it?

6 A. Yes, it's the same people of number 19 who advised me. The same statements
7 they gave to me.

8 MR FAAL: Mr Witness, I would like to show you another video. Kindly play
9 KEN-D09-0041-0439.

10 And, Mr President, the -- Mr President, just a minute. Let me consult. Perhaps
11 before we play that video, while Shalini looks at it, may I draw your Honours'
12 attention to tab 6 of the Defence bundle? KEN-D09-0041-0221, tab 6.

13 Q. And, Mr Witness, this document is a news report of the ODM rally at location 3,
14 and with your permission, Mr President, I would read out some parts of this -- of this
15 article.

16 PRESIDING JUDGE EBOE-OSUJI: Is this public, or in private?

17 MR FAAL: Well, the material is public, yes, but I would redact it as I -- as I read the
18 information.

19 PRESIDING JUDGE EBOE-OSUJI: What I mean is it now being shown only in the
20 courtroom?

21 MR FAAL: Only in the courtroom.

22 PRESIDING JUDGE EBOE-OSUJI: Only in the courtroom.

23 MR FAAL: Only in the courtroom, yes.

24 Q. And the article reads as follows. I will start from the third paragraph. It says:
25 "Speaking during a rally in stadium ..." located in (Redacted) "... the leaders urged

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1 Kenyans to reject the Wako bill at the November 21st referendum. Led by official
2 opposition leader, Uhuru Kenyatta, the leaders said the Wako draft would pave way
3 for "...", there must be some mistake there, "... because it was going to give
4 minority ..." -- "... it was going to give minority immense powers. Sports Minister,
5 Ochilo Ayacko, was present."

6 And five paragraphs down it reads -- four paragraphs -- five paragraphs down it
7 reads as follows:

8 "'We are going to stand firm in rejecting the Wako bill as what is contained in the
9 draft is not what was deliberated upon at the bomas of Kenya,' William Ruto said."

10 Mr Witness, I can assure you that I did read that out correctly. In this news article,
11 Honourable Kenyatta was present in the rally at (Redacted). Do you agree?

12 A. Yes.

13 Q. There is no mention in the article that people were saying in the rally, "Remove
14 Kikuyus, dead or alive", do you agree?

15 A. Yes, I agree with you.

16 Q. You also agree that person -- I can assure you that person 13 is not listed among
17 the people who were present. Does that surprise you?

18 A. No, that individual does not feature there.

19 MR FAAL: Mr President, before I move to play that video, may I ask that this news
20 article be admitted into evidence? It is KEN-D09-0041-0221. It addresses the rally
21 that the witness talked about in his statement to the Prosecution.

22 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

23 MS ZAGO: I believe the witness -- I'm reluctant to make specific submissions on
24 public --

25 PRESIDING JUDGE EBOE-OSUJI: Let's move -- one second. Let's go into private

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1 session.

2 *(Private session at 2.20 p.m.) Reclassified as Open session

3 THE COURT OFFICER: We're in private session, your Honours.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Ms Zago, you can sit for a minute.

6 Mr Faal, did you say there is a video you're going to play?

7 MR FAAL: Yes, immediately after this one. I was just trying to save time, so I said

8 "Let me push this one in" and then the video would come later.

9 PRESIDING JUDGE EBOE-OSUJI: All right. You mentioned that the video would
10 be at (Redacted). I mean you did that the last time in (Redacted), the video. I do not
11 recall if that video was played in public, but you do see the problem if it was played
12 in public?

13 MR FAAL: Yes, I do see the problem, Mr President. I was under the impression
14 that the videos and pictures that we show are only showed in the courtroom.
15 Perhaps I should have asked for that.

16 PRESIDING JUDGE EBOE-OSUJI: Yeah, make that clear --

17 MR FAAL: Thank you, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: -- when next you are doing that.

19 MR FAAL: Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: And we have the same -- we may have the same
21 problem here.

22 MR FAAL: Yes, thank you, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: All right.

24 While we're inside, Ms Zago what's your position?

25 MS ZAGO: The position is that we do object to this document being admitted at this

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1 point with this witness. There's no indication from the witness, or there has not been
2 as far this point, any indication that this is the same rally that the witness attended
3 and the witness referred to in his statement. So I would wished that to be clarified
4 specifically with the witness first and then assume that -- not simply assume that this
5 is exactly the same rally.

6 Thank you.

7 PRESIDING JUDGE EBOE-OSUJI: Well, Mr Faal, it looks like you have to do it the
8 long way.

9 MR FAAL: Mr President, the difficulty with that is the witness does not know
10 exactly when these campaigns happened. If you look at all his statements, he's put
11 the events well before even the constitution was drafted.

12 PRESIDING JUDGE EBOE-OSUJI: Well, let's not say that now. The point is the
13 procedure, the process. Begin with the video and then we will see.

14 MR FAAL: That video is a different -- is a different one. It's not on the same rally.
15 I wanted to introduce another point before this particular one, but considering that
16 she had to look for the video I said, "Okay, let me just put in this point to save time,"
17 but the video is on a different subject.

18 PRESIDING JUDGE EBOE-OSUJI: Oh, that's something wholly different. Okay.
19 Ms Zago and Mr Steynberg, in the past you did not object to newspapers coming in.
20 Are you objecting to this one, you say?

21 MS ZAGO: We are objecting to this one because of the reasons indicated before, that
22 this witness has not been in a position to confirm that this is exactly the same rally.
23 Besides, printouts from the internet have not been previously, if I'm not mistaken,
24 admitted and the Prosecution has objected in the past to printouts from internet.

25 MR FAAL: Mr President, these are news items that took place in 2005. It's very,

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1 very difficult to obtain the actual newspapers that were printed by -- by these news
2 houses. Your best bet is to get them off the internet. And our case is that, if the
3 Prosecution was diligent and looked at the stories they were given by the witnesses,
4 simple searches from the internet would have shown that a lot of the stories they were
5 told were lies.

6 So this news article of 2005, speaking about a rally on the same subject in the same
7 place that the witness talked about, helps to shed light on the truth or otherwise of
8 what the witness said. So on that basis, Mr President, it should be admitted.

9 PRESIDING JUDGE EBOE-OSUJI: But have you -- one difficulty is whether we have
10 some clarity that this news material off the internet, for what it is worth, is of the same
11 rally as the witness was talking about in his statement or testimony.

12 MR FAAL: Mr President, what I can offer to do is to check from the witness how
13 many rallies there are -- there were in this particular location in 2005 and check with
14 him whether he was aware of this particular rally and whether in fact in his statement
15 this was the rally he was referring to.

16 PRESIDING JUDGE EBOE-OSUJI: Yes. Can you do that?

17 MR FAAL:

18 Q. Mr Witness, do you know how many rallies were held by the "No" camp in
19 (Redacted) in 2005?

20 A. Many meetings were held and I was not able to count them.

21 Q. I am referring to rallies by the "No" camp at (Redacted). How many were you
22 aware of?

23 A. I think they held between three to five rallies.

24 MR FAAL: Mr President, to save time I just ask for the document to be marked for
25 identification.

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1 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

2 THE COURT OFFICER: Document KEN-D09-0041-0221 will bear the following
3 number: MFI-T-D09-00277.

4 MR FAAL: We now ask that the video I mentioned earlier be played.

5 And, court officer, let it not be broadcast out of the courtroom.

6 THE COURT OFFICER: We are in private session.

7 MR FAAL: Thank you very much. We stay in private session for this video.

8 (Viewing of the video excerpt KEN-D09-0041-0439)

9 MR FAAL:

10 Q. Mr Witness, we are in private session. Do you know the person showed on the
11 screen?

12 A. Yes, I know this person. This person is on the list, (Redacted).

13 Q. And that would be Kipkalya Kones, isn't it?

14 A. Yes.

15 MR FAAL: Mr President, I refer your Honours to the translation of the audio. It's
16 in tab 29 of the bundle.

17 And could you kindly continue playing the video, tab 29?

18 (Viewing of the video excerpt KEN-D09-0041-0439)

19 MR FAAL:

20 Q. Mr Witness, another person has joined Kipkalya Kones on stage. Do you know
21 who this person is?

22 A. The video passed swiftly and I could not see the images well, so I am not able to
23 identify that individual.

24 MS ZAGO: I'm really sorry to interrupt again. I'm not disrupting the flow of my
25 learned colleague. I just would like to request that they identify the time stamps

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1 when they request the witness to identify individuals in the video, because when we
2 all go back to these videos we will have to know at which point certain individuals
3 appear and are identified. So, thank you.

4 PRESIDING JUDGE EBOE-OSUJI: That's a helpful observation.

5 MR FAAL: Thank you, Mr President. I will keep it in note.

6 Q. Mr Witness, we are now looking at time stamp 1.02. Do you know the two
7 persons who are on the screen? We know you have already identified the person to
8 the right as Kipkalya Kones. Do you know the person to the left?

9 PRESIDING JUDGE EBOE-OSUJI: Is the video -- there's a freeze-framed video we
10 are seeing and there are two people on that. Is that also showing in the same way in
11 Nairobi in the transmission room?

12 THE COURT OFFICER (via video link): Yes, Mr President. I confirm all audio and
13 video that are shown in the courtroom are also shown in the same format here in the
14 transmission room.

15 MR FAAL:

16 Q. Mr Witness, the person to the left of the screen wearing a white cap, do you see
17 him clearly?

18 A. Yes, I can see the individual clearly.

19 Q. Do you know who he is?

20 A. Yes, I do recognise this individual. It is Professor Saitoti.

21 Q. And would his first name be George?

22 A. Yes, it is George.

23 Q. And do you see what is written on his cap?

24 A. Yes, I can see. The word "Yes" is written.

25 Q. And there is something on the top or above the word "Yes". Could you make

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1 out what it is?

2 A. I can't quite see what the sign is. It's a little bit far afield for me.

3 Q. We would continue playing the video, what is left of it, and see whether you
4 could make it out. We would just push it back a little bit and then we play it.

5 (Viewing of the video excerpt KEN-D09-0041-0439)

6 MR FAAL:

7 Q. Mr Witness, did you see it?

8 A. From where I'm sitting, and between myself and the screen, there's a bit of a
9 distance. I might have to move closer.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, can you move this time stamp and point
11 it out and then you can put the question or the proposition to the witness?

12 (Viewing of the video excerpt KEN-D09-0041-0439)

13 MR FAAL:

14 Q. Mr Witness, you agree that it's the Banana symbol which is above the word
15 "Yes" on Saitoti's cap?

16 PRESIDING JUDGE EBOE-OSUJI: Now finish playing the video. Witness, look at
17 the cap, while the video finishes, to see if you agree with Mr Faal that it is the Banana
18 symbol that appears above the word "Yes".

19 (Viewing of the video excerpt KEN-D09-0041-0439)

20 MR FAAL:

21 Q. Do you agree, Mr Witness, that it's the Banana symbol on his cap with the word
22 "Yes"?

23 A. Yes, when he bent his head forward I quickly understood that it was indeed a
24 banana.

25 Q. In the video did you also hear Kones saying, "Yes, Banana"? Did you?

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- 1 A. Yes, I did hear him.
- 2 Q. Would you agree that this was a "Yes" campaign?
- 3 A. Yes. This is the "Yes" camp, those who were leading the campaign.
- 4 MR FAAL: Mr President, may I ask that that video be put into evidence and the
- 5 ERN number is KEN-D09-0041-0439?
- 6 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?
- 7 MS ZAGO: We do not object. Thank you.
- 8 MR KIGEN-KATWA: We do not object, Mr President.
- 9 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Prosecution -- as the next
- 10 exhibit for the Ruto Defence.
- 11 THE COURT OFFICER: The video KEN-D09-0041-0439 will be registered as
- 12 EVD-T-D09-00278 and will also be referred to as Ruto Defence Exhibit Number 278.
- 13 This video will be registered as confidential.
- 14 MR FAAL: Mr President, I recognise that we are still in private session. I just want
- 15 to deal with two news articles and then we move into a public session.
- 16 PRESIDING JUDGE EBOE-OSUJI: All right.
- 17 MR FAAL: Mr President, and the transcript as well. We ask that it be put into
- 18 evidence. It is KEN-D09-0041-0440. The transcript and the translation.
- 19 MR KIGEN-KATWA: We have no objections, Mr President.
- 20 MS ZAGO: No objections. Usual caveat, thank you.
- 21 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 22 THE COURT OFFICER: The translation KEN-D09-0041-0440 will be registered as
- 23 EVD-T-D09-00279.
- 24 MR FAAL: Thank you, court officer.
- 25 Q. Mr Witness, are you aware that a person called Nyachae was the leader of the

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1 Banana campaign. Nyachae is N-Y-A-C-H-A-E?

2 A. Yes, Nyachae was one of those leading the "Yes" campaign.

3 MR FAAL: Mr President, I am looking at tab 5 of the Defence bundle. It's a news
4 article of The Standard newspaper in Kenya under the headlines "Nyachae to Head
5 43-Member Banana Referendum Team."

6 Q. Mr Witness, I want to read out a few paragraphs to you and ask you a question.

7 The first paragraph is:

8 "The 'Yes' campaign team has forwarded the list of its National Referendum
9 Committee to the Electoral Commission of Kenya for registration. Energy minister,
10 Simeon Nyachae, chairs the 43-member committee with Chief Whip Norman Nyagah
11 as secretary."

12 And the last two paragraphs read:

13 "Other members are MPs Paul Muite, Njoki Ndung'u ..." --

14 PRESIDING JUDGE EBOE-OSUJI: Spell along, please, as you pronounce the names.

15 MR FAAL: M-U-I-T-E is Muite "... and Njoki Ndung'u ...", which is N-J-O-K-I, Njoki,
16 and Ndung'u is N-D-U-N-G-'-U. "... Moses Wetangula ..." Wetangula is spelled
17 W-E-T-A-N-G-U-L-A. Then "... Stephen Tarus ..." T-A-R-U-S.

18 PRESIDING JUDGE EBOE-OSUJI: Did you miss John Munyes?

19 MR FAAL: Yes. John Munyes. Munyes is spelled M-U-N-Y-E-S. And Steven
20 Tarus. Tarus is spelt T-A-R-U-S. And then "... Rashid Shakombo ..." Shakombo is
21 spelled S-H-A-K-O-M-B-O and then "... Adelina Mwau ..." Mwau is spelled M-W-A-U.
22 Then "... Joseph Kingi ..." Kingi is spelt K-I-N-G-I. Then "... Moses Cheboi ..."
23 Cheboi is spelled C-H-E-B-O-I. And then "... Peter Kaindi ..." Kaindi is spelled
24 K-I-N-D-I (sic). And then the next name, "... Kipkalya Kones ..." and other names
25 followed.

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1 Q. Mr Witness, do you agree that Kipkalya Kones was a member of the "Yes"
2 camp?

3 A. Yes, Mr Kones was a member of the "Yes" camp.

4 Q. And, Mr Witness, earlier we showed the video of the rally at (Redacted). Do you
5 recall that?

6 A. Yes, I do recall.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, before you move back, why don't you
8 more correctly describe for the record the material from which you obtained this last
9 batch of information you've read out, all the names you put to the witness that ended
10 with Kipkalya Kones.

11 MR FAAL: Yes, Mr President. I did indicate that it's an online reproduction of a
12 Standard newspaper article. It is reproduced by allafrica.com and the title of the
13 article is "Nyachae to Head 43-Member Banana Referendum Team" and it's an article
14 that was published on 24 September 2005.

15 Thank you, Mr President.

16 Q. And, Mr Witness, I was saying that we earlier saw the video of the rally in
17 (Redacted), but let me read out from this article which reports about the final sprint of
18 the referendum -- of the campaign for the referendum. It's a newspaper -- news
19 article by the Standard newspaper reproduced by the allafrica.com. It's an article of
20 14 November 2005 and it's contained in tab 16 of your Honours' bundle and the ERN
21 number is KEN-D09-0041-0022. And I will read out the -- the last five -- fifth and
22 sixth -- paragraphs fifth and sixth from the bottom and reads as follow:

23 "In Kericho, three cabinet ministers and equal number of assistants pitched camp at
24 Londiani, a stone-throw away from the Orange rally, to campaign for a yes vote in the
25 referendum. The ministers were John Koech (East African Co-operation), Karua

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1 (Water) ..." -- K-A-R-U-A "... and Amos Kimunya ..." Kimunya is spelt K-I-M-U-N-A
2 (sic). "... (Lands). The assistant ministers were Kipkalya Kones ..." and other people
3 including Mirugi Kariuki.

4 Mr Witness, would you agree that this article also supports that Kipkalya Kones was
5 a member of the "Yes" camp.

6 A. Yes, I do agree with what is written in this article.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you need to speak -- spell Mirugi
8 Kariuki for the record.

9 MR FAAL: Thank you, Mr President. Mirugi is M-I-R-U-G-I. Kariuki,
10 K-A-R-I-U-K-I. Kariuki is K-A-R-I-U-K-I.

11 Mr President, I'm still waiting for the record.

12 PRESIDING JUDGE EBOE-OSUJI: You can proceed.

13 MR FAAL: Thank you very much, Mr President.

14 Q. So, Mr Witness, having seen these two videos and these newspaper articles, of
15 course you have agreed that Kipkalya Kones was a member of the "Yes" camp, so
16 when you told the Prosecution that Kipkalya Kones and William Ruto were asking for
17 the removal of the Kikuyus from the Rift Valley in a rally in (Redacted), for them to be
18 removed dead or alive, that story was false, you agree?

19 A. I do agree with you, it was false.

20 MR FAAL: Mr President, may I ask that these two articles be marked for
21 identification? The first one is in tab 5, KEN-D09-0041-0240?

22 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

23 THE COURT OFFICER: KEN-D09-0041-0240 will bear the following number:
24 MFI-T-D09-00280.

25 MR FAAL: And the second is contained in tab 16, KEN-D09-0041-0022.

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- 1 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.
- 2 THE COURT OFFICER: Document KEN-D09-0041-0022 will bear the following
- 3 number: MFI-T-D09-00281.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you. We can now go to public?
- 5 MR FAAL: I just want to show one photograph, then we go to public.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right.
- 7 MR FAAL: Thank you, Mr President. I refer your Honours to tab 55 of the Defence
- 8 bundle. It's KEN-D09-0041-0422.
- 9 Could you kindly put the photograph up the screen, please? I mean 424, not 422.
- 10 Please correct that in the transcript. It's KEN-D09-0041-0424.
- 11 Q. Mr Witness, do you see the photograph up the screen?
- 12 A. Yes, I can see the photo.
- 13 Q. Do you know who is this person?
- 14 A. I know this elderly gentleman, but his name escapes me.
- 15 Q. Could you tell the Court how you know him?
- 16 A. I was in the habit of seeing this gentleman, but I can't remember his name.
- 17 He's a (Redacted).
- 18 Q. Okay, Mr Witness. We are going to go into a public session and please kindly
- 19 remember to make use the PIS you've been provided. Are we together?
- 20 MR FAAL: Mr President, public session.
- 21 THE WITNESS: (Interpretation) Yes, I am following you.
- 22 PRESIDING JUDGE EBOE-OSUJI: Public session.
- 23 (Open session at 2.53 p.m.)
- 24 THE COURT OFFICER: We are in open session, your Honours.
- 25 MR FAAL: Mr President --

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1 Q. Sorry, Mr Witness, in your statement to the Prosecution, that is tab 1, I am
2 referring specifically to paragraph 95, you stated that at the meeting of 14 October
3 there were certain persons present including the person listed as person 14. Do you
4 see that, person 14, that he was one of those who attended the meeting on 14 October?
5 Do you remember that?

6 A. Yes, I do remember.

7 Q. And in your recorded interview, I am looking at tab 17 of the OTP bundle, that
8 is KEN-OTP-0085-0508 at 520 to 21 specifically lines 388 to 414. You were asked
9 about this person 14 and you said that he was in Kenya army at that time, the last
10 time you knew him he was a major. "(Redacted)
11 (Redacted)
12 (Redacted) ... I don't know how long he served in the Kenyan army ... I think
13 he has served in the Kenyan army for more than 10 years. I think it's many, many
14 years ... I was not aware that during the violence he was serving in the ... army ... but I
15 heard that he had ..." left "... he had already left the army." And this was referring to
16 the time -- what he was doing in 2003. Do you remember that?

17 A. Yes, I do remember.

18 Q. So, Mr Witness, from what you have said, this person, 14, was a very senior
19 person and at one time he was -- he had (Redacted). That's
20 what you said, right?

21 A. No, that is not what I stated.

22 Q. Did you tell the Prosecution that he was at some stage (Redacted)
23 (Redacted)?

24 A. (Redacted)

25 (Redacted)

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1 Q. And in paragraph 99 of the statement, the statement is at tab 1, you indicated
2 that person 10, please refer to the -- to the PIS, that (Redacted)
3 (Redacted). Do you remember that?

4 A. Yes, that is what I said.

5 Q. And you agree that person 10 (Redacted), correct?

6 A. Yes, that is correct.

7 Q. And you would agree with me that to (Redacted)
8 (Redacted), correct?

9 A. Yes, that's correct, (Redacted).

10 Q. So the person you referred to in your statement as person number (Redacted)
11 (Redacted)
12 (Redacted)

13 A. (Redacted), one would need to be at the rank of
14 general.

15 Q. You also told the Prosecution that this person, person number 14, was retired as
16 at the time you knew him in 2003?

17 A. (No audible response)

18 Q. Perhaps I should repeat the question. I did not hear an answer.
19 You told the Prosecution that person 14 was retired when you met him -- or when
20 you knew him in 2003; is that right?

21 A. Yes, that's right.

22 Q. And retirement age in Kenya would be at least 55 years old, correct?

23 A. Yes, it is at the age of 55.

24 MR FAAL: Mr President, private session for a few minutes.

25 PRESIDING JUDGE EBOE-OSUJI: Private session. And also you need to tell us

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1 how you are doing from the point of view of scheduling.

2 *(Private session at 3.03 p.m.) Reclassified as Open session

3 THE COURT OFFICER: We are in private session, your Honours.

4 MR FAAL: Mr President, if I could have up to 10 past 5, I should be able to finish, 10
5 past 5. That ten minutes is just insurance policy really, but my push -- my pitch
6 would be to finish at 5 at the latest.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, and you?

8 MR KIGEN-KATWA: I would need about 30 minutes, most likely much less.

9 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, so far do you see re-examination?

10 MS ZAGO: Not more than five minutes.

11 PRESIDING JUDGE EBOE-OSUJI: So what we want to be sure about -- yes, Mr Faal
12 says that he does not -- he may finish well before 10-past-5, but the default position
13 would be 10-past-5, and if Mr Kigen-Katwa takes over from that point and has
14 30 minutes, that would put it to 25-to-6 and basically by quarter-to-6 we should all be
15 done.

16 MR FAAL: Yes, that's my objective, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: All right.

18 MR FAAL: Thank you.

19 Q. Okay. We are in private session, Mr Witness. Have you ever heard the name
20 (Redacted)

21 A. Yes, I have heard this name before.

22 Q. In your statement to the Prosecution --

23 PRESIDING JUDGE EBOE-OSUJI: Continue, Mr Faal.

24 MR FAAL:

25 Q. Witness, when you spoke to the Prosecution and you refer to this (Redacted)

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1 (Redacted), were you referring to (Redacted)

2 (Redacted)?

3 A. I talked of -- I talked of (Redacted).

4 Q. Mr Witness, would (Redacted)?

5 A. He was a (Redacted).

6 Q. Did I hear --

7 A. He was a (Redacted)

8 Q. But you agreed earlier that (Redacted), one would have
9 to be (Redacted), did you not?

10 A. Yes, (Redacted), you have to (Redacted)

11 (Redacted)

12 Q. But this (Redacted). Was he also a

13 (Redacted)

14 A. He was (Redacted).

15 Q. So, Mr Witness, he therefore could not (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: That is argument.

18 MR FAAL:

19 Q. I put it to you, Mr Witness, that as a (Redacted) he could not (Redacted)

20 (Redacted). What do you say?

21 A. (Redacted) There are many more

22 (Redacted).

23 Q. Why then did you tell the investigators that (Redacted)

24 (Redacted)?

25 A. Because that is what I was told.

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(Private Session)

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1 Q. You see, Mr Witness, the Prosecution's case includes allegations against (Redacted)

2 (Redacted). Are you aware of that?

3 A. As far as I know, I can't tell. I really don't know.

4 Q. You see, Mr Witness, what has happened here is you heard that there was a

5 (Redacted), who was accused together with Honourable Ruto, and

6 you fabricated a story around this (Redacted). Is that not right?

7 A. (Redacted), well, it was the people at number 19 who talked to me

8 about him.

9 Q. I don't know where you get the information from, but you got the wrong

10 (Redacted) in your statement; would you agree?

11 PRESIDING JUDGE EBOE-OSUJI: Move on. Move on.

12 MR FAAL: Thank you. Thank you, Mr President. I'll leave that issue and I'll just

13 move on to something else.

14 Q. Mr Witness, you --

15 PRESIDING JUDGE EBOE-OSUJI: We're still in private session.

16 MR FAAL: We can move to -- we can move to public session, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Public session.

18 (Open session at 3.11 p.m.)

19 THE COURT OFFICER: We're in open session, your Honours.

20 THE COURT OFFICER (via video link): Mr President --

21 THE WITNESS: (Interpretation) I'm feeling dizzy.

22 PRESIDING JUDGE EBOE-OSUJI: Hold on, Mr Witness.

23 Let's go back to private session.

24 *(Private session at 3.12 p.m.) Reclassified as Open session

25 THE COURT OFFICER: We're in private session, your Honours.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 Hold on, Witness, one second.
- 3 Yes, Mr Felipe, you were trying to draw my attention?
- 4 THE COURT OFFICER (via video link): Yes. The witness was trying to say
- 5 something to me, but I didn't understand because it was in Swahili.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right. What came through interpretation is
- 7 that he said he's feeling dizzy.
- 8 MR MUTAI (via video link): Mr President, the witness has just informed me that
- 9 he's feeling dizzy.
- 10 PRESIDING JUDGE EBOE-OSUJI: All right. One second, please.
- 11 All right. Witness, we will take a break now for 30 minutes and hopefully you
- 12 will -- that will give you time to recover and then if you can drink some water, see if
- 13 that will help you. I am not a doctor, but that's what I would do. And we'll come
- 14 back in 30 minutes.
- 15 What we're trying to do is to push on and finish today so that you are finally let go
- 16 instead of having you come back on Monday. That is the objective, so if you think
- 17 you can take this break now and continue after 30 minutes, then we will go on until
- 18 about 6 or so, a little past 6, to get it all over with. That's something I need you to
- 19 consider. Do you understand?
- 20 In the meantime we will take a break for 30 minutes. That will also enable us --
- 21 THE WITNESS: (Interpretation) Yes, I understand.
- 22 THE INTERPRETER: Says the witness.
- 23 PRESIDING JUDGE EBOE-OSUJI: It will enable the system to switch tapes as there
- 24 is a two-hour limit on the tape.
- 25 The Court will rise. We'll come back in 30 minutes.

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1 THE COURT USHER: All rise.

2 (Recess taken at 3.15 p.m.)

3 (Upon resuming in open session at 3.47 p.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

6 THE COURT OFFICER: We're in open session, your Honours.

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

8 And, Witness, welcome back.

9 We will try and push along. We will continue from now and go, but at 6 o'clock we
10 have to be out of here. It will be all over by 6 o'clock, and that includes both the
11 cross-examination by Mr Kigen-Katwa and the re-examination by the Prosecution.

12 We're not extending beyond 6. The witness will have to be discharged at that point.

13 MR FAAL: Thank you. Thank you, Mr President. I'm guided.

14 Q. Mr Witness, welcome back. In your statements to the Prosecution you talked
15 about two meetings, and the first meeting was on 14 October 2007 at location 11.

16 Please refer to the PIS, location 11, on 11 October -- 14 October, I beg your pardon,
17 2007. Do you remember that, Mr Witness?

18 A. I do not remember. I am still feeling dizzy. I don't feel fine and I don't know
19 what answer to give to your question.

20 MR FAAL: Mr President, I stand guided by your decision. May I proceed,
21 Mr President?

22 PRESIDING JUDGE EBOE-OSUJI: Well, you were trying to refresh his memory
23 about a meeting. Can you put that question again.

24 MR FAAL: Thank you, Mr President.

25 Q. Mr Witness, in your statements you talked about two meetings that occurred in

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1 location 3, and in paragraph 95 of your statement you said there was a meeting that
2 took place on 14 October at location -- location 11. Could you take a look at the PIS
3 for location 11? Have you seen it, Mr Witness?

4 A. Yes, I have seen it.

5 Q. And you told the Prosecution that person 3, person 8, person 7, person 14 and
6 person 2 were present - that's what you told the Prosecution - and person 18. That's
7 what you told the Prosecution.

8 A. I would like to refer to the Chamber. I cannot answer your question. I made
9 a major effort to come here. I am feeling dizzy.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 So you cannot answer because you're feeling dizzy?

12 THE WITNESS: (Interpretation) I have a headache and I am feeling dizzy.

13 (Trial Chamber confers)

14 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, in the circumstances we have to leave it
15 there and resume on Monday. That's what it has to be.

16 MR FAAL: I'm guided, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: All right. We will finish it.

18 Witness, we will then in light of what you've said -- we do not have a doctor on hand
19 to examine you, but we will now adjourn for today and the VWU will take over and
20 they will have you see a doctor in the meantime, but we will come back and continue
21 on Monday morning at our usual time at 9.30 The Hague time.

22 You understand?

23 THE WITNESS: (Interpretation) Yes.

24 PRESIDING JUDGE EBOE-OSUJI: You remain --

25 THE WITNESS: (Interpretation) Yes, I have understood.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes. You will remain bound by the subpoena
- 2 that has been served on you, so you remain bound by it, and you will be back on
- 3 Monday to continue your testimony.
- 4 In the meantime, you are not to discuss your evidence or your testimony with
- 5 anybody.
- 6 Do you understand?
- 7 THE WITNESS: (Interpretation) Yes.
- 8 PRESIDING JUDGE EBOE-OSUJI: We will adjourn now and see you on Monday.
- 9 The Court will rise.
- 10 THE COURT USHER: All rise.
- 11 (The hearing ends in open session at 3.54 p.m.)
- 12 RECLASSIFICATION REPORT
- 13 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 14 2013, the version of the transcript with its redactions becomes Public.