

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 19 November 2014
10 (The hearing starts in open session at 9.54 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 The 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.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR STEYNBERG: Good morning, your Honours. For the Prosecution appearances
23 remain the same, save that we are joined this morning by our intern, Mostafa Hassan.
24 MR NARANTSETSEG: Good morning, your Honours. The composition of our
25 team remains the same. Thank you.

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1 MR (Redacted): Your Honour, if I may? Mr President, your Honours, good
2 morning. Good morning, everyone. I am (Redacted) duty counsel for
3 the Witness P-800. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. I was going to note your presence
5 on the record, Mr (Redacted).
6 Yes?

7 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang continues to be
8 present and his team remains the same.

9 MS ALAGENDRA: Good morning, Mr President, your Honours. The Ruto team
10 remains the same.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
12 We are starting a bit later than usual. We needed to resolve certain matters, as part
13 of which we held an ex parte meeting with Mr Steynberg and Ms Renton to get their
14 submissions on an ex parte matter that also we will now be ruling upon.
15 Let's go into private session.

16 *(Private session at 9.56 a.m.) Reclassified as Open session

17 THE COURT OFFICER: We're in private session, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
19 We will be -- we will now deliver rulings on three outstanding matters.
20 First, as I indicated, the matter for which we met ex parte with Mr Steynberg and
21 Ms Renton. That's on the matter of the request of the Defence for OTP psychologist's
22 report, (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted) but as regards the
8 documents from the OTP (Redacted) the Chamber's
9 ruling is that those documents will be disclosed in lesser redacted form.
10 The Chamber will be proposing the lesser redacted form in the course of the day to
11 the Prosecution to see whether they have difficulty with that, without prejudice, of
12 course, to the Chamber's final determination on the matter, but for now those are the
13 documents, (Redacted)
14 (Redacted) will be disclosed in lesser redacted form.
15 That is the ruling of the Chamber on that. It is of course provisional.
16 The other two remaining matters to dispose of would be -- next in line would be
17 Mr Khan's indication about the date of attendance at trial of Mr Ruto.
18 Mr Khan, can you confirm again what date did you say? You said Thursday next
19 week, is that it?
20 MR KHAN: Please, Mr President, Thursday of next week. Mr Ruto would be
21 travelling on Wednesday evening, getting here Thursday morning, so would be
22 available in Court Thursday morning.
23 PRESIDING JUDGE EBOE-OSUJI: All right. The Chamber's ruling is that the
24 testimony of Witness 658, for which the attendance of Mr Ruto has been directed by
25 the Chamber, will proceed as soon as the testimony of the witness now on the stand

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1 concludes and Mr Ruto will join us as indicated by Mr Khan, Thursday next week.
2 That's the ruling on that.
3 The remaining matter to rule upon concerns the Defence application for certain
4 measures to be taken or to be ordered by the Chamber concerning
5 witness -- Prosecution Witness 658.
6 The joint request of the Defence contain three prayers, the first of them was that the
7 Prosecution be ordered not to either, quote and unquote, "proof," we prefer
8 "preparation of witnesses," but the Defence say proof Witness P-658 on or discuss
9 with him in any way anything to do with the (Redacted)
10 (Redacted) That is the first
11 prayer.
12 The second prayer is that the Prosecution be ordered to continue or to refresh, as the
13 case may be, (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted) That's the second prayer.
19 And the third prayer is that in light of (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted) That is the third
24 prayer.
25 We will be rendering our ruling on these prayers now. There are five pages of

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1 rulings and I do not want to read the five pages while the witness is waiting to come
2 and testify. I will only give you the dispositions and in the course of the day the
3 ruling will be filed in written form.

4 We've seen the submissions of the parties sent by email. We are persuaded that the
5 proposals offered by the Prosecution offers a reasonable and fair outcome in the
6 circumstances of this case. In the written decision to be filed, we urge the parties to
7 pay particular attention to the emphasis we place on the phrase "in the circumstances
8 of this case."

9 So we will -- the dispositive on that is that the Chamber disposes of that prayer in the
10 manner of the Prosecutor's proposal.

11 The second and third prayers are denied.

12 The Chamber directs the parties that, in light of how the submissions were done by
13 email because of the urgency of the matter, the submissions should be formalised and
14 filed on the record. All you need do is simply to attach the email submissions to a
15 cover and file it in Court.

16 That concludes the ruling of the Chamber on those items.

17 We will now bring in the witness. Of course, we'll go into closed session to do that.

18 *(Closed session at 10.08 a.m.) Reclassified as Open session

19 THE COURT OFFICER: We're in closed session, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 (The witness enters the courtroom)

22 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we go to open session now, is that
23 it?

24 MR STEYNBERG: Your Honours, while we did finish in open session, the first issue
25 I would like to touch upon in this session we'll have to deal with in private, I regret.

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1 I imagine it will be about 10 minutes.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go to private session.

3 While we are going to private session, Witness, welcome back. We started a bit later
4 today. We had to resolve certain procedural matters that didn't need you to be in
5 the courtroom. Thank you.

6 *(Private session at 10.10 a.m.) Reclassified as Open session

7 THE COURT OFFICER: We're in private session, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Mr Steynberg, please.

10 MR STEYNBERG: Thank you, your Honour.

11 WITNESS: KEN-OTP-P-0800 (On former oath)

12 QUESTIONED BY MR STEYNBERG: (Continuing)

13 Q. Good morning Mr Witness.

14 A. Good morning.

15 Q. Yesterday we finished off -- when you finished off yesterday you had been
16 telling us about certain incidents that you had witnessed whilst (Redacted)
17 (Redacted) at location number 2.

18 Now I want to ask you one or two questions about (Redacted)

19 (Redacted)

20 A. Yes, your Honour.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 MS ALAGENDRA: Your Honour, could we get a basis for this. Is he speculating,
- 14 or was he told this?
- 15 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, that's a fair objection. It wasn't
- 16 stated as such, but --
- 17 MR STEYNBERG: Thank you, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: It is one thing to ask someone do you know, it's
- 19 another thing to invite speculation.
- 20 MR STEYNBERG:
- 21 Q. What is the basis for your statement that they were ready to come and burn
- 22 (Redacted)
- 23 A. Because this happened just after they had burnt the -- the other -- the other
- 24 house of the -- of the -- the Kisii -- the Kisii man (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. What language did you speak to him in?

10 A. I spoke to him in Kalenjin language -- in Nandi language, which is a Kalenjin.

11 Q. And what happened after that?

12 A. After that, your Honour, (Redacted) a member of -- of parliament by then.

13 I don't remember the name right away now, but the member of parliament intervened

14 and said that he was going to hold a meeting in (Redacted) with the youths so

15 that they don't come and harm (Redacted) in any -- any -- any time.

16 Q. Let's just get some more details about this member of parliament. For which
17 party was he a member of parliament at that time?

18 A. I know him to be a supporter of ODM.

19 Q. What was his ethnicity?

20 A. He was a Nandi. A Kalenjin.

21 Q. For which constituency was he the MP at that time?

22 A. I think Emgwen constituency, though I'm not very sure, your Honour.

23 Q. Emgwen. Is that E-M-G-W-E-N, Emgwen?

24 A. Yes, your Honour.

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 MR STEYNBERG: If the Court will bear with me, please?

10 Q. What happened when -- (Redacted)

11 did that take place?

12 A. Yes, your Honour.

13 Q. And what happened at that meeting?

14 A. Around 40 youths came to the -- to the -- to the meeting in the -- in the -- in the

15 evening and (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. And did the youth obey this instruction?

23 A. Yes, your Honour. (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. Yes, your Honour.

9 Q. All right. Just before we leave private session, when did you eventually leave

10 (Redacted)

11 A. Around mid of January -- of January is when I think I -- is when I left going to

12 Eldoret. Yes, your Honour.

13 MR STEYNBERG: All right. Just pause there because the rest we'll do in public

14 session.

15 Public session, please, your Honours.

16 PRESIDING JUDGE EBOE-OSUJI: Public session.

17 (Open session at 10.21 a.m.)

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

19 MR STEYNBERG: Thank you.

20 Q. Mr Witness, you just finished off by telling the Chamber in private session that

21 around the middle of January 2008 you returned to Eldoret. What did you observe

22 when you returned to Eldoret?

23 A. On my way back to Eldoret I saw camps. Many people were at Eldoret

24 Showground. From the road on the highway you will see many Kikuyu peopling

25 heading -- coming out and going in, which means there was a big camp in Eldoret.

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1 You will see burnt houses along the way. At around Hill School, (Redacted)
2 (Redacted), I saw also the kind of destructions that had taken place. Where
3 there were roadblocks, you will find now that they had opened. You will see -- you
4 will see stones on the side of the road and all sort of sense of destruction that was -- I
5 witnessed all sense of destruction that had taken place, your Honour.

6 Q. And you mentioned that before you left location number 8 you had witnessed
7 black smoke coming from certain areas, and I'd like you to have a look at the PIS and
8 can you tell us about any locations where you observed burnt houses? I'm referring
9 to the Eldoret area now.

10 A. Yes, your Honour. Location number 16, location number 7.

11 Q. All right.

12 A. Those are among what I saw.

13 Q. Tell us what you observed in location number 7, please?

14 A. Burnt houses, your Honour.

15 Q. Now I don't want you to speculate, but do you know who those burnt houses
16 belonged to?

17 A. I don't know the owners, your Honour.

18 Q. All right, let's leave it at that. All right. I'd like to leave the actual violence
19 itself and move on to another matter. I think we can do this in public, but just once
20 again be careful not to inject information which might identify yourself.

21 The first question I'd like to ask you is: In the Kalenjin culture, what is the
22 consequence of being involved in violence or of witnessing violence?

23 MS ALAGENDRA: Your Honour, first of all we need to know is there a
24 consequence?

25 MR STEYNBERG: Well, I'll phrase it that way.

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1 Q. Is there a consequence to being involved in violence? What do the Kalenjin
2 believe about persons who participate in violence, or witness violence?

3 A. People who participate in violence, your Honour, needs to be cleansed so that it
4 is -- it never affects them in future as a curse.

5 Q. I'm just waiting for the record. Did you say "... it never affects them in the
6 future as a curse," C-U-R-S-E?

7 A. A curse.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, that should be the correct spelling
9 of what I heard the witness say.

10 MR STEYNBERG: Yes, thank you, your Honour. I'm just waiting for the record to
11 catch up. It has now. I don't think your Honour said that, but I'm sure that will be
12 corrected in due course.

13 THE WITNESS: Your Honour, there is -- there is a matter of dates before you
14 continue to another subject that I feel I shall be able to clarify because I feel I might
15 have confused certain dates on that -- on that subject before -- before you go on. And
16 I would like to ask for your permission, your Honour, that I clarify these dates before
17 we go ahead for it to be very clear to this Court.

18 MR STEYNBERG:

19 Q. Very well, dates in relation to which events?

20 PRESIDING JUDGE EBOE-OSUJI: Before the clarification goes further, yes, it was of
21 course a funny thing Mr Steynberg observed, but I don't want to repeat it just so that
22 when the correction is made we don't want the transcript telling us that what I
23 actually said wasn't what I said. You know what I mean, Mr Steynberg. So there
24 was some incorrection on the transcript that Mr Steynberg was referring to. What I
25 actually said was that Mr Steynberg's spelling of the word was what I heard the

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1 witness say.

2 Please move on, Mr Steynberg.

3 MR STEYNBERG: Thank you, your Honours.

4 Q. Which -- which events do you want to correct dates in respect of?

5 A. The dates of events that took place on 30th and my journey to location number

6 1.

7 Q. All right. What would you like to clarify?

8 A. Your Honour, I will touch on names, and I request that we go to the private

9 session.

10 MR STEYNBERG: Private session, please, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: We go to private session now.

12 *(Private session at 10.30 a.m.) Reclassified as Open session

13 THE COURT OFFICER: We're in private session, Mr President.

14 MR STEYNBERG:

15 Q. Please go ahead.

16 A. Your Honour, on 30 December, when the presidential elections was announced,

17 I was in (Redacted). These elections were announced around -- in

18 the -- around -- around 7 o'clock in the -- in the -- in the -- in the night of that night.

19 And what I saw on that day was a smoke in the sides of (Redacted).

20 The following day on 31st or 1st -- the following day after 30th is when I was trying to

21 go (Redacted), because now I was called that violence had erupted (Redacted), and

22 (Redacted)

23 When I reached the stage is when I was told by the drivers that had managed to come

24 to Eldoret that there was roadblock in (Redacted).

25 Q. (Redacted), location 15?

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1 A. Location 15. And therefore I will not be -- (Redacted)

2 (Redacted)

3 (Redacted) If I'm sure that I will be asked my ID and produce it, I better

4 not go. Therefore when we were still talking is when the Kalenjins started throwing

5 stones to the -- to the other vehicles which were the other side, because the same

6 vehicles from that -- from that very -- very -- very stage at the Drocadero also -- also

7 vehicles which come from Langas, from -- from those sides of Langas and forth.

8 So people started to run to -- to run randomly trying to get out of the stage. And

9 when I was -- I was running towards -- towards -- towards the gate, I was lucky to

10 have seen a minibus (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. All right. Mr Witness, you started off by saying you wanted to clarify some

14 dates.

15 A. Yes.

16 Q. So I don't necessarily want to repeat your entire evidence, but if I understand

17 you, in a nutshell, you're saying that you did not travel to Hill School on the 30th but

18 the following day, which is the 31st?

19 A. 31st.

20 Q. And is that the night that you spent at Hill School, the night of the 31st?

21 A. Yes, your Honour.

22 Q. And when did you travel from Hill School to (Redacted)?

23 (Redacted)

24 (Redacted)

25 A. Yes.

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1 Q. In 2008?

2 A. Yes, your Honour.

3 Q. All right.

4 A. So I wanted to bring that clarification of dates. But everything else that took
5 place is the same.

6 Q. All right. Just one question then on the events of -- that you observed in Hill
7 School. You mentioned that you had seen women and children running on the road,
8 if I recall correctly. I think you said it was from the direction -- from which direction
9 was that?

10 A. From Langas.

11 Q. And what time of day on the 31st was this?

12 A. Around -- around -- around midday to -- yeah.

13 Q. Before you left for (Redacted) did you observe
14 any incidents or violence at that time?

15 A. Yes, your Honour. I observed houses being burnt at the nearby centre, which
16 is -- which is Hill School.

17 Q. At the centre of Hill School you observed houses being burnt?

18 A. Yes, your Honour. Your Honour, even at that night houses continued to be
19 burnt. And on the flames of the light will -- will make me see the people who
20 were -- who were -- who were -- who were doing it and identify that they were
21 Kalenjins because of the kind of -- their faces and what else? And their -- and
22 their -- and their code of wearing the shorts.

23 Q. The Langas area, what is the ethnicity, the predominant ethnicity in that area?
24 What was the predominant ethnicity in that area at the time of the elections?

25 A. The Kikuyu and the Luos.

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1 MR STEYNBERG: Thank you, your Honour, that's all I wish to clarify on this matter.

2 Unless there are any follow-up questions, I can go back into public session.

3 PRESIDING JUDGE EBOE-OSUJI: Public session then.

4 (Open session at 10.36 a.m.)

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

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Witness, remember the advice again to speak at a moderate pace and also remember

8 to observe the five-second rule. Thank you.

9 MR STEYNBERG: Thank you.

10 Q. Mr Witness, before you made that correction to the dates, we were discussing

11 the issue of the belief among the Kalenjin people that persons participating in

12 violence, who had witnessed violence be cursed, could receive a curse. What is the

13 remedy to prevent that curse from attaching to those people?

14 MS ALAGENDRA: Your Honour, perhaps "Is there a remedy" would have been a

15 fairer question.

16 PRESIDING JUDGE EBOE-OSUJI: It's all right, Ms Alagendra.

17 MR STEYNBERG:

18 Q. You may answer the question.

19 PRESIDING JUDGE EBOE-OSUJI: As long as it isn't overdone.

20 MR STEYNBERG: In fact, the witness has already mentioned it, but I want to make

21 it clear.

22 Q. What would be done?

23 A. If you're involved in such a thing that will bring your curse in Kalenjin

24 community, you have to be cleansed.

25 Q. And how is a person cleansed?

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1 A. A ceremony is prepared by the elders and they do cultural things to make sure
2 they send away all curses that will follow you.

3 Q. Are you aware of any such ceremonies being performed after the post-election
4 violence in 2008?

5 A. Yes, your Honour.

6 Q. Where was that ceremony performed?

7 A. In Nakboi Forest, your Honour.

8 Q. Nabkoi Forest is N-A-B-K-O-I, correct?

9 A. Yes, your Honour.

10 Q. How many people approximately attended that ceremony?

11 A. Around 3,000, your Honour.

12 Q. And how -- how do you know about that ceremony?

13 A. I didn't get you, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: At any rate, Mr Steynberg, is that a safe question
15 to pose in public session?

16 MR STEYNBERG: Your Honour, that's why I elicited first the number of people
17 involved. I believe it will be.

18 Q. What is your source of knowledge of this ceremony, Mr Witness? Is this
19 something somebody else told you or was this something you observed yourself?

20 A. Your Honour, before I answer that question, I realise I have talked a name
21 which will --

22 PRESIDING JUDGE EBOE-OSUJI: All right. Wait, wait, wait. We'll go into
23 private session now.

24 *(Private session at 10.42 a.m.) Reclassified as Open session

25 THE COURT OFFICER: We're in private session, Mr President.

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1 MR STEYNBERG:

2 Q. What name is it that concerns you, Mr Witness?

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) It's probably safe to discuss it in public.

10 PRESIDING JUDGE EBOE-OSUJI: Witness, it should be safe to discuss that.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MR STEYNBERG: Your Honour, while we are in public session, perhaps I can just
16 elicit some information about how he learnt about this event.

17 PRESIDING JUDGE EBOE-OSUJI: In private session, we are.

18 MR STEYNBERG: Private session, yes.

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MR STEYNBERG: It might be safer.

21 Q. Mr Witness, can you please tell us from whom did you learn about the fact that
22 this event was going to take place?

23 A. Your Honour, the ceremony, people were welcome through word of mouth.

24 PRESIDING JUDGE EBOE-OSUJI: The question now is how you learnt about it.

25 The reason why we're in private session is so if there is a name you need to mention,

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1 you can do so now. Then we'll go to public session and discuss other things about

2 the ceremony and --

3 THE WITNESS: Okay.

4 PRESIDING JUDGE EBOE-OSUJI: -- details about it.

5 THE WITNESS: Okay, your Honour. I was informed by (Redacted)

6 (Redacted)

7 MR STEYNBERG:

8 Q. All right. (Redacted) is number 15 on the PIS, but I didn't catch -- did you

9 mention a first name? Could you spell the first name please?

10 A. (Redacted)

11 Q. (Redacted)

12 A. Yeah.

13 Q. (Redacted)

14 A. (Redacted), yeah.

15 Q. All right.

16 MR STEYNBERG: Thank you, your Honour. Perhaps we can proceed back to

17 public session.

18 PRESIDING JUDGE EBOE-OSUJI: Open session.

19 (Open session at 10.45 a.m.)

20 THE COURT OFFICER: We're in open session, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MR STEYNBERG:

23 Q. Now, did you yourself attend this cleansing ceremony?

24 A. Yes, your Honour.

25 Q. Why did you attend if you weren't yourself involved in the violence?

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1 A. All the youths in my village were to attend the same ceremony and I wanted to
2 feel -- I didn't -- I didn't want to -- people to speculate that I'm not part of anything
3 they were -- they -- they -- they -- they were -- they -- that took place because they will
4 have come back for me. Something else I wanted to know, I wanted to see in person
5 what was taking place in that particular ceremony.

6 Q. You mentioned that all the youth from your area were attending. Did you
7 consider yourself at that time to be a youth?

8 A. Yes, your Honour. A youth in Kalenjin is anyone who is not an elder. All
9 elders will consider those people who are younger than them as youths.

10 Q. Please tell the Chamber what transpired at this cleansing ceremony.

11 A. I remember one elder asking if there was anyone who had been sent by
12 Mheshimiwa Ruto.

13 Q. Yes, what happened then?

14 A. One person stood, who had brought the team from Eldoret North, and said that
15 he had been sent and Ruto was happy for the unity of all the youths and Kalenjin
16 people during that time of violence.

17 Q. All right. Just a correction to line 9. I believe that you referred to -- if there's
18 anybody who had been sent by -- the Swahili word for Honourable Ruto, is it
19 Mwesh --

20 A. Mheshimiwa.

21 Q. Mheshimiwa. Thank you. Mheshimiwa Ruto. And --

22 PRESIDING JUDGE EBOE-OSUJI: Spell that please for the record. I can see the
23 interpreters would like to get it -- sorry, the court reporters would like to get it.

24 MR STEYNBERG: All right. I believe it's M-W-E-S-H-I-M-I-W-A.

25 Q. Is that right? Mheshimiwa.

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1 A. M-H-E-S-H-I-M-I-W-A.

2 Q. Thank you. You said one person stood who had brought a team from Eldoret
3 North and said he had been sent -- he had been sent. Who was that person?

4 PRESIDING JUDGE EBOE-OSUJI: Private session for a -- see if we -- the witness
5 hesitated. If we need to bring it back in open session we will do that, but private
6 session for now.

7 *(Private session at 10.50 a.m.) Reclassified as Open session

8 THE COURT OFFICER: We're in private session, Mr President.

9 MR STEYNBERG:

10 Q. Thank you. Can you give us the name of the person who stood, please?

11 A. Yes, your Honour. Mr Farouk Kibet.

12 Q. Thank you. Mr Witness, is there any reason why that can't be mentioned in
13 public? I believe we have mentioned his name in public before?

14 A. I was taking precaution, your Honour, because I thought mentioning name
15 maybe -- would be good in private session.

16 Q. Mr Witness, it's very good to take precautions. Thank you for that but, as a
17 guide, when we're dealing with well-known public figures, it's normally not
18 necessary. It's only when persons are linked somehow to yourself and mentioning
19 their names might identify you, like relatives, close friends. You understand?

20 A. Okay, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Or also as indicated to you before, if there is a
22 story that is unique that people will know that you would have been the only person
23 to know that story, or aspects of the story, we want to take precaution that you don't
24 say that sort of thing in public, but if it is a public figure that said something in a
25 crowd of very many people, you happen to be amongst all of those very many people

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1 in the crowd, there's no reason to suppose that that alone is enough to identify you.

2 That's a rough guide to things, okay?

3 THE WITNESS: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will go back to the public
5 session.

6 (Open session at 10.53 a.m.)

7 THE COURT OFFICER: We're in open session, Mr President.

8 MR STEYNBERG: Thank you.

9 Q. Mr Witness, you mentioned then that Mr Farouk Kibet was the person who
10 stood up. Who were the people that accompanied him?

11 A. He had come with a group of youths from Eldoret North, your Honour.

12 Q. Do you know specifically where in Eldoret North?

13 A. I don't know where all of them came from, but I know there were some from
14 Turbo.

15 Q. And what was the message that he brought from Mr Ruto?

16 A. He said Mr Ruto was happy from the unity that the people showed during the
17 violence and the unity they had during all time -- the hard time that was there during
18 that period and that he had been sent with a little cash to pay as a sign of thanks to
19 the community.

20 Q. Who had sent that cash?

21 A. Mr Ruto, your Honour.

22 Q. And what became of that cash?

23 A. People who were there were asked to group themselves according to where they
24 come from and the money was distributed, your Honour.

25 Q. How much money? Sorry, how much money was given to each person?

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- 1 A. We were given 300 shillings, your Honour.
- 2 Q. When you say "we," did you also receive that amount?
- 3 A. Yes, your Honour, I also received that amount.
- 4 Q. And from which area -- which other areas did the youth come from to attend
- 5 this ritual?
- 6 A. There were some from Eldoret East, Ndanai and some from Eldoret south, a few
- 7 from the neighbouring part of -- of Nandi.
- 8 Q. Can you just spell Ndanai -- Ndanai for the record, please?
- 9 A. N-D-A-N-A-I.
- 10 Q. Thank you. And can you describe the ceremony that was performed, please.
- 11 A. I saw a bull slaughtered -- being slaughtered. Internal parts of this -- internal
- 12 parts of the bull was cut into small pieces, mixed with blood. And the elders and a
- 13 few people who were selected from the group who had -- who had -- who were there
- 14 were throwing these parts away. As the elders spoke different words that -- they
- 15 were -- they were chasing away all types of curses.
- 16 Q. And how long did you the ceremony last?
- 17 A. Around four hours, your Honour.
- 18 Q. And can you give the Chamber, please, an idea of the date when this ceremony
- 19 took place? How long was it after the elections in 2007?
- 20 A. Not 2007, your Honour.
- 21 Q. Yes. No, my question was how long after the elections which took place
- 22 in -- in 2007, so 30 December 2007 was the results? Was --
- 23 A. Around -- around the month of May.
- 24 Q. May which year?
- 25 A. 2008.

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1 Q. May 2008. Thank you.

2 MR STEYNBERG: Your Honour, I see we have two minutes left, but I am about to
3 move on to a new subject now. This might be an appropriate time for a break.

4 PRESIDING JUDGE EBOE-OSUJI: We will take our morning break now and come
5 back at 11.30.

6 Witness, you will join us at that time.

7 We go to closed session now to usher the witness out.

8 *(Closed session at 11.00 a.m.) Reclassified as Open session

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

10 (The witness stands down)

11 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

12 THE COURT OFFICER: All rise.

13 (Recess taken at 11 a.m.)

14 (Upon resuming in open session at 11.38 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

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

18 Witness, welcome back.

19 Mr Steynberg?

20 MR STEYNBERG: Thank you, your Honours.

21 Q. Just before we move on, Mr Witness, there is one aspect I'd like to clarify
22 regarding the cleansing ceremony we were talking about before the break and you
23 had confirmed that cleansing ceremonies were performed in order to remove any
24 curses that resulted from being involved in violence. My question is to which
25 violence did the cleansing ceremony in May 2008 relate?

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1 A. The post-election violence.

2 Q. The violence you've been testifying about over the last two days; is that right?

3 A. Yes, your Honour.

4 Q. All right. I'd like to move on then to a new topic. You discussed earlier in
5 your evidence the involvement of Kass FM in the campaign for the 2005 referendum.

6 I'd like to discuss Kass FM's role in the period leading up to the 2007 elections.

7 Now, you also mentioned during the course of your evidence that at some stage on
8 Kass FM the names of two persons were mentioned, which I won't repeat in public
9 session, but if you look at your PIS you mentioned the names of person number
10 6 -- where is he? Sorry, I've lost the other one. Oh, and person number 1. Is that
11 right?

12 A. Yes, your Honour.

13 Q. Can you please tell the Chamber the context in which these persons were
14 mentioned?

15 A. These persons, your Honour, one, they are (Redacted) and, two, they
16 were believed to be supporters of PNU. And Kass FM was being used by the
17 political -- by politicians, especially from ODM, and therefore at one point they
18 mentioned in public these names advising the people not to be like them.

19 Q. And what was it that led to the names of these two persons being mentioned on
20 Kass FM?

21 A. They were believed to be PNU supporters and also they were believed not to
22 support the issues of the Kalenjin people.

23 Q. Who was it on Kass FM who mentioned them?

24 A. Joshua Arap Sang, your Honour.

25 Q. Did either of the two persons mentioned have any dispute with Kass FM?

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1 A. Yes, your Honour. I remember at a point person number 6 wrote a letter to
2 protest on what was happening in Kass FM.

3 Q. Have you ever seen a copy of that letter?

4 A. Yes, your Honour. I remember person number 6 showing me the copy that he
5 had written and signed.

6 MR STEYNBERG: I'd like you to please identify the document for the Chamber.

7 And can I ask the court officer to call up KEN-OTP-0036-0091 for broadcast only in
8 the courtroom.

9 And, your Honours, this is found at tab 5 of the Prosecution bundle.

10 MR KIGEN-KATWA: Mr President. Mr President, my concern is in showing the
11 witness that document, that I will pray that before he is shown the document I be
12 heard on it.

13 Mr President, I would pray that the witness be required, considering that he says he
14 has a recollection of that document, that he explains to the Court his recollection of
15 the content and the effect of that letter before he is shown.

16 MR STEYNBERG: Your Honours, the document is not produced for the proof of its
17 contents. It's in the nature of a complaint. It's not written by this witness.

18 MR KIGEN-KATWA: Mr President, may I --

19 PRESIDING JUDGE EBOE-OSUJI: Let Mr Steynberg -- unless you're withdrawing
20 your objection.

21 MR KIGEN-KATWA: Mr President, my anxiety is to have the witness establish that
22 he has a recollection of it. Some of the comments already made by my learned friend
23 border on prompting the witness on its content. I have no objection to him making
24 his observations, but if he can make his observations in a way that doesn't prompt the
25 witness until you make your ruling on that issue.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you've heard the complaint --
- 2 MR STEYNBERG: Yes.
- 3 PRESIDING JUDGE EBOE-OSUJI: -- or the concerns expressed.
- 4 MR STEYNBERG: Your Honour, all I wish to do is have the witness identify the
- 5 document. He says he have seen -- he has seen it. He did not write it. I do not
- 6 intend really to traverse the contents of it. It's a hearsay document written by
- 7 somebody else. This witness can't stand as to the contents.
- 8 It is admitted more as part of the res gestae which led to events which I have already
- 9 dealt with about the mentioning of certain names on Kass FM.
- 10 PRESIDING JUDGE EBOE-OSUJI: The document at tab 5, you say?
- 11 MR STEYNBERG: Correct, your Honour.
- 12 PRESIDING JUDGE EBOE-OSUJI: Is part of the res gestae? Do you see the date?
- 13 Never mind.
- 14 Mr Kigen-Katwa, does the explanation given by the Prosecution at least allay your
- 15 concerns to any extent?
- 16 MR KIGEN-KATWA: It doesn't at all, Mr President. If the witness has a
- 17 recollection of the letter having been written, the only way I would understand is that
- 18 he has that recollection in terms of the content of that letter. It can't be the colour of
- 19 the letter or the print in the letter. And so if he is being shown and he says he
- 20 recollects having seen it in that moment at the time when the incident occurred, then
- 21 ideally he should be asked to recollect the content of that letter before he is shown it,
- 22 your Honour.
- 23 My argument is that showing him the letter would not remind him in terms of the
- 24 text or the colour. It has to be the content and I would pray that that content be
- 25 highlighted by the witness before he is shown.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, the concern of course is that this
2 doesn't lead or result into, as it were, leading the witness on contentious issues, so for
3 that reason it is a reasonable concern that Mr Kigen-Katwa has indicated.

4 MR STEYNBERG: Very well. I'm content to ask the witness some further details
5 about this statement -- I beg your pardon, this document. I'll say no more in case I'm
6 accused of leading.

7 Q. This letter, Mr Witness, what was it about?

8 A. It was about a complaint that Mr Sang was mentioning names of people in
9 public.

10 Q. To whom was the letter addressed?

11 A. I don't remember, your Honour.

12 Q. Can you recall who the letter was sent to, which organisation?

13 MR KIGEN-KATWA: Mr President, I think that is --

14 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. Objection sustained.

15 MR STEYNBERG: All right.

16 Q. In whose name was the letter sent, or names?

17 A. I remember a copy was -- I saw copies copied to Kipruto, Arap Kirwa. A copy
18 of that letter went to the body which regulates media and in Kenya I don't remember
19 the -- the body now, and I remember the letter was signed by Mr --

20 PRESIDING JUDGE EBOE-OSUJI: Don't mention the name.

21 THE WITNESS: Yes. Number 6 and number 1. And, your Honour, if I look at
22 this -- at -- at the signature of number 6, I'll be able to identify if that is the document
23 or not.

24 MR STEYNBERG:

25 Q. I've already said the contents are not that important for me, but besides the

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1 mentioning of names, can you recall any other complaints that were raised?

2 A. I don't recall now, your Honour.

3 MR STEYNBERG: Your Honour, the witness has stated he will be able to identify
4 the document. I think I've laid sufficient basis to show the document at this stage.

5 May I ask then the document 0036-0091 is called up?

6 THE COURT OFFICER: Mr Steynberg, could you please confirm the level of
7 confidentiality of the document?

8 MR STEYNBERG: Yes. Thank you, madam. As mentioned before, it's
9 confidential. Please for display only in the courtroom.

10 Q. All right. Do you see that document in front of you? That's the first page of
11 the document.

12 A. Yes, your Honour.

13 MR STEYNBERG: And before I ask you questions, can I ask that the third page, 0093,
14 is called up? Sorry, can we zoom out a little bit? I can't -- I'm interested in the first
15 few signatures. Ah, they're redacted.

16 One second, please, your Honour.

17 Madam Court Officer, may I enquire whether you have a later less redacted version
18 of this letter, please?

19 THE COURT OFFICER: We do, Mr Steynberg. We have an unredacted version of
20 the document.

21 MR STEYNBERG: Please can you display the same page of that document?

22 THE COURT OFFICER: Sure.

23 MR STEYNBERG: And may I ask the technicians to zoom in on the first three or
24 four signatures.

25 Q. Mr Witness, now this is not a very good copy, but are you able to identify any of

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1 those signatures?

2 A. Yes, your Honour. Person number 3.

3 MR STEYNBERG: And can I ask the court officer to call up the last page, 0094.

4 PRESIDING JUDGE EBOE-OSUJI: Let's -- Mr Steynberg, for the record, what does
5 person number 3 mean? The witness said "person number 3."

6 MR STEYNBERG: Ah, yes.

7 Q. Sorry, are you referring to the number of the -- the number of the person -- the
8 number of the signature on this letter, or a number on the PIS?

9 A. The number of person in the signature.

10 Q. And for the record, so we know who that person is later, which number is that
11 on the PIS?

12 A. Number (Redacted), your Honour.

13 MR STEYNBERG: Thank you. Thank you, your Honour.

14 Can we then go back to the last page, 0094, and if we can scroll down a little bit to the
15 persons copied?

16 Q. Right. You mentioned Kipruto Kirwa earlier; is that correct?

17 A. Yes, your Honour.

18 Q. And you also mentioned a person -- a body responsible for the media. Can
19 you identify that body amongst this list?

20 A. Parliamentary Commission on Communication and Information, your Honour.

21 Q. Thank you. Can we have the first page again, please, 0091, of the same
22 version?

23 PRESIDING JUDGE EBOE-OSUJI: Before we do, do we know what -- do we know
24 what CCK refers to?

25 MR STEYNBERG: Your Honour, I don't, so let me ask the --

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1 PRESIDING JUDGE EBOE-OSUJI: I'm asking the witness.

2 MR STEYNBERG: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: Sorry.

4 Witness, you see amongst the persons copied is "Chairman CCK." What -- do you
5 know what CCK stands for?

6 THE WITNESS: I don't know, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR STEYNBERG: Can we please go back to the first page, 0091. Oh, we have it.

9 Q. And I would just like you to confirm the date of this letter, please, Mr Witness.

10 A. The wrong date, your Honour.

11 Q. I'm sorry, what did you say?

12 A. The wrong date, your Honour.

13 Q. Wrong date?

14 A. Yes, your Honour.

15 Q. So you are saying the date on this is the wrong date. What is the correct date
16 then?

17 A. I think 2007, or not very sure anyway about the dates, your Honour.

18 Q. I note in the second paragraph of the letter there's a reference to a programme
19 on (Redacted). Does that help your memory?

20 A. I know, your Honour, there was a programme which these names were
21 mentioned, but I'm not very sure about the dates, your Honour. I'm referring to the
22 date of the letter, not the date when the names were mentioned, but perhaps you can
23 clarify were the names mentioned on Kass FM before or after this letter was written?

24 A. This letter was written after the names were mentioned.

25 MR STEYNBERG: Your Honour, if I can just point out in a response to a query

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1 earlier that there's a reference in the letter to Communications Commission of Kenya,
2 CCK. That might answer the question your Honour raised earlier.

3 PRESIDING JUDGE EBOE-OSUJI: I was wondering whether that was what it meant,
4 but I didn't want to suggest it. If that is the case, then let's move on.

5 MR STEYNBERG: The reference is on the second page, 0092.

6 PRESIDING JUDGE EBOE-OSUJI: Indeed, I see that now.

7 MR STEYNBERG: All right. I'd like to move on then. Well, perhaps, rather than
8 leave it 'til later, may I ask that this exhibit be -- this document be handed in as the
9 next in the Prosecution exhibits? The witness has identified it. It's true that he is
10 not certain of the date, but he has identified the signatures and certain of the
11 addressees.

12 PRESIDING JUDGE EBOE-OSUJI: Any objection?

13 MR KIGEN-KATWA: Yes, Mr President, I would object. Mr President, the first
14 reason is clearly the witness does not know the contents of this letter. At least that
15 has not been traversed.

16 Secondly, your Honour, we are aware that the Prosecution still has witnesses and it is
17 our conviction that this witness -- this -- this document can be taken through
18 subsequent witnesses for purposes of the content and the circumstances of the date
19 and the other circumstances that the witness says he can't recall.

20 Mr President, for those reasons we would object to this witness being the person to
21 produce the document. He has clearly disassociated himself from the way it was
22 made, the contents and other than knowing that the letter was written.

23 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

24 MS ALAGENDRA: Your Honour, we support the objection of my learned friend,
25 Mr Kigen-Katwa, and additionally there's no -- there's nothing to suggest that this

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1 letter was in fact sent anywhere, and we don't know when it was in fact created and
2 whether or not it was not created for the purposes of this trial.

3 PRESIDING JUDGE EBOE-OSUJI: The objection is overruled. The witness said
4 that he had seen the document. The rest you can deal with, Counsel for the Defence,
5 in your cross-examination.

6 The document is admitted as the next in the Prosecution exhibits.

7 THE COURT OFFICER: The document KEN-OTP-0036-0091-Conf will bear the
8 number EVD-T-OTP-00244.

9 MR STEYNBERG: Thank you, madam.

10 Q. Moving away from this document then, what else can you tell us about the role
11 of Kass FM and Mr Sang in the lead up to the 2007 elections?

12 A. Throughout this period, Mr Sang continued to play the song that I mentioned
13 earlier and people used the platform to communicate mostly to the Kalenjins on
14 issues that were taking place politically and used the platform of Kass FM to continue
15 instigating enmity between the Kalenjin and the Kikuyu, especially like the use of this
16 kind of -- of messages sent to the people by mentioning names was one aspect that
17 made the people start to fear, to talk and disassociate with people who seemed to be
18 supporting the opposition.

19 Q. How did Kass FM instigate enmity between the Kalenjin and the Kikuyu?

20 A. They allowed people to use their platform, the platform of this -- of this FM
21 radio to continue calling and campaign. Also the words -- mostly the leaders of the
22 Kalenjin used this platform to pass information to the Kalenjin community against the
23 Kikuyu.

24 Q. What sort of information?

25 A. Incitive information, your Honour.

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1 Q. Just one follow-up question. You mentioned that -- well, firstly, who on Kass
2 FM in particular was responsible for this?

3 A. I beg your pardon, your Honour?

4 Q. You mentioned that Kass FM in general was used to convey inciting
5 information. Who in Kass FM was responsible for this? Which -- which person?

6 A. Joshua Arap Sang, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Can you pause there, Mr Steynberg.

8 Private session for a minute.

9 *(Private session at 12.06 p.m.) Reclassified as Open session

10 THE COURT OFFICER: We're in private session, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 I don't know, Mr Steynberg, whether you are the one to speak to this, but there is a
13 request to redact the transcript in the delayed broadcast and what is urged is
14 redaction of the reference to (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 because you put it in front of me. Why do we need to redact that?

20 MR STEYNBERG: I'm advised, your Honours, that this is because it would tend to

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE EBOE-OSUJI: Yes, I get the point. I get it. It's all right. It is
25 a correct request. I just wanted to see it before -- understand why the request was

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1 being made.

2 Yes, thank you. You may proceed with your questioning. We go back to public
3 session now.

4 MR KIGEN-KATWA: Mr President, could -- could you -- Mr President, I have
5 looked at the witness statement. If the signing could be put on hold until this issue
6 is covered. We might have a solution to that issue, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: We don't have -- we have a certain window
8 within which we must do this. That's the problem. And if we miss it it becomes
9 difficult to go back and capture it.

10 MR KIGEN-KATWA: It is in my knowledge, Mr President, that apart from the
11 specific circumstances of the testimony here, that this document is suggested to have
12 received a wide circulation, Mr President, and I think the argument that it will be
13 (Redacted) But I will leave it
14 to you, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR KIGEN-KATWA: Probably that's the best option.

17 PRESIDING JUDGE EBOE-OSUJI: Yes, thank you for noting your concern. I have
18 signed it and it is a correct request in the circumstances. Thank you.

19 (Open session at 12.09 p.m.)

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

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

22 Mr Steynberg, sorry for interrupting your flow there. How are we doing? You
23 indicated this witness would be done today by you.

24 MR STEYNBERG: Yes, your Honours. We obviously had a very late start today,
25 but I'm still hopeful that we will be able to wrap it up.

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- 1 PRESIDING JUDGE EBOE-OSUJI: I'm sure you can wrap it up, Mr Steynberg.
- 2 MR STEYNBERG: Thank you, your Honours.
- 3 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 4 MR STEYNBERG: All right, I can't do that in public.
- 5 Very well. I would like to then move on to a new issue, your Honours, which I am
- 6 going to have to deal with in private session unfortunately. It will be identifying. I
- 7 think I will just while we are in public session ask one follow-up question on the issue
- 8 of Kass FM and then I'll be moving on to new issues.
- 9 PRESIDING JUDGE EBOE-OSUJI: Are you waiting for?
- 10 MR STEYNBERG: Sorry. I did say I would have to deal with this issue in private
- 11 session. I'm sorry.
- 12 PRESIDING JUDGE EBOE-OSUJI: You want to go to private session?
- 13 MR STEYNBERG: Yes. I beg your pardon, your Honour.
- 14 PRESIDING JUDGE EBOE-OSUJI: All right. Private session then.
- 15 *(Private session at 12.11 p.m.) Reclassified as Open session
- 16 THE COURT OFFICER: We're in private session, Mr President.
- 17 MR STEYNBERG: All right. I'm sorry about the in and out, your Honour.
- 18 Q. One follow-up question. After the names of persons number 1 and 6 were
- 19 mentioned on the radio, did anything happen to either of those two persons?
- 20 A. A few days after that, your Honour, person number 6 went to (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Now, you've mentioned the document was circulated to AIC churches. Firstly,
10 what is the AIC church?

11 A. It's African Inland Church, your Honour.

12 Q. And what is the significance of that church? Why was the document sent to
13 that church, do you know?

14 A. I concluded myself that this -- this letter was circulated to this church -- to these
15 churches because it was mostly -- it was mostly attended by the Kalenjin people.
16 Having been a church that former president of Republic of Kenya happened to have
17 been attending, this is the President Moi, and he assisted most of the church projects
18 and these churches, the AIC church when he was in power, and most Kalenjin did
19 attend this church -- to this church, your Honour.

20 Q. And what was President Moi's ethnicity?

21 A. He was a Kalenjin, your Honour.

22 Q. All right, thank you. I would like then to move to a new subject. And just to
23 set the date, it's not in dispute that you met with the Prosecution of the ICC, met with
24 them for the first time on 8 October 2012 and that you made your first statement, or
25 you signed your first statement, on 29 October 2012. Does that accord with your

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1 recollection?

2 MR KIGEN-KATWA: Mr President, before the witness answers, other than the
3 concern for person number 6, we would have wished the aspect or the claim that this
4 letter was made available to all church members and the reference to the former
5 president made out in public session, Mr President. Other than -- we understand the
6 concern for person number 6, but it is our view that the other part of the testimony
7 could be made available in a public session, Mr President.

8 MR STEYNBERG: Yes, it probably could have, your Honour, but in order not to
9 keep going in and out of the private session, I would submit that the best way to deal
10 with it would simply be to deal with that when we issue the public redacted version.

11 PRESIDING JUDGE EBOE-OSUJI: All right. And if we go out -- during your
12 cross-examination, you may also to that limited extent bring it back if you want.

13 MR KIGEN-KATWA: I'm obliged, Mr President.

14 MR STEYNBERG: Thank you.

15 Q. I'm not sure if we got an answer there, but do those dates that I mentioned to
16 you, do those seem right to you, 8 October and 29 October 2012?

17 A. Yes, your Honour, it's right.

18 Q. How did you come to be a Prosecution witness? How were you introduced to
19 the ICC?

20 A. Person number 6 intro -- forwarded my name, your Honour.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. Who were those persons? You can mention names while we are in private
25 session.

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1 A. May I mention names, your Honour?

2 Q. We're in private session. You may.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. What discussions, if any, did you have with those people concerning (Redacted)

7 (Redacted)

8 MS ALAGENDRA: Before that, your Honour, could I request for a full name of

9 (Redacted), please?

10 MR STEYNBERG: Yes.

11 Q. In fact, let's start with (Redacted). Do you know him by any other

12 names than (Redacted)?

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And (Redacted), do you know him by any other names?

17 A. No, your Honour. I know him by the name (Redacted).

18 Q. All right. Can I just bring your attention then to the PIS form when we go back

19 into public session, and from the top you will see (Redacted)is number 8,

20 (Redacted) is number 12, (Redacted) 13 and (Redacted) number

21 22. Please bear that in mind.

22 Getting back then to my next question, what discussions if any did you have with

23 (Redacted)

24 becoming witnesses?

25 A. I just gave them information that they will be expecting a call because I had

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1 (Redacted)

2 Q. Did you at any time discuss with them, (Redacted)

3 (Redacted)

4 A. No, your Honour.

5 Q. Are you aware whether (Redacted) discussed with any other persons the
6 contents of their evidence?

7 A. I'm not aware, your Honour.

8 Q. All right. Before we go back into public session, after you made your
9 statement and had agreed to become a Prosecution witness, without mentioning the
10 location, is it correct that you were relocated by the ICC?

11 A. Yes, your Honour.

12 Q. And if I can refer you to the PIS, page 2, I'll be discussing events which occurred
13 in 2013, and if I can refer you to number 11 on the locations list, I would ask you to
14 please refer to your location at that time as "Protection location number 1." Can you
15 remember that?

16 A. Yes, your Honour, I remember.

17 Q. The reason being that we should not be revealing protection locations which
18 might compromise other witnesses. And I would ask you to do that in public and
19 private session, please.

20 Your Honour, I think we can go into public session. I will have to proceed fairly
21 cautiously and before too long we are going to start touching on matters which might
22 involve my learned friend, (Redacted), in which case I will alert the Chamber
23 and ask to go back into private session.

24 PRESIDING JUDGE EBOE-OSUJI: All right. But just so we're clear, is it the reason,
25 one of the reasons why we entered into private session, and we are still in it now, be

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1 (Redacted)

2 MR STEYNBERG: Indeed, your Honour. It was to do with the identity of

3 other -- (Redacted) And out of an abundance of

4 caution I prefer to do that in private session. Now that we have established the

5 identity, we can use the PIS going forward.

6 PRESIDING JUDGE EBOE-OSUJI: My question goes just beyond not only the

7 (Redacted)

8 (Redacted)

9 MR STEYNBERG: Well, to the extent, your Honour, that that fact might tend to

10 identify the witness. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: We'll go to open session now.

15 (Open session at 12.24 p.m.)

16 THE COURT OFFICER: We're in open session, Mr President.

17 MR STEYNBERG:

18 Q. Thank you, Mr Witness. Now I'd like to ask you certain questions relating

19 specifically to person number 22 who you identified in private session. Whilst you

20 were in protection location number 1 in 2013, did you have any contact with person

21 number 22?

22 A. Yes, your Honour.

23 Q. What was the nature of that contact?

24 A. I remember, your Honour, person number 22 contacted me to say that

25 Mr William Ruto (Redacted) and he was willing to give

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1 me in particular 1.5 million in order to recant my testimony.

2 Q. 1.5 million what?

3 A. Kenya shillings, your Honour.

4 Q. Who was prepared to give you that amount?

5 A. Mr William Ruto, your Honour.

6 Q. And how is it that person number 22 knew that?

7 A. I don't know, your Honour. He just informed me about the news, Mr -- your
8 Honour.

9 Q. Yes. Did he tell you anything else?

10 A. I remember him telling me that if I accept, this money will be available to me,
11 your Honour.

12 Q. And what did you tell him at that time?

13 A. I told him that I wanted to think about it and see if I'll get the 1.5 million, your
14 Honour.

15 Q. And how did the conversation end?

16 A. The conversation ended when he said that he will -- he will have more
17 discussion with Mr William Ruto and see if he will be able to look for me and see
18 ways to get -- if I can get that money, your Honour.

19 Q. And when he referred to Mr William Ruto, how did he refer to him? By what
20 name or -- what name did he refer to him by?

21 A. I don't recall now, your Honour, but I gave that name in my statements, your
22 Honour.

23 Q. All right. We'll come to that. Can you recall the date of this conversation
24 when he -- when person number 22 phoned you and made this offer?

25 A. I don't remember the dates, your Honour.

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1 Q. Is that date also referred to in your statement?

2 A. Yes, your Honour.

3 Q. What did you do as a result of this call?

4 A. I informed the investigators of the ICC about the call that I had received and the
5 contents of discussion, your Honour.

6 Q. And was it as a result of that that you came to make a statement?

7 A. Yes, your Honour.

8 Q. Would it assist your memory of the dates to refer to your statement,
9 Mr Witness?

10 A. It will assist, your Honour.

11 Q. And will it assist your memory regarding the name by which you discussed
12 Mr Ruto with person 22?

13 A. Yes, your Honour.

14 MR STEYNBERG: Your Honour, I think it is fairly important that I establish a
15 timeline in respect of the events which will follow and to that end I request
16 permission to refresh the memory as to the date of the call and as to the name by
17 which Mr Ruto was referred. The witness has indicated that these details are
18 contained in his statement and he has indicated that it would assist his memory if he
19 is able to refer to those.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

21 MS ALAGENDRA: Your Honour, except to highlight that these are statements the
22 witness went over just a few days ago, we don't have any objection to this.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Proceed, Mr Steynberg.

25 MR STEYNBERG: Thank you, your Honours.

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- 1 If I can ask the court officer to call up KEN-OTP-0103-2473_R03, redacted version 3.
- 2 This is a confidential document.
- 3 Thank you. I see it is up.
- 4 Q. Do you see your name on that document, Mr Witness? I won't read it out.
- 5 We're in public session.
- 6 A. Yes, your Honour, I can see my name.
- 7 MR STEYNBERG: And if I can ask the court officer to scroll down to the bottom.
- 8 Q. Can you please identify your signature there?
- 9 A. Yes, your Honour, I can identify my signature.
- 10 Q. Which one is it?
- 11 A. The first one, your Honour.
- 12 Q. The one on the left?
- 13 A. Yes, your Honour.
- 14 Q. And is it correct that the statement was deposed to over two days on 29 and 30
- 15 May 2013?
- 16 A. Yes, your Honour.
- 17 MR STEYNBERG: Can I then, please, ask the court officer to pull up page 2478 of
- 18 the same version, in particular the first three paragraphs?
- 19 Q. And I'd ask you, Mr Witness, to read the first paragraph, paragraph 24, and tell
- 20 us when you're finished. Just that paragraph, please.
- 21 MS ALAGENDRA: Your Honour, I believe we are in a public session.
- 22 MR STEYNBERG: We are, your Honour, but I'm being careful not to --
- 23 PRESIDING JUDGE EBOE-OSUJI: Yes, but there's a name that's there. Person
- 24 number 22 is that?
- 25 MR STEYNBERG: Yes, your Honour. When I asked him to read, not to read it out

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1 loud. So if he can just read the paragraph and let us know when he's finished.

2 THE WITNESS: Yes, your Honour, I got you right that I don't read it loud.

3 MR STEYNBERG: The document is not being broadcast to the public.

4 MS ALAGENDRA: Your Honour, if I -- if I may? For us we of course would like
5 all of this to be in public session, but my learned friend is referring to very specific
6 conversations between this witness and others and I'm not sure whether the detail is
7 going to reveal the identity of this witness, but it's up to my learned friend; the detail
8 of the conversations. I'm not sure how many people he's had these kind of
9 conversations with and who knows that he has had these kind of conversations with a
10 particular person, but for us, your Honour, we would of course like all of this to be in
11 public.

12 MR STEYNBERG: Your Honour, it may be, I suppose, that the person number 22
13 would recognise the contents of the conversation. It will become apparent, of course,
14 that person number 22 is very well aware of the identity -- the identity of the witness
15 and the fact that he is a witness, so I'm not sure what would be protected by dealing
16 with this in private session. My concern, of course, is that obviously the witness's
17 security comes first, but from the Prosecution's perspective it's unfortunate if what is
18 broadcast in the public is the fact of witnesses recanting and the fact of witnesses
19 making allegations against the Prosecution and other witnesses, but what we allege to
20 be the truth behind that is kept hidden in the courtroom. This, in our submission,
21 would cause a distorted picture to be -- to be broadcast to the public at large.

22 PRESIDING JUDGE EBOE-OSUJI: Why do we have only a numeric identifier in the
23 PIS for person number 22?

24 MR STEYNBERG: To -- because other people might be aware of his relationship
25 with the witness.

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1 PRESIDING JUDGE EBOE-OSUJI: Isn't that -- isn't Ms Alagendra's concern
2 consistent with that concern you've indicated as a reason why you have person
3 number 22 as such in the PIS?

4 MR STEYNBERG: The main purpose why we've put person number 22 in the PIS is
5 to protect the fact of the relationship between this witness and that person from the
6 public at large, not from person 22 who is well aware of it, but if your Honours are
7 concerned that the details which I am eliciting may in the minds of the public at large
8 identify the witness, then the most prudent course of events would then be to deal
9 with it in private session.

10 The unfortunate result will be that the large majority of the rest of this witness's
11 evidence will then have to be dealt with in private session.

12 PRESIDING JUDGE EBOE-OSUJI: Well, we just -- we will try our best, everyone,
13 Prosecution, Defence, of course the Chamber, to be consistent. That is the thing. If
14 we have been indicating to the witness the need to not broadcast or rather give in
15 open session information that is unique enough that some people will easily link him
16 to it, I think we need to be consistent with that, and on that basis, Ms Alagendra's
17 suggestion is not at all unreasonable. So we should be in private session.

18 MR STEYNBERG: As the Court pleases.
19 Private session then, please.

20 *(Private session at 12.38 p.m.) Reclassified as Open session

21 THE COURT OFFICER: We're in private session, Mr President.

22 MR STEYNBERG: All right.

23 Q. Have you finished reading paragraph 24, Mr Witness?

24 A. Yes, your Honour.

25 Q. Does that refresh your memory as to the date of the call?

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- 1 A. Yes, your Honour.
- 2 Q. What was that date?
- 3 A. (Redacted) your Honour.
- 4 Q. And can I ask you now to have a look at the first two lines of paragraph 26.
- 5 A. Yes, your Honour, I can see.
- 6 Q. Does that refresh your memory as to the name by which Mr Ruto was
- 7 discussed?
- 8 A. Yes, your Honour.
- 9 Q. What is that name?
- 10 A. (Redacted)
- 11 Q. (Redacted) How did you know that was a reference to Mr Ruto?
- 12 A. When we were talking about Mr Ruto, we used to refer him as (Redacted)
- 13 Q. Perhaps I should just get a little bit of history about your relationship with
- 14 person number 22. How did you know him?
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 So we had close relationship as a -- as -- as persons. (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 Q. And would you be able to identify a picture of this person?

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1 A. Yes, your Honour.

2 MR STEYNBERG: Court officer, please call up KEN-OTP-0103-2484-Conf. It

3 doesn't appear on the record yet, so I will read it out again. It is

4 KEN-OTP-0103-2484-Conf.

5 Q. Do you recognise that person, Mr Witness?

6 A. Yes, your Honour.

7 Q. Is that person 22?

8 A. Yes, your Honour.

9 Q. Did you have any contact details for this person; in other words phone numbers,
10 addresses, et cetera?

11 A. Yes, your Honour.

12 Q. And how did you receive those contact details?

13 A. I remember I had his business card, your Honour.

14 MR STEYNBERG: Can I ask the court officer to call up KEN-OTP-0103-2483-Conf.

15 Q. That the business card you referred to, sir?

16 A. Yes, your Honour.

17 Q. And whilst we have it up, can you tell the Chamber whose phone number is
18 that written on the back of that business card? We're in private session. You can
19 mention the name.

20 A. (Redacted), your Honour.

21 Q. (Redacted). Did you say (Redacted)? Did I get the name right?

22 A. Yes, your Honour.

23 Q. Do you know him by any other names?

24 A. (Redacted), your Honour.

25 Q. Is that the person at number 19 on the PIS?

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1 A. Yes, your Honour.

2 Q. I just I want to clarify. On the PIS his middle name appears as (Redacted). Is it
3 (Redacted)?

4 A. (Redacted). The name on the -- on the paper is right, your Honour.

5 Q. Thank you.

6 MR STEYNBERG: Your Honours, before we move on may I ask that the last two
7 documents be admitted as the next exhibits in the Prosecution bundle, please?

8 PRESIDING JUDGE EBOE-OSUJI: Any objections?

9 MS ALAGENDRA: No objections, your Honour.

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

11 MR KIGEN-KATWA: None, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: They will be admitted. And can you give them
13 again to the court officer.

14 MR STEYNBERG: Certainly, your Honour. They are KEN-OTP-0103-2484 and
15 2483 in the order which I produced them.

16 THE COURT OFFICER: The confidential document KEN-OTP-0103-2484 will bear
17 the number EVD-T-OTP-00245.

18 The confidential document KEN-OTP-0103-2483 will bear the number
19 EVD-T-OTP-00246.

20 MR STEYNBERG: Thank you.

21 Q. Now, after you told the investigators about the call you received from person 22,
22 (Redacted)

23 A. Yes, your Honour.

24 Q. What was that?

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 A. I don't recall the dates, your Honour.

10 Q. Would it help your memory to refer to the date in your statement?

11 A. Yes, your Honour.

12 MR STEYNBERG: Could I ask the court officer to call up the same statement, that's

13 KEN-OTP-0103-2473_R03, at page 2479 firstly, in particular paragraph 33.

14 Q. I'd like you just to read the first line of paragraph 33, please, the first sentence.

15 And then if I can ask the court officer to call up the next page, 2480, paragraph 35, just

16 the first line of paragraph 35.

17 Does that refresh your memory then as to the date of this call?

18 A. Yes, your Honour.

19 Q. What was that?

20 A. On the (Redacted), your Honour.

21 Q. (Redacted)?

22 A. Yes, your Honour.

23 Q. Right. Now, I don't intend to go into the details of that call. Unfortunately

24 time doesn't permit me to go through all the details. (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. All right. I'd like to refer you then to -- can you remember how long after that
7 you (Redacted), to person 22?

8 A. No, I don't remember, your Honour.

9 Q. And would this be recalled -- recorded in any statement?

10 A. Yes, your Honour.

11 Q. And would you like to refresh your memory as to that date from your
12 statement?

13 A. Yes, your Honour.

14 MR STEYNBERG: Madam Court Officer, please call up

15 KEN-OTP-0106-0388_R02-Conf.

16 Q. Do you recognise your -- sorry, can we have the bottom of the page again,
17 please.

18 Do you recognise your signature at the bottom of that page?

19 A. Yes, your Honour. It's my signature.

20 Q. And you agree this is a statement taken on (Redacted)?

21 A. Yes, your Honour.

22 MR STEYNBERG: And can we have page 0391, at paragraph 15, please.

23 Q. Can you please read paragraph 15 and the first sentence of paragraph 16. Does
24 that refresh your memory?

25 A. Yes, your Honour.

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1 Q. What was the date and time of that call?

2 A. The date is (Redacted).

3 Q. And the time?

4 A. Around (Redacted) hours.

5 Q. Thank you. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 What are these things that he was going to conclude?

9 A. Arrangements on how he was going to come and see me.

10 Q. And where was he going to come and see you, referring to the PIS?

11 A. In my Protection Location 1.

12 Q. Why was he coming to see you?

13 A. To talk to me in order to make sure that I recant my testimony.

14 MS ALAGENDRA: Your Honour, if I may at this stage, there's a lot of explanations
15 that has been given by the witness and we don't have --

16 PRESIDING JUDGE EBOE-OSUJI: You need to speak, point the voice to the
17 microphone, you remember.

18 MS ALAGENDRA: I apologise, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Sorry.

20 MS ALAGENDRA: The witness is providing a lot of explanations and he is being
21 prompted by the Prosecutor to explain things, but we have not received any
22 disclosure of (Redacted) to support these explanations, if I'm making sense?

23 PRESIDING JUDGE EBOE-OSUJI: I understand your concern if there is any other
24 details of the explanations should be something disclosed to you.

25 MS ALAGENDRA: Yes, your Honour, and indeed it should be in some (Redacted)

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1 as well, which we've never received.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

3 MR STEYNBERG: Your Honour, the Prosecution has disclosed to the Defence every

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted) That has been disclosed to my learned friend.

11 PRESIDING JUDGE EBOE-OSUJI: Is that correct?

12 MS ALAGENDRA: No, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: That the --

14 MS ALAGENDRA: In fact, what I am trying to --

15 PRESIDING JUDGE EBOE-OSUJI: One second. Let's firm it up. Mr Steynberg is

16 saying that, as I understood him, that to the extent of -- that during the witness

17 preparation session the narrative, as it were, that were filled in as they obtained it

18 from the witness during witness preparation has been disclosed to you.

19 Mr Steynberg, is that what you were saying?

20 MR STEYNBERG: That is correct, your Honour, not to say that we've gone through

21 (Redacted) but we referred to what I believe were the relevant

22 portions.

23 PRESIDING JUDGE EBOE-OSUJI: And you disclosed the product of that

24 information gleaned in the fuller view?

25 MR STEYNBERG: A summary thereof, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: A summary. You've disclosed that to the
2 Defence?

3 MR STEYNBERG: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: And I'm asking Ms Alagendra, is that correct?

5 MS ALAGENDRA: That is correct to the best of my knowledge, your Honour. But
6 my concern was a bit -- probably I need to explain it better. We have a very vague

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: All right. That is something -- before I say this,
14 is your contention that the run of the testimony so far as indicated in the witness's last
15 few answers go beyond the summary or outside the scope of the summary the OTP
16 gave you?

17 MS ALAGENDRA: Your Honour, what we've received is an explanation from the
18 witness. We have not been given a summary of (Redacted)

19 (Redacted)

20 (Redacted)

21 meaning is being read into it. So it is his speculation.

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MS ALAGENDRA: And if that is the case, then that must be made plain and clear.

24 PRESIDING JUDGE EBOE-OSUJI: The Prosecutor, do you have any more
25 information on this you have not disclosed to the Defence?

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1 MR STEYNBERG: No, your Honour. The Defence is in the same position we are.
2 (Redacted) the witness is the
3 best-placed person to explain the meaning which is being conveyed. And of course
4 if my learned friend thinks that the witness is reading things (Redacted)
5 which are not justified, then that is a matter which can clearly be taken up in
6 cross-examination.

7 PRESIDING JUDGE EBOE-OSUJI: All right. The bottom line is that you have no
8 more in your possession than you've given. On that basis, Ms Alagendra, you can
9 take up those concerns in cross-examination.

10 Mr Steynberg, continue please.

11 MR STEYNBERG: Your Honours, I see we are over time.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, we are indeed. This will be a good time for
13 us to take our lunch-break and we'll come back at 2.30 as usual.

14 The Court will rise, but after the witness has been ushered out of the courtroom.

15 Closed session.

16 *(Closed session at 1.06 p.m.) Reclassified as Open session

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

18 (The witness stands down)

19 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

20 THE COURT OFFICER: All rise.

21 (Recess taken at 1.07 p.m.)

22 (Upon resuming in open session at 2.38 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

25 THE COURT OFFICER: Mr President, for the record we are in open session.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

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

2 Welcome back, everyone.

3 Welcome back, Witness.

4 Mr Steynberg, please proceed.

5 MR STEYNBERG: Thank you, your Honours.

6 Regretfully I must ask to return to private session, and unfortunately I note we have
7 an audience, but I must regretfully inform that probably most of the rest of the session
8 will have to be conducted in private session.

9 PRESIDING JUDGE EBOE-OSUJI: Most of the rest of the session, all right. Let's go
10 to private session then.

11 Ms Alagendra?

12 MS ALAGENDRA: Your Honours, in fact we would much prefer for this testimony
13 to be done in public and I'm not sure how my learned friend can adjust his
14 questioning without going into (Redacted) so that we can stay in public.

15 PRESIDING JUDGE EBOE-OSUJI: Yes, but we also have to move efficiently and
16 quickly. So let's -- let's go to private session and see how it goes.

17 *(Private session at 2.40 p.m.) Reclassified as Open session

18 MS ALAGENDRA: Your Honour, also perhaps my learned friend could provide a
19 summary in a public session of what transpired during the private sessions? I think
20 my learned friend has expressed that he also would like this -- this testimony to be
21 in -- in public.

22 PRESIDING JUDGE EBOE-OSUJI: Let's -- we haven't been doing this as a matter of
23 procedure, especially in -- a matter of our regular procedure, especially when we are
24 in the private session for an extended period. If we popped into private session to
25 get one or two answers occasionally when we emerge it might quickly be summarised

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 what was said, but to do that for extensive proceedings in private session would not
2 be something we think efficient.

3 We do realise the inconvenience, but -- caused especially to members of the public
4 who want to follow the proceedings, but occasionally we have to do it this way.

5 THE COURT OFFICER: Mr President, for the record we are in private session since
6 14 hours, 40 minutes, nine seconds.

7 Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR STEYNBERG: Thank you, your Honour.

10 Thank you, Mr Court Officer.

11 Q. Mr Witness, we were (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: Where is the tab again? Still tab --

15 MR STEYNBERG: I believe it was tab 22, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Twenty-two.

17 MR STEYNBERG:

18 Q. Now, you mentioned that person 22 told you he was going to conclude certain
19 things and then he would come, and then (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 (Redacted)

2 Q. Do you know why?

3 A. No, I don't know, your Honour.

4 Q. Very well. It continues, (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MR STEYNBERG: All right.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 MR STEYNBERG: All right.

18 Your Honours, I was hoping that we would be able to move a little bit more swiftly,

19 but I think we're going to have to take it one step at a time.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MR STEYNBERG:

6 Q. All right. (Redacted) Mr Witness?

7 A. Yes, your Honour.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. What are you referring to?

19 A. (Redacted) I was trying to confirm to mister -- person

20 number 22 that we have to get good money.

21 Q. And what did he then -- can you explain to us what he told you after that?

22 MS ALAGENDRA: Your Honours, if I may at this stage, we don't have (Redacted)

23 (Redacted)

24 MR STEYNBERG: Your Honours, I believe that's the same objection and I confirm

25 once again that whatever (Redacted) has been provided to my

Trial Hearing
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(Private Session)

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1 learned friend.

2 (Redacted)

3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, would you be coming to that
5 conversation later?

6 MR STEYNBERG: Your Honours, I'm quite content to go through each and every
7 one of (Redacted), but then I'm going to need another day. There are a
8 number of (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MS ALAGENDRA: My objection was a bit different. I was not asking my learned
14 friend to go through (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 MR STEYNBERG: Your Honour, I've already stated that all (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Perhaps Ms Alagendra's concern arises from the
23 answer that comes at line 11, where the witness alludes to (Redacted)

24 "I was trying to confirm to mister -- person 22 that we have to get good money." The
25 question then, perhaps, is -- may be a matter of follow-up to find out what's

Trial Hearing
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- 1 being -- what the witness had in mind when he said (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 Isn't that the case, Ms Alagendra?
- 5 MS ALAGENDRA: Exactly, your Honour. Thank you.
- 6 MR STEYNBERG: Your Honour, I can do no more than ask the witness.
- 7 Q. Mr Witness, (Redacted) when you said
- 8 (Redacted) you were trying to confirm to
- 9 mister -- to person 22 that "we have to get good money"?
- 10 A. When he called the first time -- when we called and said that we -- we
- 11 were -- we were to get 1.5 -- we were to get 1.5 million, then I was still insisting that
- 12 we have to get something good from these -- from these people.
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 A. Your Honour, the part that's -- we were talking about 1.5 million and I confirm

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 to you that (Redacted)

2 Q. Is that the (Redacted)

3 A. Yes, your Honour.

4 MR STEYNBERG: Your Honours, it seems that he's referring to the witness
5 statement which was shown to him before the break that I used to refresh his memory,
6 not -- not (Redacted)

7 MS ALAGENDRA: Your Honours, in fact at lines 16 and 17 the witness is saying
8 that (Redacted)

9 MR STEYNBERG: Let me go over the sequence of events again.
10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 A. No, your Honour.

21 (Redacted)

22 (Redacted)

23 A. No, your Honour.

24 Q. Thank you. I'll move on.

25 Getting back then to (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted) I believed that it -- I was not the only one who was

12 targeted to go back, but also other witnesses.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Mr Witness, what was that all about?

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 MS ALAGENDRA: Your Honours, can I request that the witness be told to explain
- 13 whether this is part of (Redacted) or is he
- 14 speculating as to the meaning?
- 15 MR STEYNBERG: Your Honour, at this point I must object to these continuous
- 16 interruptions. I have a limited amount of time and a lot of material to get through.
- 17 These are all matters that my learned friend can quite properly take up in her
- 18 cross-examination if she's unsure of the witness's answer. That is one of the
- 19 purposes, after all, of cross-examination.
- 20 PRESIDING JUDGE EBOE-OSUJI: Defence counsel, of course you -- what
- 21 Mr Steynberg says is quite correct, but beyond that and from your own perspective,
- 22 the matter of having a Prosecution witness clarify things can be a double-edged
- 23 sword, you know. I leave it at that.
- 24 Mr Steynberg, continue.
- 25 MR STEYNBERG: Thank you, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 I've rather lost my train of thought now, I'm afraid. Yes.

2 Q. From your understanding of the situation (Redacted)

3 (Redacted) why would witnesses be afraid to return to their villages?

4 A. According to my understanding, your Honour, most of the Kalenjin people do

5 not want -- or, do not agree with witnesses to come and testify in the -- in the ICC or

6 even go and give statements of what transpired -- of what had transpired during the

7 post-election violence, and, therefore, if they come to know that you are part or one of

8 those who are -- who have done anything in relation to giving testimony, then they

9 can harm you.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Is that date contained in any statements that you made to the investigators

14 subsequently?

15 A. Yes, your Honour.

16 Q. Would you like to refresh your memory --

17 A. Yep.

18 Q. -- as to that date?

19 A. Yes, your Honour.

20 MR STEYNBERG: Your Honour, with the permission of the Chamber, I ask the

21 court officer to call up KEN-OTP-0109-0002_R02, the first page, confidential, please.

22 PRESIDING JUDGE EBOE-OSUJI: Did you indicate the tab already, Mr Steynberg?

23 MR STEYNBERG: I'm afraid I haven't, your Honour. Tab 23. And can we scroll

24 down to the bottom, please. All right. I see the signatures are on the next page, so

25 can we please have page 0003.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 Q. Can you identify your signature there, Mr Witness?

2 A. Yes, your Honour.

3 Q. Is that the first one on that page?

4 A. Yes, it is.

5 MR STEYNBERG: Court officer, please call up page 0006 and zoom in on paragraph
6 19.

7 Q. Can you read paragraph 19 and the first line of paragraph 20, please. Does
8 that refresh your memory as to the date (Redacted)

9 A. Yes, your Honour.

10 Q. When was that?

11 A. On (Redacted)

12 Q. Thank you.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Who is the person Teigut, T-E-I-G-U-T, (Redacted)?
- 19 A. I'm not sure, your Honour, but I thought it was Farouk Kibet Teigut.
- 20 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we would like to (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 MR STEYNBERG: Certainly, your Honour. (Redacted)
- 24 (Redacted)
- 25 (Trial Chamber confers)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: One more time, please.

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

4 MR STEYNBERG: Thank you, your Honour.

5 Q. And why do you believe that the reference to Teigut is a reference to Farouk

6 Kibet?

7 A. Because he's a personal assistant of Mr Ruto, your Honour.

8 Q. Have you heard the name "Teigut" before?

9 A. Even though I don't recall properly, it's like I have heard that name,

10 your Honour.

11 Q. Very well. Let's move on. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR STEYNBERG: Thank you, your Honour. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Now, (Redacted) you've told

20 us about person 22 wanting to come to meet with you in your protection location,

21 protection location number 1. Did that, in fact, ever happen?

22 A. Yes, your Honour.

23 Q. And were the investigators -- were the investigators aware that that was going

24 to happen?

25 A. Yes, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 Q. And what did they tell you about that?

2 A. They asked me to arrange that meeting with -- with (Redacted) at a -- at a
3 certain hotel in my protection location 1 and I did so.

4 Q. Can you recall the date at which (Redacted) arrived at your protection location?

5 A. No, your Honour, but I gave the statements.

6 Q. Is the date contained in your statements?

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MR STEYNBERG: I believe so, your Honour, but let me clarify. I was still coming
14 to that issue.

15 Q. Did you eventually meet with (Redacted) at that location?

16 A. Yes, your Honour.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 Q. And did you have any discussions with him on that occasion?

2 A. Yes, your Honour.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 MR STEYNBERG: If the Court will bear with me for one moment, please?

11 Thank you. Can I ask the court officer to please call up KEN-OTP-0131-0431 and if

12 we can go to page 0437? And it's R02, I beg your pardon.

13 PRESIDING JUDGE EBOE-OSUJI: Tab?

14 MR STEYNBERG: Your Honours, it's at tab 28.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, this is to you directly. The

16 witness mentions (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 A. And that many witnesses had already gone back and also that those who had

15 gone back would not -- are not -- are not -- are not asked to go to the media

16 to -- to -- to be broadcast that they have gone back and so forth.

17 Q. Why not?

18 A. I don't know, your Honour.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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23 (Redacted)
24 MR STEYNBERG: Can I ask the court officer, please, to call up
25 KEN-OTP-0111-0159_R01 for the witness.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 It's at tab 26, your Honours.

2 Q. Have you seen these photographs before, Mr Witness?

3 A. Yes, your Honour. I saw them when I was giving my statements to the
4 investigators, your Honour.

5 Q. And if I can just focus your attention firstly on photograph number 2. Can you
6 identify the two persons depicted in that photograph?

7 A. Yes, your Honour.

8 Q. Who are they?

9 A. It's -- it's me on the right and (Redacted) on the left.

10 Q. And in the other -- all the other photographs, is it correct that's (Redacted)
11 wearing the blue or black cap?

12 A. Yes, your Honour.

13 MR STEYNBERG: Your Honours, if I may also deal with this -- admission of this
14 document when I deal with the others, it would save some time.

15 PRESIDING JUDGE EBOE-OSUJI: Any objections to the admissibility of the
16 photographs?

17 MS ALAGENDRA: No objections, your Honour.

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

19 MR KIGEN-KATWA: No objection.

20 PRESIDING JUDGE EBOE-OSUJI: Noted. Proceed, Mr Steynberg.

21 MR STEYNBERG: Thank you. For the sake of completeness, can I just ask the next
22 page to be called up, 0160, so the witness can identify them all.

23 PRESIDING JUDGE EBOE-OSUJI: Still in the series of photographs, isn't it?

24 MR STEYNBERG: It's the -- it's the same series of photographs, yes, your Honour.

25 Q. Can you identify, are those the same individuals in those four photographs,

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 Mr Witness?

2 A. Yes, your Honour, they are the same people.

3 Q. Thank you. We can move on.

4 PRESIDING JUDGE EBOE-OSUJI: I take it counsel also have no objections?

5 MS ALAGENDRA: No objections, your Honours.

6 MR KIGEN-KATWA: No objections.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, no objections she says.

8 And, Mr Kigen-Katwa, no objection?

9 MR KIGEN-KATWA: No objection.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

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3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. I see. And how did you -- how did -- how did these meetings wrap up in the
7 end?

8 A. The meetings, your Honour, ended at the end after it was -- after (Redacted) had
9 confirmed to me that -- that -- on those people who were -- who were linked to
10 making witness recant; and also not to forget, your Honour, that at some point he said

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. All right. Now, I'd just like to then for the record clarify the date of these
19 meetings. You mentioned that it had been recorded in your statement. If I can just
20 ask you to refresh your memory as to the dates.

21 MR STEYNBERG: Mr Court Officer, please can you call up KEN-OTP-0111-0140.

22 PRESIDING JUDGE EBOE-OSUJI: You're moving away from this transcript then?

23 MR STEYNBERG: Yes, your Honour, for the time being.

24 PRESIDING JUDGE EBOE-OSUJI: Let's stay here for a minute, please.

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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19 (Redacted)
20 (Redacted)
21 (Redacted)

22 That is the content of our discussion as I can tell by my words, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Steynberg, I note we are a little past the time.

25 MR STEYNBERG: Your Honours, I was just going to get to the date.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 I regret that I have not been able to keep my promise of finishing today.

2 Your Honours, we started 45 minutes late this morning. I'm confident that within

3 that time tomorrow morning I'll be able to wrap it up. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE EBOE-OSUJI: All right. Have you then -- I noticed you were

8 moving off to another (Redacted) before I came in with my own questions. By the

9 way, you can ask follow-up questions and naturally the Defence in your time can ask

10 questions on mine. But are we tomorrow going to remain in closed session, or are

11 you moving on to something else that might require hearing in open session?

12 MR STEYNBERG: Your Honours, the portion I'll be moving on to tomorrow will

13 (Redacted) I just wanted to move on to

14 the -- the date of these (Redacted) and I was about to refresh the witness's memory as

15 to the date. If we could do that in two or three minutes it would be easier than

16 having to remind the witness in the morning.

17 PRESIDING JUDGE EBOE-OSUJI: Yes, let's do that now.

18 MR STEYNBERG: Mr Court Officer, I was going to ask you to call up

19 KEN-OTP-0111-0140, tab 25, R_02. If we can just have the signatures at the bottom

20 of that page, please.

21 Q. Do you recognize those signatures, Mr Witness?

22 A. Yes, your Honour.

23 Q. And is that a copy of the statement you made on (Redacted)

24 A. Yes, your Honour.

25 MR STEYNBERG: If the Court will bear with me, please?

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

- 1 Yes. Can you please call up page 0146, paragraph 32?
- 2 Q. And could you read that paragraph, please?
- 3 A. Yes.
- 4 Q. Does that refresh your memory as to the date of the meeting at the hotel that
- 5 we've just been referring to?
- 6 A. Yes, your Honour.
- 7 Q. What was that date?
- 8 A. On (Redacted)
- 9 Q. Of which month?
- 10 A. Of (Redacted).
- 11 Q. That's (Redacted), correct?
- 12 A. Yes, your Honour.
- 13 Q. And the meeting that you had at (Redacted) must
- 14 have been (Redacted); is that right?
- 15 A. Yes, your Honour.
- 16 MR STEYNBERG: Thank you, your Honours. That's all I wished to confirm at this
- 17 stage.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 19 We will rise for the day. Witness, we will come back tomorrow morning at 9.30.
- 20 Please do not discuss your testimony with anybody overnight. Do you understand?
- 21 THE WITNESS: Yes, your Honour.
- 22 PRESIDING JUDGE EBOE-OSUJI: All right.
- 23 The Court will rise after the witness has been ushered out of the courtroom.
- 24 Closed session, please.
- 25 *(Closed session at 4.07 p.m.) Reclassified as Open session

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

- 1 THE COURT OFFICER: We are in closed session, Mr President.
- 2 (The witness stands down)
- 3 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 4 THE COURT OFFICER: All rise.
- 5 *(The hearing ends in closed session at 4.08 p.m.) Reclassified as open session
- 6 RECLASSIFICATION REPORT
- 7 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 8 2013, the version of the transcript with its redactions becomes Public.