

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 and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Thursday, 20 November 2014
10 (The hearing starts in open session at 9.36 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 announce the case.
16 THE COURT OFFICER: Good morning, Mr President.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, case number ICC-01/09-01/11.
19 For the record, we are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR STEYNBERG: Good morning, your Honours. Appearances are as before,
23 except our intern Mr Hassan is no longer with us today.
24 MR NARANTSETSEG: Good morning, your Honours. The same, thank you.
25 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present and his

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- 1 team remains the same. I apologise to my learned friend.
- 2 PRESIDING JUDGE EBOE-OSUJI: That's all right. We will come back to him later.
- 3 MS ALAGENDRA: Good morning, Mr President, your Honours. We are joined
- 4 today by Ms Shalini Jayaraj.
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 6 MR (Redacted): Mr President, your Honours, good morning. Good morning everyone.
- 7 As yesterday I am (Redacted) duty counsel for the witness, P-800. Thank you.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Mr Steynberg?
- 10 Witness, welcome back. Thank you for rejoining us. Mr Steynberg will continue
- 11 his questions to you.
- 12 Mr Steynberg?
- 13 MR STEYNBERG: Thank you, your Honour.
- 14 WITNESS: KEN-OTP-P-0800 (On former oath)
- 15 QUESTIONED BY MR STEYNBERG: (Continuing)
- 16 Q. Good morning, Mr Witness.
- 17 A. Good morning.
- 18 Q. Mr Witness, before I move on to a new subject, I just want to clarify two or three
- 19 issues relating to what we were dealing with yesterday.
- 20 And unfortunately, your Honour, I see we're in public session. We are going to have
- 21 to continue with this in private session I regret.
- 22 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 23 *(Private session at 9.39 a.m.) Reclassified as Open session
- 24 THE COURT OFFICER: We are in private session, Mr President.

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1 MR STEYNBERG: Thank you.

2 Q. Mr Witness, we discussed yesterday in your conversations with person 22 that

3 you mentioned that you were supposed to (Redacted)

4 (Redacted) Did you ever

5 intend to (Redacted)

6 A. No, your Honour.

7 Q. So what were you doing when you were speaking to (Redacted) and telling him

8 all these things?

9 A. I wanted to get information from (Redacted) and therefore I was promising him

10 that I was going to (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. And besides (Redacted) that you've mentioned,

14 did you know of (Redacted) in that area?

15 A. No, your Honour.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Where is the tab again, Mr Steynberg?

22 MR STEYNBERG: If the Court will bear with me, please? I think it's 22. Tab 28,

23 your Honour. I beg your pardon.

24 Q. And, Mr Witness, you'll see I have just highlighted the (Redacted)

25 (Redacted)

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- 13 MR STEYNBERG: Your Honours, I would like to move away from the (Redacted)
- 14 I have limited time and I would like to get to what happened thereafter.
- 15 PRESIDING JUDGE EBOE-OSUJI: All right. One question for the witness.
- 16 Witness, you have testified that at some point you -- (Redacted)
- 17 (Redacted) you started doing so. That's
- 18 the case; was that it?
- 19 THE WITNESS: Yes, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: Was there any interaction you had with
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 THE WITNESS: No, your Honour.
- 25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 MR STEYNBERG:

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MR STEYNBERG: All right, I'm going to move on then.

7 Now, the Court will bear with me please?

8 PRESIDING JUDGE EBOE-OSUJI: Let me understand that, please. Is it -- are you

9 saying -- ignore whether you think I'm telling you something, but I just want to

10 express my understanding. Tell me if I'm wrong or right. Are you saying that even

11 in those situations where you might have been (Redacted)

12 (Redacted) Is that

13 what --

14 THE WITNESS: Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Is that what you were saying, or not?

16 THE WITNESS: That's what I was saying, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Thanks.

18 MR STEYNBERG: Your Honour, I think there is a segment we can do in public

19 session. Unfortunately it won't be very long, but for the sake of publicity may we go

20 to public session?

21 PRESIDING JUDGE EBOE-OSUJI: Open session.

22 (Open session at 9.50 a.m.)

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR STEYNBERG: Thank you, your Honour.

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1 Q. Now, Mr Witness, we are in open session, so I remind you please to refer to
2 your PIS form whenever mentioning individuals or places who might identify you or
3 which might identify you.

4 Mr Witness, how long did you remain in protection location number 1 after this
5 meeting with person 22 we've been discussing?

6 A. I'm not very sure about the dates, your -- your Honour, but about -- about one
7 month.

8 Q. And what led to your leaving that location?

9 A. At one point, your Honour, there was misunderstanding between me and --

10 PRESIDING JUDGE EBOE-OSUJI: We are in public session. Remember that.

11 That's not to say you shouldn't answer the question, but if you're going to mention
12 the name of somebody remember to look at the PIS to see if --

13 THE WITNESS: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: Okay.

15 THE WITNESS: There was misunderstanding between me and officers of the -- of
16 the Court who were in that location and, at that point before we solved our issues, I
17 received a call from person number 19.

18 MR STEYNBERG:

19 Q. What did person number 19 want?

20 A. He wanted me to get back because he said it was -- that he had tried to come
21 and talk to -- and talk to person number 8, but he did not succeed. He therefore -- he
22 therefore asked me if I could go to get back to Kenya and he will organise that
23 nothing will happen to me.

24 Q. For what purpose was he trying to get hold of person number 8, do you know?

25 A. Yes, your Honour. Like person number 22, this person number 19 wanted to

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1 see person number 8 for the same agenda.

2 Q. And on whose behalf was person number 19 acting? Do you know that?

3 A. Yes, your Honour. I'm aware he was sent by those who are concerned to make
4 sure that witnesses recant their testimonies.

5 Q. And when you say "... sent by those concerned," who are you referring to?
6 Who are the "those concerned"?

7 A. I'm aware he was sent by person number 7.

8 Q. Right. Now, after you received this phone call from person number 19, what
9 did you do?

10 A. I went back to Kenya.

11 MS ALAGENDRA: Your Honours, can I just seek one clarification? Is when he
12 says person 19 was sent, does that mean somebody has gone somewhere, or been
13 asked to do something? Just a clarification.

14 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, remember you have a right of
15 cross-examination, so anything that's not clear to you you can pursue in
16 cross-examination, but that's not to say that, Mr Steynberg, if you feel a need to clarify
17 at the request of your colleague you may now do so.

18 MR STEYNBERG: Thank you, your Honours. I will ask a slightly different
19 question which might serve the same purpose.

20 Q. You've told us that person number 19 travelled to your -- well, where did he go
21 to when he was going to see -- trying to see person number 8? Was that your
22 protection location number 1?

23 A. Yes, your Honour.

24 Q. And he also contacted you. So my question is: When you say he was sent by
25 other people, was that for the purposes of finding person number 8, or contacting you,

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1 or both?

2 A. When person number 19 came to my protection location 1, he had intentions to
3 see person number 8.

4 Q. Just stop there. And was he sent by somebody to do that, or was that on his
5 own initiative?

6 A. He was sent by person number 7.

7 Q. And when he contacted you and asked you to return to Kenya, was he sent or
8 instructed by somebody to do that, or was that on his own initiative?

9 A. He had -- he said he had discussed with person number 7 and it was okay.

10 Q. What happened when you returned to Kenya?

11 A. Person number 7 organised a meeting with me and person number 19 in Kenya.

12 MR STEYNBERG: All right. Your Honours, to get the details of this meeting
13 I think it's going to be identifying (Redacted)

14 (Redacted) If I can just ask one more question I think we can do in public session and
15 then I'm going to have to ask to go into private, please.

16 Q. What was the purpose of this meeting with person number 7 and person
17 number 19?

18 A. The purpose of the meeting was to discuss all offers that I wanted so that I could
19 recant my testimony.

20 Q. When you say offers that you wanted, was this a demand you communicated or
21 was this an offer that was provided to you?

22 A. I didn't understand, your Honour.

23 Q. You say you discussed offers what you -- offers that you wanted. Just explain
24 that. What do you mean, offers that you wanted?

25 A. To discuss how much money I wanted so that I could recant my testimony.

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1 Q. And who requested that meeting?

2 A. It's person number 7 through person number 19.

3 MR STEYNBERG: Thank you.

4 Private session, please, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: You want to now explore the details of the
6 meeting, you say, between persons 7 and 19, Mr Steynberg?

7 MR STEYNBERG: That's correct, your Honours.

8 PRESIDING JUDGE EBOE-OSUJI: All right.

9 Before we do that, I want to have a clearer understanding of certain aspects of the
10 testimony thus far given.

11 Witness, you said you left protection or protected relocation -- protection location
12 number 1 because of misunderstanding between you and the court officers at that
13 location, protection location number 1; is that it?

14 THE WITNESS: Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: And that misunderstanding, did it happen before,
16 after, or during the period of your interactions that we've seen evidence of with
17 person number 22?

18 THE WITNESS: After my interactions with person number 22, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. And we'll go into --

20 MR STEYNBERG: Your Honours, perhaps if I may just clarify and ask one
21 follow-up question before we go into private session?

22 PRESIDING JUDGE EBOE-OSUJI: Yes, and when we go into private session I have
23 some more questions on this matter.

24 MR STEYNBERG: Your Honours, I think this is something I can ask in public
25 session. I don't want there to be any misunderstanding about the nature of this

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1 problem he had with --

2 PRESIDING JUDGE EBOE-OSUJI: No, no, that's all right.

3 MR STEYNBERG: Okay.

4 PRESIDING JUDGE EBOE-OSUJI: Proceed. I'm saying that in private session I
5 may have some other questions about this.

6 MR STEYNBERG:

7 Q. Mr Witness, what was the nature of this misunderstanding you were having?
8 What was -- what was your problem?

9 A. Your Honour, sometimes when -- when we were there our allowances will come
10 late, and also allowances that was given to my -- to my -- to my family I felt was too
11 little to support them and that is why I was talking to those officers, who were at the
12 ground by that time, and they were relaying -- to relay back information to me.
13 I remember at times I talked to the investigators about it and they were saying that
14 they will come and solve it in the headquarters, but they took a lot of time without
15 getting back on a -- to me.

16 Other officers at the ground also asked -- also were saying that I had no right
17 to -- I had no right to demand for -- for -- for anything at that moment because I had
18 not signed a memorandum of understanding between me and -- and the Court. So it
19 got very hard for me to forward my complaints because of that fact.

20 And when I was approached by person number 19, I felt it was a -- a -- it was -- it was
21 better for me to get back home and try to get ways to support my family without
22 getting into more conflicts between me and the officers who were at the ground at
23 that time.

24 Q. And, briefly, what problems were you having supporting your family?

25 A. It was about -- I -- I was asking if we could be -- before I went to location

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1 number -- number 1 --

2 Q. Protection location number 1?

3 A. Yeah, protection location number 1. I used to pay for insurance for my

4 children, and I was asking if, now that I was not able to work anymore

5 from -- from -- from Kenya at that time, if I could be supported to continue paying

6 because I had paid -- I was supposed to pay every month.

7 I also was paying someone who was -- who was -- who was working at home

8 in -- in -- in location number 9 and I was asking if I could be -- if I could be supported

9 because debts were piling -- were piling up. And now I was told they were -- they

10 were coming to discuss and get back to me, but they were taking a lot of time without

11 doing that.

12 MR STEYNBERG: Thank you, your Honours. Private session, please.

13 PRESIDING JUDGE EBOE-OSUJI: And those were the -- your questions clarified

14 what I said I was interested in asking in private session. We'll go to private session

15 then.

16 *(Private session at 10.08 a.m.) Reclassified as Open session

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

18 MR STEYNBERG: Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR STEYNBERG: Thank you, your Honours.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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23 *(Closed session at 11.03 a.m.) Reclassified as Open session

24 THE COURT OFFICER: We are in closed session, Mr President, and the witness will
25 be escorted out.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 (The witness stands down)

3 PRESIDING JUDGE EBOE-OSUJI: Now we can properly rise. Thanks.

4 THE COURT OFFICER: All rise.

5 (Recess taken at 11.04 a.m.)

6 (Upon resuming in open session at 11.36 a.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

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

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

11 Mr Steynberg, 30 more minutes to wrap the whole thing up.

12 MR STEYNBERG: Yes, your Honour, that should be sufficient.

13 I think we can proceed in public for the time being.

14 Q. Mr Witness, just before the break we were dealing with your planned testimony
15 during the September session this year, and I'd just like to fill in a couple of blanks
16 between the time you signed your various withdrawal affidavits and your agreement
17 to come to testify. Why is it that you agreed to cooperate with the Prosecution once
18 again after signing the withdrawal affidavits we've just been discussing?

19 A. Your Honour, coming to testify here, one, is not because of my -- of -- about
20 myself. I'm here because of what concerns many victims of post-election violence
21 and actually what I -- what I witnessed for those who died and children who suffered
22 in camps.

23 You realise I left because of my own self being when I had misunderstandings in
24 location -- in protection location 1, and my conscience did not rest from that time
25 because I had failed -- I was going to fail those whom actually I would have given

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1 testimony on because I -- I had a duty to testify what I saw and what I witnessed in
2 person.
3 So number two: Also, your Honour, after the -- the -- after person number 22 was
4 required to appear here I knew that (Redacted)
5 (Redacted)
6 (Redacted)
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12 MR STEYNBERG: All right.

13 Your Honour, the last matter I need to traverse involves another witness. I ask we
14 go into private session.

15 PRESIDING JUDGE EBOE-OSUJI: Private session.

16 *(Private session at 11.44 a.m.) Reclassified as Open session

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

18 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, I need to clear this up.

19 (Redacted)

20 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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(Private Session)

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8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you need to watch it now, I think,
10 not about the time, but the nature of the evidence you're eliciting --

11 MR STEYNBERG: I'm --

12 PRESIDING JUDGE EBOE-OSUJI: -- in terms of the hearsay nature of it,
13 commenting on the evidence another witness gave in court.

14 MR STEYNBERG: As the Court pleases. I'm in any event done with that subject.

15 Q. Now, you mentioned that you had (Redacted) and
16 we've spoken about person number 8 and we've spoken about person number 13.
17 What can you tell us about person number 12, (Redacted), and his cooperation with
18 the Court?

19 A. I am aware that person number 12 withdrew as a witness while I was still in
20 protection location 1. I also remember a time when I contacted him when I was in
21 that location (Redacted)

22 (Redacted)

23 And since that time, your Honour, we have not been in contact with person number
24 12.

25 Q. When you returned to Kenya from protection location number 1, after having

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1 discussed with (Redacted), did you find out why person number 12 had left
2 the -- left as a witness?

3 A. No, your Honour.

4 MR STEYNBERG: Your Honour, that concludes the questions I intend to ask this
5 witness.

6 I mentioned yesterday that I had certain documents I wanted to hand in and propose
7 that we do it by way of filing. I have one additional document being the affidavit
8 we've referred to. My learned friends have both kindly confirmed that, rather than
9 putting in the unsigned copy which is on the LOE, they have no objection to me
10 submitting the signed copy which I handed up to the Bench. I'm in the Court's
11 hands. We can do this all via a submission, or there are a total now of nine items we
12 could hand in at this stage.

13 PRESIDING JUDGE EBOE-OSUJI: The other documents the Defence counsel have
14 indicated no objections to their admission and the affidavit? Is that the case as well?

15 MS ALAGENDRA: Indeed, your Honour.

16 MR KIGEN-KATWA: Yes, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: And, Mr Steynberg, you're saying that you do
18 not need the unsigned affidavit to be admitted, you only want the signed version; is
19 that it?

20 MR STEYNBERG: Yes, your Honour. I don't see the point in having both copies
21 admitted. The one subsumes the other.

22 PRESIDING JUDGE EBOE-OSUJI: All right. We've noted that. The Defence
23 counsel have indicated no objections to the nine documents you've mentioned; is that
24 it?

25 MR STEYNBERG: In fact, your Honour, it's ten. (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: All right. Do a filing on the matter, of course
4 you liaise with your colleagues to make sure both sides are exactly on the same page
5 and then we'll do it by filing.

6 MR STEYNBERG: As the Court pleases.

7 MS ALAGENDRA: Your Honour, perhaps just one issue with -- for my learned
8 friend is the witness has said he (Redacted)

9 (Redacted)

10 (Redacted)

11 Can we get some clarification whether it exists?

12 MR STEYNBERG: Your Honours, we've certainly never seen it, but I'll follow up.

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Well, that's certainly the witness's testimony that,
16 I quote, (Redacted)

17 (Redacted)

18 So do look for it and see if that's the -- if there is any such (Redacted)-- in the
19 possession of the OTP.

20 MR STEYNBERG: I'll certainly do so.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Witness, that concludes Mr Steynberg's questions to you in examination-in-chief.

23 Now the Defence counsel will ask you questions in cross-examination, beginning with
24 Ms Alagendra.

25 We are in private session.

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1 MS ALAGENDRA: We can go into public for a little bit, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: We go now to open session.

3 (Open session at 12.00 p.m.)

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

5 QUESTIONED BY MS ALAGENDRA:

6 Q. Good morning, Mr Witness.

7 A. Good morning.

8 Q. My name is Shyamala Alagendra and I come from Malaysia and I am going to
9 be the counsel that's going to be asking you questions on behalf of the Defence team
10 of Mr Ruto. Are you clear on that?

11 A. Yeah.

12 Q. So before we go further -- sir, you can -- you will have a lot of time to look at
13 that document, so if you could listen to my questions, yeah? So before we go further,
14 allow me to clarify, you've met with the Prosecution investigators and you've spoken
15 to them on very many occasions; am I right?

16 A. You're right.

17 Q. In fact, there's been hundreds when you put together phone calls, SMSs, text
18 messages, interviews, meetings; am I right?

19 A. Yes.

20 Q. And you will confirm, sir, for the Court that apart from your screening
21 interview on 8 October 2012 and your five-day interview between 25 October and 29
22 October 2012, that's two years ago, you will confirm that apart from those occasions
23 all your interactions with the OTP for the last two years have been about Article 70
24 issues concerning witness interference; that's correct, yes?

25 A. I beg your pardon? From what time was about Article 70?

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1 Q. After your screening interview on 8 October 2012 and after your first formal
2 interview, the five-day interview you had between 25 October and 29 October 2012,
3 two years ago, after that all your interactions have been about Article 70 matters;
4 correct? You've not gone back to discuss what you told them about the post-election
5 violence; am I correct?

6 A. I want to confirm that in most occasions we've discussed about Article 70 but
7 time frame I'm not sure.

8 PRESIDING JUDGE EBOE-OSUJI: Witness, you do understand what the reference
9 to Article 70 means, do you?

10 THE WITNESS: Witness inter -- interactions.

11 PRESIDING JUDGE EBOE-OSUJI: Witness interference.

12 THE WITNESS: Interference, yeah.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.

14 Ms Alagendra, is your question, so that it is clear to me at least, that the witness has
15 met with the Prosecution staff on two periods; one period being the intake interview
16 and the second period being the period five-day interview between 25 and 29
17 October 2012?

18 MS ALAGENDRA: Your Honours, if I can clarify --

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MS ALAGENDRA: -- and I'm sure there's no dispute on these dates, even for my
21 learned friend, is --

22 PRESIDING JUDGE EBOE-OSUJI: What I'm trying to -- I just want to get numbers
23 of meetings, so period one and period two.

24 MS ALAGENDRA: Perhaps I can clarify that --

25 PRESIDING JUDGE EBOE-OSUJI: Yes.

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1 MS ALAGENDRA: -- with the witness, your Honour?

2 Q. Sir, just so their Honours have it clear, you've met -- you've had two discussions,
3 apart from the one last week, keep that aside, your preparation session, keep that
4 aside, but you've met with the Prosecution -- or, discussed with them issues
5 pertaining to the post-election violence, one, during your screening and, two, during
6 your five-day interview when you gave them all the facts that you were testifying to
7 here. Those were the only two occasions that you spoke about post-election violence
8 with the OTP; am I right?

9 A. Your Honour, I kindly request you to use simple language that I can understand.
10 When you -- when you say "screening," you mean when I first met the investigators
11 before I gave my testimony, or what kind of screening are you talking about?

12 Q. I'm talking about your initial contact --

13 A. With the --

14 Q. -- with the Prosecution when you told them what information you have --

15 A. Yes.

16 Q. -- relating to the post-election violence.

17 A. Yes.

18 Q. That's one.

19 A. Yes.

20 Q. And the date we have on record, and my learned friend will agree, is 8
21 October 2012, correct?

22 A. I don't remember the date, but I met them during -- before I -- I went to give
23 my -- my -- what I have as a statement.

24 Q. So you've -- your first meeting with them was when you gave them information
25 generally about what you know about the post-election violence?

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- 1 A. Yes.
- 2 Q. That was the first time you met them?
- 3 A. Yes.
- 4 Q. In October 2012?
- 5 PRESIDING JUDGE EBOE-OSUJI: He said he doesn't remember the date.
- 6 MR STEYNBERG: The date is not in dispute, your Honours.
- 7 PRESIDING JUDGE EBOE-OSUJI: So the -- okay.
- 8 Ms Alagendra, you're still talking about the first meeting?
- 9 MS ALAGENDRA: Yes.
- 10 PRESIDING JUDGE EBOE-OSUJI: What you referred to as the screening meeting?
- 11 MS ALAGENDRA: Indeed, your Honour.
- 12 THE WITNESS: Yeah, I confirm that --
- 13 PRESIDING JUDGE EBOE-OSUJI: One second.
- 14 THE WITNESS: -- I met them, your Honour.
- 15 PRESIDING JUDGE EBOE-OSUJI: Wait one second.
- 16 So that's what we're talking about now?
- 17 MS ALAGENDRA: Exactly, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: So you have not moved to the interview period?
- 19 MS ALAGENDRA: No.
- 20 PRESIDING JUDGE EBOE-OSUJI: No? All right. So you're now saying the
- 21 witness met the OTP on that occasion --
- 22 MS ALAGENDRA: Yes.
- 23 PRESIDING JUDGE EBOE-OSUJI: -- the first time?
- 24 MS ALAGENDRA: Yes.
- 25 PRESIDING JUDGE EBOE-OSUJI: All right. Take it from there.

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1 MS ALAGENDRA:

2 Q. Then we come to the second time, sir, which is maybe a few days later or one or
3 two weeks later where you met them for five days and then you gave them details
4 about the post-election violence; correct? Probably in a location outside of Kenya.

5 A. Yes.

6 Q. And apart from those two meetings, all your other interactions with the
7 Prosecution has not been about the post-election violence, it has only been about
8 witness interference issues; correct?

9 A. Your Honour, I don't remember every other detail, not unless if I can -- if we can
10 go to -- to -- to statements that I've gave since then, I'll be able to confirm, but I know I
11 gave my -- I gave my statements and after giving my statements in that location
12 outside Kenya, I was -- I was relocated to protection -- to protection location 1. And
13 from that time I've been having some interactions -- so many interactions with
14 the -- with the -- with the investigators and at every other time I give them
15 information I do -- I give in terms of -- in terms of audio and -- or, a signed statement.
16 And I believe all the information that I've given is in this Court.

17 Q. So all those very many meetings that you had with the Prosecution after you
18 gave them your information about the election violence has been about witness
19 interference and your -- your security issues, correct?

20 PRESIDING JUDGE EBOE-OSUJI: He answered that question, didn't he, saying he
21 doesn't remember the details, but the details could be verified because all his
22 meetings are on record in the possession of the Prosecution? That was my
23 understanding of his answer and your asking him the last question is basically
24 worrying that proposition further.

25 MS ALAGENDRA: Indeed, your Honour.

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1 Q. Mr Witness, thank you for that indication, and we're able to confirm from all the
2 records that we have that that was -- those were the only two occasions where the
3 Prosecution has ever discussed anything to do with the post-election violence with
4 you and all the interactions with you for the last two years after that has been only
5 about witness interference and your security issues. So thank you for that guidance.

6 PRESIDING JUDGE EBOE-OSUJI: Court reporters, at line 15 the word is not
7 "warranting," but "worrying" as in worry something.
8 Proceed, please.

9 MS ALAGENDRA:

10 Q. Sir, can you confirm that you have not provided the Prosecution with any
11 recordings of planning meetings in Mr Ruto's house, or in Ziwa, which may have
12 taken place in 2007?

13 MR (Redacted): Your Honour, excuse me. I don't know if giving names is good for my
14 client. I prefer to go to private session if we are going to give names, especially for
15 places.

16 MS ALAGENDRA: Your Honour, perhaps that's an objection that should have come
17 from the Prosecution, and in any event these are locations which the Court has heard
18 endless testimony about since the case started.

19 PRESIDING JUDGE EBOE-OSUJI: Mr(Redacted), the question is proper.
20 Proceed, Ms Alagenda.

21 MS ALAGENDRA:

22 Q. Sir, let me just repeat the question. You will confirm, sir, that you have never
23 given the Prosecution any recordings of planning meetings which took place in the
24 home of Mr Ruto, or Ziwa -- that allegedly took place in those two locations in 2007;
25 am I correct?

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1 A. Yes, your Honour.

2 Q. And you will confirm, sir, you never gave it to the Prosecution because you
3 never had such recordings, yes?

4 A. Yes, your Honour.

5 Q. And you will also confirm, sir, that you have not provided the Prosecution with
6 any electronic or paper reports about anything related to the post-election violence, or
7 campaigns? Do you confirm that?

8 A. I have given reports -- part of reports that I was given by --

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 *(Private session at 12.14 p.m.) Reclassified as Open session

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

12 PRESIDING JUDGE EBOE-OSUJI: Yes, Witness, you may finish your answer. You
13 were beginning to say you have given reports or parts of reports that you were given
14 by and then I interrupted you. If you can finish.

15 THE WITNESS: Yes, your Honour. I wanted to answer the question that reports
16 (Redacted)

17 (Redacted) they're reports in terms of paper that I have provided -- I provided to the
18 investigators.

19 MS ALAGENDRA:

20 Q. Sir, I believe I know what you're speaking about and those are reports relating
21 to (Redacted); am I right? That's the time frame. But
22 what I'm asking you, sir, is for you to confirm that you've never given the Prosecution
23 any written or electronic reports concerning the 2007 elections or the post-election
24 violence. Do you confirm that?

25 A. I can confirm that I've never given recordings to any meeting that took place at

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1 that time.

2 PRESIDING JUDGE EBOE-OSUJI: What about paper reports? The question is --

3 THE WITNESS: The paper reports to -- if the reports that I -- I was talking about

4 were -- I don't remember now the details of those reports that I provided, because

5 (Redacted) and I handed them. If those ones were not for -- those meetings

6 did not have anything concerning the meetings, then I confirm that I did not give. I

7 did -- they were not in my possession.

8 MS ALAGENDRA:

9 Q. Thank you, sir. In fact, taking on from your previous guidance to us,

10 we -- I think the Prosecution will confirm that those reports that you've provided to

11 them concerns only certain (Redacted) and

12 nothing to do with the campaign of violence, okay?

13 A. Another paper report I've given is an evidence of a -- of a -- that was annexed

14 here. The -- the -- the (Redacted). I remember that's a paper, yes.

15 Q. Indeed. Indeed. But apart from that there's nothing else, so you will agree

16 you didn't give them anything; correct?

17 A. I give them -- I gave them those ones, your Honour.

18 Q. And only those ones?

19 A. That ones you say.

20 PRESIDING JUDGE EBOE-OSUJI: What was your --

21 MS ALAGENDRA:

22 Q. And, sir --

23 PRESIDING JUDGE EBOE-OSUJI: What was your last answer, Witness?

24 THE WITNESS: That those are the only papers I've given, your Honour.

25 MS ALAGENDRA:

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1 Q. And, sir, you will finally confirm that you have not given any (Redacted)

2 (Redacted) correct?

3 A. I don't remember that one, your Honour, because most of the things -- I've
4 already given so many things to the OTP. I can't recall everything now, but in case it
5 is not in record I have not. If it is in record then I did, but everything that I had
6 either in person and if there was anything that I -- I -- I had in possession then I gave
7 it to the investigators.

8 Q. Thank you, sir. I can confirm that there are no (Redacted)

9 (Redacted) that we are aware of that you have given to the OTP, so we'll move on
10 from there.

11 PRESIDING JUDGE EBOE-OSUJI: Witness, are you able to react to that? The
12 lawyer is saying -- you've probably heard a lawyer saying, "I put it to you." That's
13 the nature of what Ms Alagendra did there, saying that there are no (Redacted)
14 (Redacted) that they are aware of.

15 Are you agreeing? Are you in a position to comment on that? And you can
16 comment by saying if you remember giving any such notes then this will be your
17 opportunity to say you remember doing so, or you can leave it at what you said
18 earlier that you gave so many things to the OTP that you don't remember the
19 specifics.

20 So the question is Ms Alagendra is saying that there are no (Redacted)
21 (Redacted) that they are aware of.

22 THE WITNESS: Your Honour, I remember at a time there was -- there were (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 PRESIDING JUDGE EBOE-OSUJI: The question is did you give those (Redacted)
2 (Redacted) to the OTP?

3 THE WITNESS: I don't remember, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Proceed, Ms Alagendra.

5 MS ALAGENDRA:

6 Q. Sir, the OTP has never given us any of those (Redacted), so I'll assume that you did
7 not give it to the Prosecution, okay?

8 A. I said I don't remember, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: You can move on, Ms Alagendra.

10 MS ALAGENDRA: Your Honour, we can perhaps go into a public session please.

11 PRESIDING JUDGE EBOE-OSUJI: Public session.

12 (Open session at 12.22 p.m.)

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

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MS ALAGENDRA:

16 Q. Sir, you will recall that before my learned friend finished his questioning he
17 took you through an affidavit and some annexures which were letters in your
18 handwriting. Do you recall that?

19 A. Yes.

20 Q. And you told the Court that the content of the affidavit is false and it's not yours,
21 correct?

22 A. In any way, your Honour, I didn't say -- I didn't use the word "false," and what I
23 said is that I don't know the contents --

24 Q. I see.

25 A. -- of this affidavit because most -- having looked at it the last time I saw it, I said

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1 other parts happened to have talked about myself and others were not true. So parts
2 of wordings of this affidavit, part of it if we go paragraph-by-paragraph we will find
3 out that other parts talks about myself and what -- and what I went through, but
4 others are not -- doesn't -- are not true.

5 And also to confirm that I only went to sign the affidavit, but did not give -- but
6 didn't -- but did not sit with someone who was writing paragraph-by-paragraph.

7 Q. Sir, you told the Court not long ago before the break that you found most of the
8 affidavit to be untrue?

9 MS ALAGENDRA: And, your Honours, that's at page 25, lines 15 to 17.

10 MR STEYNBERG: Sorry --

11 THE WITNESS: That's what I -- I have confirmed to have said that, your Honour.

12 MR STEYNBERG: Sorry, your Honour. Just for my clarity and the witnesses, there
13 are two affidavits. Which one is my learned friend referring to, please?

14 MS ALAGENDRA:

15 Q. Sir, is there any one of the two affidavits you have read yours, that you actually
16 take responsibility for the content and signature and everything in it?

17 A. I signed -- I went to -- only to append my signature to these affidavits. On the
18 first -- on the -- on the -- on this first affidavit -- on the first affidavit of -- of -- of
19 withdrawal, I just went to the advocate's office to sign, and on the second affidavit I
20 went to also append my signature to the last page and I have described how that page
21 looked like.

22 Q. Sir, you seem to be having the affidavit in front of you; is that correct? Do you
23 have the signed affidavit in front of you?

24 A. Sure, I have it.

25 MS ALAGENDRA: And, your Honours, for the record I'm looking at

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1 KEN-OTP-0145-0554. That's the bundle of papers my learned friend handed up
2 earlier.

3 Q. Sir, could you quickly scan through the contents of that affidavit. I believe you
4 read it a few days ago, so you can do it quickly for us.

5 Sir, you will confirm paragraphs --

6 MR STEYNBERG: I see the witness is still reading. Sorry, your Honour.

7 MS ALAGENDRA: I was going to direct him to some paragraphs, your Honour.

8 Q. Sir, you will confirm paragraphs 3, 5, 6, 7, 8, they're factually true, isn't it?

9 A. Your Honour, paragraph 3, looking at this paragraph, your Honour, is untrue.

10 Q. Sir, let me just interrupt you. If there's anything in that paragraph that will
11 identify you, please don't say it out loud.

12 Please continue.

13 A. Your Honour, I was saying no one requested me to become a witness, but I went
14 voluntarily to give my testimony to the investigators of this Honourable Court.

15 Q. Sir, while we are there -- thank you for that. In fact, we are aware of that and
16 you were, in fact, introduced to the Prosecution by person number 6, correct?

17 Person number 6 in the --

18 A. Yes, I was introduced.

19 Q. By person number 6. Sir, can I ask you to please put that paper down and
20 perhaps concentrate on the questions for now?

21 A. Yes, I concentrate, your Honour.

22 Q. Thank you. So you were introduced by person number 6, correct?

23 A. Yes, your Honour.

24 Q. And you travelled to the location of your interview with person number 6,
25 correct?

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1 A. You are wrong, your Honour.

2 Q. And you were interviewed the day after he finished his interviews with the
3 OTP?

4 A. Wrong, your Honour.

5 Q. I'll come back to that, sir. Is that the only thing that is wrong with paragraph 3
6 of the affidavit, what you just explained?

7 A. To me, the way I understand this paragraph, it's like the investigators lured me
8 to become a witness. If I was the one seated and writing this paragraph, I will not
9 have framed it the way it is framed because the picture that is coming in my mind is
10 as if the investigators were going round just trying to get individuals who will -- who
11 will come and give testimony and -- but I, myself, if I did not want to become a
12 witness, it -- I was not forced by anyone to go to see the investigators; I, rather, went
13 there because I felt I had information that I wanted to -- to give out. So I went there
14 voluntarily, without being forced by anyone.

15 Q. But introduced by person number 6?

16 A. Your Honour, person number 6 --

17 Q. Sir, can I just stop you there and just request you to please answer yes or no to
18 the question. Introduced by person number 6, yes?

19 A. Yes.

20 Q. And apart from that issue you've just been explaining, everything else in
21 paragraph 3 is correct?

22 A. Most things in this paragraph are wrong, mister -- my Honour, because around
23 midday -- this is wrong. Nothing about -- about -- about midday.

24 Q. There is nothing about midday, you're correct.

25 A. Let me read, my Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Why don't we go to private session where

2 Ms Alagendra will read the propositions in paragraph 3 so that we move forward.

3 *(Private session at 12.35 p.m.) Reclassified as Open session

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

5 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you will need to be more specific

6 now, one proposition by proposition so we can move away from paragraph 3.

7 MS ALAGENDRA: Indeed, your Honour.

8 Q. Sir, is it correct that you became a Prosecution witness (Redacted)

9 (Redacted)? True? Sir, could you --

10 A. Your Honour, it is --

11 PRESIDING JUDGE EBOE-OSUJI: One second.

12 Ms Alagendra, I think you will have to read the text of the paragraph and take it like

13 that because your question now may not entirely be on all fours with the proposition

14 in paragraph 3. So it's safest to just read the text and ask the witness -- since this is

15 about an affidavit that is supposed to have -- well, let's take it word by word what the

16 thing says.

17 MS ALAGENDRA: Indeed, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: And then be -- outside of that you can ask any

19 questions you want.

20 MS ALAGENDRA:

21 Q. Sir, the first part is that around (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Remember to do quote and unquote.

23 MS ALAGENDRA:

24 Q. I am now quoting from your affidavit, sir, and I quote, (Redacted)

25 (Redacted)

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1 (Redacted) ..." Now, we've dealt with that and you've explained clearly that
2 you were very eager and you volunteered yourself to be a witness. We're clear,
3 okay?

4 The next part is, "... (Redacted)
5 (Redacted) ..." --

6 PRESIDING JUDGE EBOE-OSUJI: No, no, no, no.

7 MS ALAGENDRA: (Redacted)--

8 PRESIDING JUDGE EBOE-OSUJI: Hold on. Let's do it this way.

9 Witness, the text says this, quote, (Redacted)

10 (Redacted)

11 (Redacted)

12 I'll stop there, and unquote.

13 Ms Alagendra, now put the question: Is that correct or not?

14 Witness, is that -- do you agree with that proposition?

15 THE WITNESS: I don't agree, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: And you are -- why is that?

17 THE WITNESS: Because the person who introduced me to the investigators is -- can
18 I quote the name?

19 PRESIDING JUDGE EBOE-OSUJI: Yes, we are in private session.

20 THE WITNESS: Is (Redacted) and it was through (Redacted) that I
21 came to know the investigators. I was only informed by (Redacted) that he
22 had -- he had -- he had -- he was asked -- that he was asked if he knew anyone else
23 who had -- who had information - valid information - on this matter and he
24 forwarded my name.

25 PRESIDING JUDGE EBOE-OSUJI: So your point, is it that it was you, through the

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1 introduction of (Redacted)--

2 THE WITNESS: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: -- that went looking for the investigators and not
4 that it was the investigators who came looking for you after they've (Redacted)
5 (Redacted)

6 THE WITNESS: Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Ms Alagendra, continue.

9 MS ALAGENDRA: Thank you, your Honour.

10 Q. And, sir, you will confirm that (Redacted)-- and I don't think this is in
11 dispute. His interview with the Prosecution that you've just referred to took place
12 between (Redacted). Are you aware of that?

13 A. I can't confirm about the dates, but I know he was interviewed (Redacted)

14 Q. And he finished his interview on (Redacted) and the (Redacted)

15 (Redacted), you started your interview with the

16 Prosecution. Will you be able to confirm that, that it was the (Redacted)

17 and you started your interview with the OTP?

18 A. Your Honour, what I can only -- what I -- what I can remember on that subject is

19 that I was -- I received a call from the investigators when I was in -- in -- in -- in

20 (Redacted) and (Redacted). So I don't want to confirm

21 about the dates or not unless I look at the statement that I signed, if was any at that

22 particular time when I met the investigators, because I can remember it was not one

23 investigator. Like it is stated here in the -- in paragraph 3 that I -- (Redacted)

24 (Redacted)

25 (Redacted) and most information that is given based

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1 on this very paragraph to me, your Honour, I may not confirm.

2 Q. You see, sir, the record we have from the Prosecution is that (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) Do you now remember you were at the

8 same --

9 A. Your Honour -- your Honour, I want to say this. That --

10 PRESIDING JUDGE EBOE-OSUJI: Remember the -- remember the five-seconds

11 pause. Don't forget it because you're now in cross-examination. You -- it is

12 important, as much important, that you observe it in cross-examination as it is when

13 the -- it was when the Prosecutor was examining you in-chief. Listen to the question

14 carefully, understand it, pause for five seconds and then answer.

15 Can you put the question again, Ms Alagendra.

16 MS ALAGENDRA:

17 Q. Sir, I'm -- I'm going to request you, please, to listen to my question and just

18 answer only the question I'm asking you, then we can move things forward faster.

19 I'll repeat: The record we have been given by the Prosecution is that (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Now, my question to you is: Do you still maintain that you were not in the same
4 location with (Redacted) on that day?

5 A. Your Honour, there's something that I don't understand and I would like to -- to
6 be clarified, that are you talking on which meeting? Is it the first meeting that I had
7 with the investigators, or another meeting that was held somewhere else (Redacted)
8 (Redacted) that you are talking about, so that it is very clear?

9 What I -- me, what I'm talking about, I'm on the -- I'm on the first day that I met the
10 investigators and how I accepted to become a witness, not on any other meeting that I
11 had after that, so that I can answer the question correctly.

12 Q. Sir, I'm talking about your meeting with the Prosecution, (Redacted)
13 (Redacted) Does that help you remember?

14 A. I remember I met them.

15 Q. And you remember the same time (Redacted) was also there?

16 A. When meeting these people, you don't know whom they have met because you
17 don't --

18 PRESIDING JUDGE EBOE-OSUJI: Witness, listen. The question is do you
19 remember whether (Redacted) was there at the time?

20 MS ALAGENDRA:

21 Q. In (Redacted)?

22 A. No, I was not with -- with -- with (Redacted) and I don't know the time that he
23 was interviewed.

24 Q. Did you see him in (Redacted)? Did you meet him for lunch, tea, during that
25 period?

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1 A. No.

2 Q. And he's (Redacted) who introduced you to the OTP, yes?

3 A. Yes.

4 Q. And you came to the same location an hour apart and you left like strangers, yes?
5 That's your testimony?

6 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, in your last three questions each
7 of them contained multiple propositions. You know that. And not only for the
8 sake of the record, but even for the point you're pursuing I don't know how it helps
9 you.

10 MR STEYNBERG: Your Honour, if I may? Not only that. They're also becoming
11 argumentative. The witness has said he didn't know that (Redacted) was there, so to
12 start taxing him on why he didn't have lunch with (Redacted) is really just getting
13 into argument.

14 MS ALAGENDRA: Your Honour, in fact my learned friend shouldn't introduce any
15 fact that I'm trying to argue with the witness. I'm in fact trying to find out what
16 really happened and what did not happen, your Honour, and I'm fully entitled to do
17 that.

18 But perhaps I think that this is a point we can take in submissions and I'll move on,
19 your Honour.

20 Q. Mr Witness, let me make something very clear to you, sir. I'm not here to
21 argue with you, okay?

22 A. Okay.

23 Q. I'm asking you questions and we hope that through your answers the Court will
24 be able to get to the truth about what happened during the PEV, what did not happen
25 and the circumstances surrounding this case. That is all. Am I clear?

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1 A. I totally understand.

2 MS ALAGENDRA: Thank you.

3 Your Honour, perhaps we can go into a public session?

4 PRESIDING JUDGE EBOE-OSUJI: Public session.

5 (Open session at 12.51 p.m.)

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MS ALAGENDRA:

9 Q. Sir, let me change my approach and deal with this affidavit a bit more simply.

10 Your testimony is that this is an affidavit stating that you're recanting your testimony
11 in this case. Is that what the idea is behind this affidavit?

12 MR STEYNBERG: Sorry, again, your Honour, which affidavit? There are two
13 affidavits that were submitted for two different purposes.

14 MS ALAGENDRA:

15 Q. Either one of them, sir?

16 PRESIDING JUDGE EBOE-OSUJI: Why don't we take it one at a time. I have in
17 front of me the one ending with 0554 where we -- that we were looking at as regards
18 to its paragraph 3. Can we deal with that first and then we can look at the other one.

19 MS ALAGENDRA: Certainly, your Honour.

20 Q. Sir, shall we look at the first affidavit?

21 A. Which one?

22 Q. The first one you're looking at now.

23 A. Yes.

24 Q. Is it your testimony that by this affidavit you were being made to recant your
25 testimony to the Prosecution and to be a witness in this case?

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1 MR STEYNBERG: Well, your Honour, that wasn't his testimony. Perhaps my
2 learned friend can refer to the portion of the record where -- where this witness said
3 that affidavit 0554 was made for that purpose?

4 MS ALAGENDRA: Your Honour, my question was "Is it your testimony ...," not
5 was it.

6 PRESIDING JUDGE EBOE-OSUJI: First of all, Witness, look at the bottom, the very
7 last writing on that -- on the first cover -- on the first page, the front cover. Do you
8 see that? No, the very -- on the front page that begins with "Republic of Kenya."
9 Do you see that right on top it says "Republic of Kenya?" You see that?

10 THE WITNESS: Yes.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Look at the very last writing. What
12 do you -- what four letters end what you're looking at, the writing? Does it end with
13 0554?

14 THE WITNESS: 0554.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you. So that we're all looking at the same
16 document. All right.

17 Ms Alagendra?

18 MS ALAGENDRA:

19 Q. Sir, by this affidavit does it indicate that you are recanting as a witness in this
20 case?

21 A. Not unless I read, but as far as I'm concerned, your Honour -- my Honour, is
22 that this affidavit I understand its purpose was about the issue of person number 22.

23 Q. And, sir, you will agree with me that there is nothing in this first affidavit where
24 you say -- there's nowhere in this affidavit where you say that Mr William Ruto or
25 Joshua Sang, that the allegations you made against them in the ICC is false, correct?

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1 It doesn't say that. Do you accept that?

2 A. Not unless I read it so that I can make confirmations, my Honour.

3 Q. Sir, didn't you read this affidavit a few days ago?

4 A. You can agree with me that I already had so many documents. I can't keep
5 every paragraph with me in -- and -- and just confirm most of such -- before I refresh
6 my mind by reading it again.

7 Q. Okay, sir, let me -- let me do it this way. I'm going to put it to you that in the
8 first affidavit, in the handwritten letter and in the third affidavit there is nothing there
9 which says that any of the information you gave the Prosecution that Mr William
10 Ruto and Joshua Sang were involved in the PEV is false.

11 And I don't think there's any dispute from my learned friend, the Prosecution, so with
12 that, your Honour, if I may proceed?

13 PRESIDING JUDGE EBOE-OSUJI: I think so, yes.

14 MS ALAGENDRA: Thank you.

15 Your Honour --

16 PRESIDING JUDGE EBOE-OSUJI: So would it be the case then, Prosecutor, that the
17 second affidavit would be the document appearing at -- as part of the bundle you
18 handed up as an attachment to the affidavit we just looked at?

19 MR STEYNBERG: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: So the second affidavit appears at -- with the
21 ERN number that ends with 0562?

22 MR STEYNBERG: Indeed, your Honour, that's the first page. And the affidavit, if
23 one goes to the last page, is dated 29 August 2013, at 0565.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MR STEYNBERG: It purports to be the withdrawal affidavit.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 MS ALAGENDRA: Your Honours, could I please request that the document be
- 3 taken from the witness? He's unable to put it down.
- 4 PRESIDING JUDGE EBOE-OSUJI: Witness, put it aside. Yes, you can --
- 5 THE WITNESS: Yeah, I have done, your Honour.
- 6 PRESIDING JUDGE EBOE-OSUJI: Not just because of Ms Alagendra's request, but
- 7 we also don't -- it isn't convenient to have your desk cluttered with documents.
- 8 So if we can put it aside until the witness needs it.
- 9 If you do need to look at it, then request it.
- 10 THE WITNESS: Okay, your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: Court officer, can we retrieve that and allow him
- 12 a clean sheet -- clean desk, leaving only the PIS I think for now.
- 13 MS ALAGENDRA: Your Honours, could we go into a private session for a few
- 14 minutes?
- 15 PRESIDING JUDGE EBOE-OSUJI: Well, we are now at the time for lunch-break.
- 16 I think it is a convenient time to take it and we will reconvene at 2.30.
- 17 Closed session, please.
- 18 *(Closed session at 1.00 p.m.) Reclassified as Open session
- 19 THE COURT OFFICER: We are in closed session, Mr President, and the witness will
- 20 be escorted out.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 22 (The witness stands down)
- 23 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 24 THE COURT OFFICER: All rise.
- 25 (Recess taken at 1.00 p.m.)

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- 1 (Upon resuming in open session at 2.38 p.m.)
- 2 THE COURT USHER: All rise.
- 3 Please be seated.
- 4 THE COURT OFFICER: Mr President, we are in open session.
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 6 Witness, welcome back.
- 7 Ms Alagenda, please continue.
- 8 MS ALAGENDRA: Yes, Mr President. Your Honours, can we go into a private session,
- 9 please?
- 10 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 11 *(Private session at 2.39 p.m.) Reclassified as Open session
- 12 THE COURT OFFICER: We are in private session, Mr President.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 14 MS ALAGENDRA: Thank you.
- 15 Q. Good afternoon, sir. Welcome back.
- 16 A. Thank you.
- 17 Q. Sir, (Redacted) that we've been talking about, he was part of (Redacted),
- 18 correct?
- 19 A. I know him as a (Redacted), not being part of (Redacted).
- 20 Q. That is perhaps how you know him or came to know him, but are you also aware, sir,
- 21 that (Redacted) was also part of (Redacted)?
- 22 A. I don't know.
- 23 Q. And you told the Court that you (Redacted). Do you recall
- 24 that?
- 25 A. Yes, I recall.

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1 Q. And so what was the purpose that you (Redacted)

2 (Redacted) or was there any other reason?

3 A. There was another reason, the reason being that he was a (Redacted), and during this
4 time of post-election violence, I was aware that he ought to have information that could assist
5 (Redacted)

6 Q. And did you know exactly what information he had or were you thinking since he's a
7 (Redacted), he must have some information?

8 A. I knew that (Redacted) is among the few people who remain in -- who remained in
9 Eldoret during this time of post-election violence, and he had information that could assist the
10 (Redacted)

11 Q. But you did not know exactly what information he had, correct?

12 A. I didn't know the -- I didn't know the amount of information he had if it was -- if it was
13 like how many pages, but I knew as a (Redacted) who had -- who had been in Eldoret, he
14 must have -- because he was a (Redacted), I knew he had photographs, I knew he had
15 information, maybe he has (Redacted) post-election violence, and he had gathered enough
16 material that could assist (Redacted)

17 Q. So you thought it would be useful if (Redacted) because he would have an
18 overview, general information about what happened during that period in Eldoret, correct?

19 A. I knew if contacted, (Redacted), and if he had information in
20 terms of photographs, in terms of general overview and any other evidence, then he will talk
21 (Redacted)

22 (Redacted)

23 Q. That's correct. And, sir, you can just answer yes or no to my next question. You did
24 not tell (Redacted) a particular specific
25 piece of information, correct?

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1 A. Yes.

2 MS ALAGENDRA: Your Honours, may I request your Honours to please turn to tab 85 of
3 the Defence bundle.

4 PRESIDING JUDGE EBOE-OSUJI: Screening note?

5 MS ALAGENDRA: Yes, your Honour.

6 MR (Redacted): Your Honour, excuse me. I don't have it.

7 PRESIDING JUDGE EBOE-OSUJI: Do you have difficulty with the thing coming up on
8 screen at this time, Ms Alagendra? Because you only asked us to turn to it. Do you have
9 difficulty with the witness seeing it at the same time as we are looking at it?

10 MS ALAGENDRA: Perhaps he can put it on the screen, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Yes. Thank you.

12 THE COURT OFFICER: With your leave, Mr President, can I be reminded of the ERN
13 number so that I can pull it up on the screen? Thank you.

14 MS ALAGENDRA: The document ERN is KEN-OTP-0086-0136 and the page to be shown is
15 the one ending 0140.

16 THE COURT OFFICER: The document as referred by counsel is being displayed. It's the
17 redacted version number 3.

18 MS ALAGENDRA: Thank you.

19 Q. Do you see, Mr Witness, what is on the screen is a document that has been provided to
20 us by the Prosecution, and it's the notes of your first meeting with them on (Redacted). And if
21 I can read it to you, this is the (Redacted)

22 (Redacted) "He was the one who followed ..." -- and I'm quoting. "He was
23 the one who followed on the issue of guns. He was hiding ..." -- (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Yes, your Honour.

2 Q. You see, Witness, when you told the Court that you (Redacted) to
3 provide general information and nothing specific, it wasn't true, was it?

4 A. It was true. I've said (Redacted). He ought to have (Redacted) and many
5 things that because he remained in the -- in the -- during the post-election violence, but most
6 of detailed content - because this is only one line - of his statement I could not -- I could not
7 have -- have -- have at hand. But this is what I personally thought (Redacted)-- I thought
8 (Redacted) could offer, because he had -- he is a (Redacted) and was following most of the
9 meetings, most -- most of the -- most of the -- of the -- of the violence and everything that was
10 taking place within Eldoret.

11 PRESIDING JUDGE EBOE-OSUJI: Did you say (Redacted) is a (Redacted) or --

12 THE WITNESS: (Redacted).

13 PRESIDING JUDGE EBOE-OSUJI: You misspoke the time when you said (Redacted)?

14 THE WITNESS: Oh, sorry for that.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MS ALAGENDRA:

17 Q. Sir, you don't -- you didn't know, did you, whether or not (Redacted) had any
18 information about guns?

19 A. The issue of guns and other weapons that were used during the post-election violence --

20 Q. Sir, I'm just going to stop you there, because I don't want to detain you in this court for
21 too long with my questions, so could you please answer yes or no to my last question?

22 A. Frame your question again, your Honour.

23 Q. You didn't know -- you did not know, did you, whether or not (Redacted) had any
24 information about guns?

25 A. I thought he had.

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1 Q. He had, okay. And, sir, at the time you were (Redacted), he was just
2 coming out of a (Redacted) in Kenya, was it?

3 A. Yes.

4 Q. And you were (Redacted) so that he could get into the next
5 (Redacted) that's correct, yes?

6 A. Not correct.

7 Q. And you were assisting him to get into a (Redacted)
8 (Redacted), correct?

9 A. Not correct.

10 Q. Okay. Sir, let's move on to your (Redacted) and your interactions with (Redacted)
11 that my learned friend was taking you through. Sir, you testified that you reported to the
12 OTP on (Redacted) that (Redacted)
13 willing to give you 1.5 million to recant your testimony. Do you remember telling the Court
14 that?

15 A. I remember telling the Court that I started giving my statements on that day when we
16 had -- when the photograph -- when those photographs that we were shown here were being
17 taken, every other break I will go and meet investigators and give them -- and give
18 them -- and give them my statements. That is when I started giving my statements.

19 Q. Sir, can I -- is there something distracting you, sir? Are you comfortable?

20 A. Very comfortable, your Honour.

21 Q. Okay. So can I ask you please, sir, to listen to my questions clearly and to answer only
22 my questions please. Can you do that?

23 A. Yes, I'm doing that.

24 Q. So I'm going to repeat my question again, okay?

25 A. I have no problem, your Honour.

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1 Q. Okay. So what my question was is: You testified that on (Redacted)
2 phoned you and he told you that (Redacted) was willing to give you
3 1.5 million to recant. That was your testimony to the Court. Do you recall?

4 A. Yes.

5 Q. Thank you. And you also told the Court that the words (Redacted) which (Redacted) used,
6 you interpreted it to be referring to Mr Ruto. Do you remember that?

7 A. Yes.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. And you also told the Honourable Judges that you have no knowledge 'til now on how
13 (Redacted) knew that Mr Ruto wanted to give you 1.5 million. Do you recall that? That
14 was your testimony here?

15 A. Repeat that one.

16 MR STEYNBERG: Your Honours, may I just ask my learned friend to give us the references
17 when she's referring back to the record, please.

18 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

19 MS ALAGENDRA: Indeed, I'm able to do that, your Honour. Page 42, lines 10 to 14, of
20 yesterday's testimony.

21 Q. And you -- this is what you testified, sir, and this is coming out of the transcripts.

22 PRESIDING JUDGE EBOE-OSUJI: You're going to quote?

23 MS ALAGENDRA: I can do so, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Yes.

25 MS ALAGENDRA:

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1 Q. At line 10 this is your answer, and I quote, "I remember him telling me that if I accept
2 this money it will be available to me." (Redacted)

3 (Redacted)

4 (Redacted) Do you remember that now?

5 A. Yes.

6 Q. And then you testified, line 16 to 18, that the conversation ended with (Redacted)
7 telling you that he will have some discussions with William Ruto and he will see if you'll be
8 able to get the money. Do you recall?

9 A. Yes.

10 Q. Then at page 62 of the transcript, line 7 to 10, you testified that you told (Redacted) to
11 ensure that, (Redacted) Do you recall that?

12 A. Yes.

13 Q. And page 43, line 4 to 5, as a result of the call you told the Chamber that you (Redacted)
14 (Redacted)

15 A. Yes.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MS ALAGENDRA: Now, if I can turn to tab 17 of the Prosecution bundle and I'm looking at
21 your statement, sir. Your Honours, it's KEN-OTP-0103-2473.

22 PRESIDING JUDGE EBOE-OSUJI: The witness will have to be looking at it too, of course.

23 MS ALAGENDRA: Indeed, your Honour. I was going to go to the paragraph, and can I
24 request that the witness be shown paragraph 31 which is at page ERN-2479? Para 31, please.

25 If you can zoom it to para 31?

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- 1 THE COURT OFFICER: The document is available on the screen. It will be zoomed out.
- 2 For the record it is redacted version number 3, paragraph 31.
- 3 MS ALAGENDRA:
- 4 Q. Sir, can you look at paragraph 31?
- 5 A. Yes.
- 6 Q. And it reads, "On the (Redacted)..." --
- 7 PRESIDING JUDGE EBOE-OSUJI: Quote.
- 8 MS ALAGENDRA: And I'm quoting.
- 9 PRESIDING JUDGE EBOE-OSUJI: Quote, good.
- 10 MS ALAGENDRA:
- 11 Q. "On (Redacted) I had a conversation with ICC investigators (Redacted)
- 12 (Redacted) Do you see
- 13 that?
- 14 A. Yes.
- 15 Q. So now do you remember the date? It was (Redacted) Are you
- 16 happy with that, sir? Yes?
- 17 A. Yes.
- 18 MS ALAGENDRA: Okay. Can I ask that the statement be taken off the screen, please?
- 19 Q. So on (Redacted)?
- 20 A. I don't remember very well, but I think I met them.
- 21 Q. You met them?
- 22 A. I think so. I don't remember very well.
- 23 Q. And if you say you met them, do you recall the reason why you met them? Was it to
- 24 report this incident, or was there any other reason?
- 25 A. I don't remember.

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1 Q. And do you remember if when you met them to report (Redacted) whether you
2 spoke to them about anything else?

3 A. I don't remember.

4 Q. I'll come back to that. Now, sir, when you reported this (Redacted)
5 (Redacted), did they?

6 A. They asked me to make sure I (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 Q. Now, sir, before (Redacted), while you were in (Redacted) you were in
21 fact communicating with (Redacted) very regularly. Am I correct?

22 A. You're correct. We will communicate with (Redacted) where I failed to ask something, or
23 he failed to say "Hi" to me.

24 Q. In fact you were communicating with him weekly, correct?

25 A. You're wrong.

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ICC-01/09-01/11

- 1 Q. So let me take you -- let me take you to your statement. It's the same document as
2 earlier and could you please put up paragraph 23, which is at ERN-2477?
3 PRESIDING JUDGE EBOE-OSUJI: What tab is that again? 17?
4 MS ALAGENDRA: 17.
5 PRESIDING JUDGE EBOE-OSUJI: 17.
6 MS ALAGENDRA: 17, your Honour.
7 PRESIDING JUDGE EBOE-OSUJI: 17, yes.
8 MS ALAGENDRA: Yes.
9 Q. Do you see paragraph 23, sir? And I quote, "I have been in contact with (Redacted) using
10 (Redacted) "Over the past few months
11 I have been in touch with (Redacted) on a weekly or fortnightly basis." Unquote.
12 So I was right, wasn't I, Mr Witness?
13 A. You are wrong because I said "... or fortnightly basis," so it was not like every after seven
14 days I communicate. Seven days, no. I said maybe weekly or after two weeks.
15 Q. Okay, so I was half correct? I said "weekly." I didn't say "fortnightly."
16 A. You brought a picture that I was timing every week to communicate to (Redacted)
17 Q. And prior to this incident, (Redacted), that you were speaking to (Redacted) on
18 a weekly or fortnightly basis? (Redacted)
19 PRESIDING JUDGE EBOE-OSUJI: You said "... prior to this incident ..."?
20 MS ALAGENDRA: Yes.
21 PRESIDING JUDGE EBOE-OSUJI: What incident?
22 MS ALAGENDRA: The (Redacted)
23 PRESIDING JUDGE EBOE-OSUJI: Thank you.
24 THE WITNESS: (Redacted)
25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 MS ALAGENDRA: Your Honour, perhaps I could request the assistance of the Chamber?

2 I'm not sure whether the witness is taking so long to answer my questions because he is
3 following the five-second rule, or if there is any other reason?

4 PRESIDING JUDGE EBOE-OSUJI: Well, we have to assume the five-second rule and, if it's
5 more than five seconds, you're free to point it out on the record.

6 MS ALAGENDRA: Indeed, your Honour. That's the reason for my observation. It's more
7 than five seconds.

8 THE WITNESS: I'm trying to respect the microphone, your Honour.

9 MS ALAGENDRA:

10 Q. And the time I'm sure, but if you could answer my questions after five seconds then we
11 can move on a bit quicker, sir. Is that okay? The same way you were answering when my
12 learned friend for the Prosecution was asking you questions, can you do that for us?

13 A. I'll try, but allow me to take my time to answer your questions correctly.

14 Q. Sure.

15 PRESIDING JUDGE EBOE-OSUJI: That is a fair point, Ms Alagendra. He's entitled to think
16 about his answer, but if you suspect that it was inordinate, as I said, you can point that out.
17 And by the way, although the Prosecutor did not point it out, there were a couple of
18 occasions where the witness had also taken much longer than five seconds to answer
19 to the Prosecutor.

20 Please proceed.

21 MS ALAGENDRA:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 Q. Okay. Then what happens is that the (Redacted) you do call (Redacted) right? Is that correct?
- 25 A. Yes.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 Q. And he told you he will call you the next day, and he will come and see you in (Redacted)
2 is that correct?

3 A. Yes.

4 Q. So we are now on (Redacted), okay?

5 A. Yes.

6 Q. Now we go to (Redacted) and there is still no sound of (Redacted); am I right?

7 A. I beg your pardon?

8 Q. On (Redacted) to (Redacted), there is no call, no communication from (Redacted), correct?

9 A. I don't remember because if there was any message, it must be recorded. If not, then
10 there was none.

11 Q. Let me assist you to remember.

12 MS ALAGENDRA: Your Honours, I'm looking at the statement at tab 21. And it's

13 KEN-OTP-0106-0388. And I'm looking at page 0391 and paragraph 15, please.

14 THE COURT OFFICER: The document as referenced by counsel is being displayed. For
15 the record, it's the redacted version number 2.

16 MS ALAGENDRA:

17 Q. Sir, do you see paragraph 15, and I quote, "On the (Redacted) ICC investigators
18 contacted me (Redacted) End of
19 quote.

20 Do you accept now, sir? (Redacted)

21 (Redacted) You accept?

22 A. Yes.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

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1 Q. And this is now (Redacted) offering you 1.5 million, correct?

2 A. Yes, correct.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, one moment please.

16 I was trying to verify that the witness doesn't have a feed of the live transcript
17 because it can be distracting.

18 All right, I've been assured that that's not the case. Thank you. Please proceed.

19 MS ALAGENDRA:

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

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Trial Hearing
Witness: KEN-OTP-P-0800

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1 (Redacted)

2 (Redacted)

3 Q. Sir, let me -- let me understand something at this stage. Where you were in your
4 protected location in (Redacted), you were there because you had concerns for your safety
5 and security; am I right?

6 A. You're right.

7 Q. Now, sir, if you look at paragraph 32 and 33, if I read it, quote, "Regarding my assistance
8 (Redacted)

9 Paragraph 33, I quote, (Redacted)

10 (Redacted)

11 (Redacted)..." Correct?

12 A. Yes.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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Witness: KEN-OTP-P-0800

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Trial Hearing
Witness: KEN-OTP-P-0800

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Trial Hearing
Witness: KEN-OTP-P-0800

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ICC-01/09-01/11

1 (Redacted)

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9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Okay. Now, sir, if you look below, the investigators informed you that they have been
20 trying to reach you since (Redacted), but you were unreachable. Do you
21 see that, sir?

22 A. Yes.

23 Q. This is (Redacted). And your explanation was, and I quote, "...
24 that he was unreachable probably because of the poor network coverage. In addition, he
25 said he went to the Church on Sunday, and afterwards he went for (Redacted), and his

Trial Hearing
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1 phones were off." That's what you told them, didn't you, Mr Witness?

2 A. Yes, that's what I told.

3 Q. But was that the truth?

4 A. Indeed.

5 Q. And in fact, sir, we say to divert the attention of the investigators from you being
6 incommunicado, (Redacted) That's correct, isn't it?

7 A. I didn't understand since you used terms that I could -- that I could not understand.

8 Q. To divert the attention from getting upset with you that you were missing, missing in
9 action for two days, uncontactable, (Redacted)

10 (Redacted) Am I right?

11 A. That is wrong, (Redacted)

12 (Redacted)

13 Q. Well, let me continue reading. So after you are questioned about you being missing
14 you say to them that, and I quote, you "... you did not hear from (Redacted) who your Honour
15 for the record is (Redacted)... for a long time," and you say (Redacted)

16 (Redacted)

17 (Redacted) Do you see that?

18 A. Yes.

19 Q. That's what happened, isn't it?

20 A. Yes.

21 Q. Then you go on again to say that you received some information from P-256. Do you
22 know who (Redacted) is, sir?

23 A. I don't know the codes.

24 Q. And (Redacted). Do you know who that is?

25 A. I don't know about the codes. I've said that.

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(Private Session)

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1 Q. I'll help you. So what you did is you then, after (Redacted)
2 see what's been going on with him, why he's been so quiet, you then give the OTP
3 information about what you heard from (Redacted). Do you see
4 that?

5 A. Yes.

6 Q. Sir, that conversation you had with (Redacted)
7 (Redacted)

8 A. I don't remember.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, are we then to take it - it looks like that's
10 the case - that (Redacted)

11 MS ALAGENDRA: Indeed, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MS ALAGENDRA:

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
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1 MS ALAGENDRA: Your Honour, the record will speak for itself. It's quite clear what the
2 witness has testified to earlier. And perhaps I can --

3 PRESIDING JUDGE EBOE-OSUJI: If you want to pursue the point you can, but if you want
4 to leave it for arguments later.

5 MS ALAGENDRA: Indeed, your Honour, but I'll just refer your Honours and my learned
6 friend to page 91 and to the witness's response at lines 24 to 25.

7 PRESIDING JUDGE EBOE-OSUJI: And what is -- can you put it -- now that you've referred
8 to it, put it in the quotes so that the witness here can react to it if need be.

9 MS ALAGENDRA: Indeed. Indeed, your Honour.

10 Q. Sir, you told the Chamber a few minutes ago and I quote, (Redacted)

11 (Redacted)

12 End of quote.

13 PRESIDING JUDGE EBOE-OSUJI: But later on he did clarify, didn't he, that in the nature of
14 the sort of subject matter that (Redacted)?

15 THE WITNESS: I continued.

16 MR STEYNBERG: Your Honour, it's at page 20 -- line 24 of the same page.

17 MS ALAGENDRA: And also, your Honour, at page 92, line 4, the witness says, "Yes, that I
18 (Redacted)

19 Your Honour, the record is quite clear. I'll move on.

20 MR STEYNBERG: I beg your pardon, your Honour. My reference was to page 93, line 24,
21 not page 91. Subsequently he referred to it again.

22 PRESIDING JUDGE EBOE-OSUJI: We can move on on this matter. Ms Alagendra says the
23 record is quite clear. It isn't always clear on whose side that clarity falls until we start
24 looking at these things.

25 Please proceed.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 MS ALAGENDRA:

2 Q. Sir, you remember this day clearly, don't you, this meeting you had with the
3 Prosecution?

4 A. I remember.

5 Q. Now after this meeting, sir, you returned straight back to your lodging, did you?

6 A. Yes.

7 Q. And nothing else happened that night and the next morning until you meet with the
8 OTP the next day again, correct?

9 A. Please let us refer, because taking me back like that it's very hard for me to confirm most
10 of the things unless we go the way -- the way we have done on the -- on the -- on the -- on the
11 others.

12 Q. What are you saying, sir, that these things that happened you don't remember what
13 happens and the dates?

14 A. You know, please take me the way you've taken me for the previous for -- for -- on the
15 paragraphs that nothing happened on this date until this date, so we can -- we can follow
16 together. Instead of making me confirm without seeing, because I can -- I don't want to
17 confirm things which are out of my --

18 MS ALAGENDRA: Okay. I will assist you, sir.

19 Can we go to tab 23, your Honours? That's KEN-OTP-0109-0002 and I'm looking at
20 paragraph 17 which is on page 0006.

21 Q. Do you see there, sir, the next day now, (Redacted), you meet the OTP investigators? Do
22 you see that?

23 A. Yes.

24 Q. And do you see at paragraph 17 it reads, and I quote -- you were asked by investigator
25 (Redacted) and you agreed to it, yes?

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1 A. Yes.

2 Q. And then --

3 PRESIDING JUDGE EBOE-OSUJI: That wasn't a quote, Ms Alagendra.

4 MS ALAGENDRA: I'll quote it, your Honour.

5 Q. "On the (Redacted) I was asked by investigator (Redacted)

6 (Redacted)

7 (Redacted)..." End of quote for my purpose. Yes, sir?

8 A. Yes, I handed.

9 Q. Then the next paragraph, paragraph 18, (Redacted)

10 (Redacted)

11 (Redacted) Do you see that?

12 A. Yes.

13 Q. And the previous (Redacted)

14 (Redacted), am I correct? Sir, could you answer my questions and not --

15 A. Yes.

16 Q. Yes, thank you. And in fact OTP investigators told you they (Redacted)

17 (Redacted) yes?

18 A. Yes.

19 Q. And they wanted you to confirm (Redacted)

20 (Redacted)

21 (Redacted)

22 A. Yes.

23 Q. Sir, why do you think on (Redacted)

24 (Redacted) Do you have -- was there any reason?

25 A. To check whether I had (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

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1 Q. So they were checking something, yes?

2 A. They were checking if I had made (Redacted), because it was long time and I had
3 not (Redacted)

4 Q. Okay, that's clear. And going back a bit, sir, in your testimony when you were
5 explaining to the Chamber the sequence of (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted) Do you

9 remember that happening?

10 A. I don't get you.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Let me take you directly to it, sir. Let's go to tab 17.

18 Your Honours that's KEN-OTP-0103 at 2473. And I'm looking at paragraph 32 and
19 33.

20 Sir, do you see that paragraph 32 that on (Redacted)

21 (Redacted) Do you see that?

22 A. Yes.

23 Q. Do you agree with that?

24 A. Yes.

25 Q. And the next paragraph, paragraph 33, on (Redacted)

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1 PRESIDING JUDGE EBOE-OSUJI: Wait a minute. (Redacted), wasn't

2 that your point, Ms Alagendra?

3 MS ALAGENDRA: Indeed, your Honour.

4 Q. Let me go back to that. The (Redacted)

5 (Redacted) do you agree with that?

6 A. Yes.

7 Q. And then the next day, on (Redacted), you met with the investigator, (Redacted)and

8 (Redacted) again, and they introduced you to somebody called (Redacted), yes?

9 A. Yes.

10 Q. And they gave you (Redacted)

11 (Redacted) yes?

12 A. Yes, that is true.

13 Q. And after that (Redacted)

14 (Redacted)?

15 A. Yes.

16 Q. So when you explained to the Court in your testimony about the sequence of events,

17 what happened from (Redacted) till now, why did you skip that part out? Why didn't

18 you tell the Court that the Prosecution (Redacted)?

19 MR STEYNBERG: Your Honours that's an unfair question. I was leading the witness as to

20 information I was interested in. I didn't lead -- I didn't ask him any questions on that point.

21 PRESIDING JUDGE EBOE-OSUJI: The objection is sustained. Ms Alagendra, you may

22 need to rephrase that. If you want to make it as a fresh point, you're free to do so, but the

23 witness was asked a lot of questions and lots of details. It may not always be fair to imply

24 that not providing a certain information of interest to you had any untowards purpose,

25 especially when the witness had been cautioned to listen carefully to the question asked and

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1 answer just that question.

2 MS ALAGENDRA: Your Honour, if I can recall, and I'll get the reference, I think my learned
3 friend was not asking leading questions, and the questions were quite general as to what
4 happened next. And if the witness has forgotten, which is quite human to do, he can just
5 explain that, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: You can also bring it out fairly in a way that makes it
7 easier for you to deal with the witness going forward.

8 MS ALAGENDRA: Perhaps I'll move on from this issue, your Honour. Your Honour --

9 PRESIDING JUDGE EBOE-OSUJI: Before you do, looking at paragraph 33, the middle of it, I
10 don't know if you captured this, and I missed it, but I quote, the middle of paragraph 33,
11 quote, "(Redacted)..." -- no, no, no, I take that back. The line

12 before -- the line before that. The sentence before rather says, quote, (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Unquote.

18 Is that something of interest in your line of question about (Redacted)

19 (Redacted)

20 MS ALAGENDRA: Your Honour, from what I have gauged from the statement and
21 disclosures and what the witness has said, this is the time where they give him (Redacted)

22 (Redacted)

23 MR STEYNBERG: I confirm that your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you. And, Mr Steynberg, so the analysis would

25 (Redacted)

Trial Hearing
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- 1 MR STEYNBERG: Correct, your Honour, and we have disclosed the analysis report to the
2 Defence.
- 3 PRESIDING JUDGE EBOE-OSUJI: Thank you.
4 Please proceed.
- 5 MS ALAGENDRA: Your Honours, I'm just looking at the time.
- 6 PRESIDING JUDGE EBOE-OSUJI: Indeed. We will then adjourn at this point and continue
7 tomorrow at 9.30.
- 8 Witness, please do not discuss your testimony with anyone overnight and we will see
9 you again tomorrow at 9.30.
- 10 THE WITNESS: Okay.
- 11 PRESIDING JUDGE EBOE-OSUJI: Closed session, please.
- 12 *(Closed session at 4.04 p.m.) Reclassified as Open session
- 13 THE COURT OFFICER: We are in closed session, Mr President.
14 (The witness stands down)
- 15 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 16 THE COURT OFFICER: All rise.
- 17 *(The hearing ends in closed session at 4.05 p.m.) Reclassified as Open session
- 18 RECLASSIFICATION REPORT
- 19 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
20 2013, the version of the transcript with its redactions becomes Public.