

Trial Hearing
Witness: KEN-OTP-P-0495

(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 Carbuccion and Judge Robert Fremr
7 Trial Hearing
8 Thursday, 18 September 2014
9 (The hearing starts in open session at 9.39 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Court officer, the case please.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Republic of Kenya in the case of The Prosecutor against
17 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
18 We are in open session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 Appearances?
21 MR STEYNBERG: Good morning, Mr President, your Honours. For the Prosecution
22 appearances remain the same.
23 MR NARANTSETSEG: Good morning, your Honours. On our side appearances remain
24 the same. Thank you.
25 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team is constituted of

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1 myself, Katwa-Kigen, Caroline Buisman, Logan Hambrick, Honor Lanham and Marie-Ange,
2 our intern. Thank you.

3 MR HOOPER: We're the same as yesterday. No change.

4 PRESIDING JUDGE EBOE-OSUJI: And in Nairobi, I notice the presence of Mr (Redacted) on
5 the end of the video link.

6 MR (Redacted) (via video link): Yes, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Prosecutor?

9 MR GARCIA: Good morning, your Honours. This morning the Prosecution would like to
10 make an application to have the witness, who has been standing testifying before the Court,
11 Witness 495, declared hostile.

12 Now, the reasons underlying this request are basically the fact that the witness has
13 initially made some serious allegations against the OTP. I'm not saying that this is
14 determinative in this question of whether the witness is hostile or not, but it's
15 certainly a factor to be considered. In addition to that, the witness has also departed
16 in a very significant manner from his prior statement to the Prosecution.

17 Now, essentially the witness has claimed during his testimony that the OTP
18 fabricated the statement - 17-page statement - that we've been asking him questions
19 on for the last day and a half.

20 This is, to say the least, a very incredible claim on the part of the witness. The
21 questioning -- we put the witness -- to the witness certain questions on the matter and
22 the witness has stated that not only was the investigator part of this fabrication, but
23 also a trial attorney who was present at the location.

24 Also the witness has, as I've just stated, departed systematically from his prior
25 statement. He gave initially in the month of -- from the 8th to the 11th, 2012 to the

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1 Prosecution a 17-page statement. I'll not go through every section of that statement,
2 because we did go through that exercise with the witness already, but what I can say
3 is that save for the personal information, information that's found in the section
4 entitled "Background," paragraphs 14 to 22, save for some of that personal
5 information, the witness has completely disavowed all the rest of the relevant and
6 incriminating evidence that he offered to the Prosecution during those four days of
7 interview.

8 Now, the evidence which he has disavowed in the last day and a half is quite
9 important. It's evidence regarding rallies that he would have attended, evidence
10 regarding meetings that would have been held prior to the post-election violence in
11 his region, and most importantly, it's what happened on 30 and 31 December 2007,
12 that is to say, immediately after the election results were announced in his region.

13 Now, in his prior testimony, prior statement to the Prosecution, and that's on pages 11
14 to 13 of his statement, 0246 to 0248, the witness gave a wealth of details on what
15 happened immediately after the pronouncement of the election results in his region:
16 People calling meetings, what was said during the meetings, the exact time on which
17 he attended the meetings, who was chairing the meetings, the people involved in the
18 meetings, what was stated, and more importantly, what was decided, what would
19 happen as a result of the election results and the fact that the Kikuyus had allegedly
20 stolen the votes.

21 So that would have been 30 December.

22 He also claims -- he also gave information, quite important information to the Prosecution
23 regarding 31 December 2007.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, it may be safer at this stage to speak in terms
25 of what the statement says and the witness has not denied that he signed the statement. So

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1 let's just safely speak in those terms that the statement says this. This is a statement of the
2 witness. There's no doubt that this is the statement of the witness. Let us not speak in
3 terms of those as if they are the truth, that you know.
4 Do you understand what I'm saying? Maybe you will consult with Mr Steynberg
5 who wants to talk to you?
6 MR GARCIA: Indeed, your Honour. I'm guided by the Chamber.
7 Now, essentially the evidence that we have from 31 December 2007, that the
8 Prosecution says the witness provided to the OTP during the interview, is evidence of
9 what happened in his particular region regarding the meetings that occurred and the
10 actions that were implemented afterwards.
11 Now, there are specific paragraphs that deal - and this is page 0248, 31
12 December 2007 -- that deal with the person who was allegedly chairing the
13 meetings - it's person number 9 on the PIS - the people that had been -- who had been
14 designated to lead the youth in subsequent attacks and where the places - the exact
15 places - where the attacks occurred and that would have been paragraph 78 in the
16 statement. More importantly, on the bottom of this page 0248, a meeting at (Redacted)
17 (Redacted). So you have paragraph 79 to 86 of the witness's original statement.
18 Now, the witness claims the information that the witness provided to the OTP at the
19 time was that he had actually attended a meeting that would have occurred in
20 (Redacted) along with other -- along with other youth, a certain number of youths,
21 and he had also attended -- when he attended these meetings certain individuals had
22 spoken.
23 Now, these are names that I put to the witness and the witness all along in his
24 testimony has denied almost every -- knowing almost every name that has been put
25 to him by the Prosecution.

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1 In fact, for all of them save one or two of them, people who are recognised in the
2 community, the witness says that this is the first time in court that he's heard those
3 names. That's quite difficult.

4 And what is important about the evidence that the witness provided to the OTP
5 during these four days of testimony regarding the meeting at (Redacted) is that it is
6 essentially noted by the investigators that the information would have been that these
7 people, reunited and meeting in (Redacted) the youth from there would have been
8 sent out, transported with lorries to Eldoret - now Eldoret obviously is a place that
9 concerns this Chamber and the charges deal with Eldoret - youth that would have
10 gone to Chepkoilel campus; that's a branch of Moi's University located in Kimumu.
11 So this coincides with the testimony of other witnesses who have testified before this
12 Court.

13 Now, all this to say, your Honour, is that the witness provided what we believe is
14 relevant information, relevant incriminating -- incriminating evidence to the
15 Prosecution on those four days. Now the witness claims before the Court that the
16 OTP fabricated all this evidence and, save for his personal information, he has
17 disavowed all - almost the entirety - of his statement, relevant incriminating evidence.
18 So for those reasons we believe that this witness should be declared hostile by the
19 Chamber so that the Prosecution can get to the root of the matter, to the bottom of this
20 story of the witness.

21 Now, the Prosecution has operated with neutral questions. I understand there has
22 been a certain leeway in asking more different type of questions to the witness to try
23 and arrive at the truth, but at this moment the Prosecution has exhausted those means
24 of trying to reach the truth with neutral-type questions.

25 What the Prosecution is basically asking is to have the capability of having leading

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1 questions to be able to cross-examine the witness and to be able to put to the witness

2 other significant and relevant material that will demonstrate to this Chamber as to the

3 specific reasons why the witness is now in court disavowing his prior statement.

4 Now, the Prosecution is in possession of recorded material. It's direct evidence

5 wherein the witness - this witness, Witness P-495 - in one specific instance --

6 PRESIDING JUDGE EBOE-OSUJI: Let's stop it there. Okay, let's not go into evidence you

7 have to contradict the witness with. If you are given the leeway to do that then we will see,

8 but let's not start putting on record ahead of time specific evidence you may have to do that.

9 MR GARCIA: No, what I was merely doing, your Honours, is explaining the purpose for

10 which -- one of the purposes for which we wish to have this witness declared hostile is to

11 confront him with material that we have. I will not go into the details if the Chamber does

12 not want me to go into the details, but it's essentially material that will demonstrate to the

13 Chamber the specific reasons why and it will become quite clear as to why the witness here

14 before the Court is giving this explanation and has given this story of fabrication by the OTP

15 of a witness statement. So that we say is quite important. This is one of the reasons why

16 we wish the witness to be declared hostile.

17 In sum, your Honour, I have nothing further to -- I have nothing further to add on the

18 question of substantive issues, but what's also important to notice in the way the

19 witness has been testifying is that on several occasions, even with the story that he's

20 given the Chamber, there have been significant contradictions; one of them being

21 conversations with person number 2 on the PIS. At one point the witness said that

22 he had conversed with her on the month of August and afterwards in December, only

23 to say afterwards that he had also spoken with her during the taking --

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you see, what I was trying to hint the last time

25 is that, when we made a ruling on a similar application made in relation to Witness 604, we

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1 laid down certain factors that should guide the determination of whether or not to declare the
2 witness hostile. It should be enough for you to argue that any or some of those factors have
3 been met and leave it at that.

4 MR GARCIA: Indeed, your Honour. The Chamber had given a list of five factors, if I'm
5 correct, and also stated that these were not exhaustive. Indeed, one of these factors was the
6 fact of systematically and deliberately departing from a prior statement -- prior statement, sorry.
7 I believe that in this case indeed the witness has systematically and deliberately
8 departed from his prior statement in very important manners regarding relevant
9 incriminating evidence.

10 He has also obviously supported the Defence case. In the question -- in the manner
11 of his demeanour what I can say, and this is another factor that was indicated by the
12 Chamber, is that the witness does seem to be evasive on certain questions, or
13 responds in the same manner, it seems like he's been tailoring evidence and also of
14 importance is the fact that ultimately the witness refused to meet with the OTP for a
15 preparation meeting.

16 So for all of the reasons that I've just given, your Honour, I feel that this is a clear case
17 where the witness is hostile to the Prosecution - the calling party - and he should be
18 declared hostile so the Prosecution can have the tools to arrive at the truth in this
19 matter.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 Mr Hooper?

22 MR HOOPER: Well, the first thing to note is of course it's very well for my friend to ring his
23 hands over the quality of this witness, but it's a quality of his witness. This is the quality, or
24 the kind of quality, of witness that the Prosecution are basing or seeking to base their case.
25 In terms of my friend's application, in the light of this Chamber's previous decision

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1 and the criterion that were -- the criteria that were applied in respect to the last
2 witness, I have no reasonable basis upon which to object to my friend's submission, or
3 to oppose my friend's submission.

4 However, in having this witness declared adverse, it remains for you, the Chamber, to
5 determine to what extent you feel you will be assisted by such an exercise, given such
6 a witness as this, and that's entirely a matter for the Chamber.

7 PRESIDING JUDGE EBOE-OSUJI: Now isn't that a matter of submissions at the end of the
8 day, or do we have to deal with that now?

9 MR HOOPER: I'd submit that you as a Chamber have a -- have a general discretion as to
10 whether you want to hear any more from a witness and that's entirely a matter for you. If it
11 goes on, the importance is to focus on the matters that are core to this case, which are of
12 course probative and relevant evidence relating to the crimes that the accused face.

13 PRESIDING JUDGE EBOE-OSUJI: What can we -- to what extent are we free as a Chamber
14 at this stage to stop an examiner-in-chief and say, "Stop there. We don't want to hear any
15 more from your witness. The witness is discharged"? Can we freely do that before the
16 examiner-in-chief has indicated that he or she is done with the witness?

17 This is a witness for the Prosecution. The Prosecution has elicited -- has gone some
18 way with the witness and they're saying, "Well, we're not done with the witness." It
19 would have been the Prosecutor to say, "Well, given the testimony of this witness,
20 Judges, there's no further question and we stop it there." They haven't said that.
21 They are saying they want to ask the witness more questions because they believe
22 there is something more to explore.

23 Can we stop them doing that?

24 MR HOOPER: I submit you have a great discretion and like most discretions it runs on a
25 continuum, from the blindingly obvious to not, and it's not for me to submit I think at this

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1 stage where on that continuum you may be.

2 But I'm not ruling out that there are or could be occasions when Judges at this stage

3 may turn to the calling party and just say, "Well, we're not going to be assisted any

4 further in terms of fact-finding on the core issues that matter in this case by this

5 witness," and certainly at least knock the ball back at the very least to the calling party

6 to consider whether, for example, they want to go on.

7 So that kind of situation can arise. Now whether it can arise in this particular

8 instance is entirely a matter for you, the Judges. But what we are going to I

9 anticipate find from the Prosecution, as I well know, is that the witness will be

10 confronted with evidence of interference, interference of him and his interference of

11 others, and to what extent you, the Bench, are going to be assisted by that in terms of

12 participation by particular individuals in post-election violence is a matter of course

13 for you, the Bench. It may be it's a matter that you'd wish to resolve later in the case

14 than at this juncture, but I'm not -- I am submitting that your discretion is a very

15 broad and wide one.

16 And one of the difficulties here is that an essential part of Mr Garcia's application, or

17 any application of this kind, is that there's been a departure from the truth. And a

18 Prosecutor, with a witness who he considers has departed from the truth, is fully

19 entitled and perhaps in certain circumstances expected to ask the finders of fact to

20 explore the reasons for that departure and perhaps come eventually to some extreme

21 conclusions.

22 But the difficulty here is that what is the truth? Now, here we have a situation

23 where the Prosecution have, as we have in our hands, the witness statement of this

24 particular witness in which he asserts certain facts. He's now said that they are not

25 his assertions, which really comes to this. That, as far as he's concerned, to the extent

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1 that he knows of those facts they're not true.

2 The Prosecution are saying that what he said in his statement is true, but the difficulty
3 is that the Prosecution know full well they've got no corroborative evidence of
4 anything this man says and so they're making that application from that position.

5 There is no independent corroboration of what this witness says. And I use the
6 word "independent" in the sense that lawyers would use the word "independent."

7 But as I said, I'm not in a position and nor do I seek on behalf of Mr Ruto to stand in
8 the way of the application that's been made.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Hooper.

10 Mr Kigen-Katwa?

11 MR KIGEN-KATWA: Your Honours, on our part we leave the question of whether to
12 declare this witness hostile to the Chamber.

13 We, however, wish to say on our part that when the Prosecution says that as one of
14 the grounds upon which they are making their application the witness has supported
15 the Defence case, we contest that. We are not aware of any instance when the
16 witness in the testimony so far adduced has said anything that is supportive of the
17 Defence case.

18 We also contest the contention that --

19 PRESIDING JUDGE EBOE-OSUJI: How about the suggestion that the -- or, rather, the
20 allegation quite clear from the testimony of the witness that the investigator had put those
21 facts together in the statement and made him sign it, isn't that, if believed, something that
22 supports the case for the Defence?

23 MR KIGEN-KATWA: Not necessarily in the sense that -- the point on our part, your
24 Honours, is that --

25 PRESIDING JUDGE EBOE-OSUJI: In the sense -- in the sense that the Prosecutor will go all

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1 out to fabricate evidence against the Defence, what else could they have done in the case?

2 MR KIGEN-KATWA: It is our submission that that is an issue of professional ethics rather
3 than a question of having taken a position that is defensive of -- that is -- that is of assistance
4 to the Defence.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you are telling me that if it is the case
6 that objectively it is established that the Prosecutor fabricated evidence in some respect, that
7 you will not argue at the end of the day that this is something that the Chamber should take
8 into account in assessing the guilt or innocence of your client? Is that what you're saying?

9 MR KIGEN-KATWA: No. We would of course take that -- we would take advantage of
10 that position, Mr President. What --

11 PRESIDING JUDGE EBOE-OSUJI: So then it's not a matter merely of professional ethics.

12 MR KIGEN-KATWA: Mr President, I will leave that issue there.

13 The last issue I wish to raise, your Honours, is that we do not quite agree that the
14 questions that have been put to this witness so far are all entirely neutral. We
15 submit that there are instances when the cross-examination has already been done.

16 But the bottom line, your Honours, is that we do not -- we leave it to you to determine
17 whether or not to have this witness declared hostile.

18 PRESIDING JUDGE EBOE-OSUJI: All right. While you're on your feet, Mr Kigen-Katwa,
19 so far would it be a correct appreciation that this witness is not, at least from the review of his
20 statements, has not touched your client in a direct way?

21 MR KIGEN-KATWA: He hasn't, your Honour. He hasn't. I confirm that.

22 PRESIDING JUDGE EBOE-OSUJI: It wasn't a determination I made. I just asked you the
23 question.

24 MR KIGEN-KATWA: Indeed he hasn't, your Honour. Could I explain why I have --

25 PRESIDING JUDGE EBOE-OSUJI: No, no, no, no. The reason is would you then see a need

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1 to cross-examine? I just want to know for purposes of planning.

2 MR KIGEN-KATWA: Yes, your Honour. I would really have to cross-examine out of
3 question that if the Prosecution at the end of it come back with the application under Article
4 68, and in the recent past their suggestion that they could also seek to have the statement
5 brought in for its truth under Article 69, I would need to have addressed the allegations he
6 had made initially.

7 PRESIDING JUDGE EBOE-OSUJI: All right.

8 MR NARANTSETSEG: Thank you, Mr President, for this opportunity. Your Honours, we
9 support the Prosecution's application. In our observation the manner this witness has
10 answered the questions posed by the Prosecution fulfils all, if not most, of the five criteria that
11 your Honour established on your last decision declaring witness hostile issued
12 on 8 September.

13 Your Honours, we also would like to highlight the fact that this witness has departed
14 to the largest degree possible from the statement he had given to the Prosecutor's
15 investigators. Your Honours, we couldn't imagine a situation where a witness could
16 depart even more than this witness did in the circumstances.

17 Your Honours, we also would like to highlight the fact that this witness appears to us
18 clearly and deliberately impugning the Prosecution's case and also this witness
19 appears to be clearly supportive of the Defence case.

20 Your Honours, therefore, we believe that there is no need to further require the
21 Prosecution counsel to continue his questioning using neutral forms of questions.

22 Therefore, your Honours, we believe at this time for your Honours to allow the
23 Prosecution to question this witness with closed and leading questions.

24 Your Honours, we would also add that this is important for your Honours to hear the
25 testimony of this witness and assess the evidence that he provides after allowing the

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1 Prosecution to explore all the avenues possible. Through this -- through such
2 vigorous testing of this evidence your Honours will be able to arrive at the proper
3 conclusion of this case, and this is also important for the ascertainment of the truth,
4 your Honour.

5 This concludes our submission. Thank you.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 (Trial Chamber confers)

8 PRESIDING JUDGE EBOE-OSUJI: We render our ruling.

9 This is the second time the Prosecution is making an application to have a witness they've
10 called declared a hostile witness. The first time was on the occasion of the testimony of
11 Witness 604. As regards the present application, all parties and participants do not -- have
12 not argued -- none of the parties and participants, I should say, has argued that the
13 circumstances of this witness's testimony thus far is any different -- or are any different from
14 those under which Witness 604 was declared a hostile witness. In particular, on that
15 previous occasion, the Chamber considered that the extensive degree to which the witness's
16 testimony had consistently and systematically diverged from the statement that the witness
17 had given to the Prosecution was enough to warrant having the witness declared hostile, and
18 the Prosecution application on that occasion was granted.

19 Similarly, it is granted in this instance for the same reason.

20 So the witness may be brought back in and the Prosecutor may proceed.

21 Mr Garcia, as indicated yesterday, you have to finish this thing today, your
22 examination-in-chief, now cross-examination as it were, of this witness.

23 MR GARCIA: Indeed, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Today.

25 THE COURT OFFICER (via video link): Mr President, I will bring in the witness.

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- 1 (The witness enters the video-link room)
- 2 THE COURT OFFICER (via video link): Mr President, the witness is in the room.
- 3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 4 Witness, welcome back. The Prosecutor will continue questioning you.
- 5 Mr Garcia.
- 6 WITNESS: KEN-OTP-P-0495 (On former oath)
- 7 (The witness speaks English and Swahili)
- 8 (The witness gives evidence via video link)
- 9 QUESTIONED BY MR GARCIA: (Continuing)
- 10 Q. Good morning, Mr Witness.
- 11 A. Morning to you, sir.
- 12 MR GARCIA: Now, court officer, I'd like to put to the witness document 0084-0256 at
- 13 page 0260, please.
- 14 PRESIDING JUDGE EBOE-OSUJI: Where is your tab?
- 15 MR GARCIA: Tab 9, your Honour.
- 16 THE COURT OFFICER (via video link): Mr Garcia, the page 0260 is presented to the
- 17 witness.
- 18 MR GARCIA:
- 19 Q. Now, Mr Witness, yesterday we went through this notebook of yours and actually we
- 20 left off discussing certain parts of it. I'd like to -- I'd like for you to look at this page and the
- 21 writing at the top says: "The real names of those beaten from" --
- 22 PRESIDING JUDGE EBOE-OSUJI: We are in the public session. Remember that.
- 23 MR GARCIA: Yes, your Honour. I'm mindful of that.
- 24 Q. Now, the title at the top of this page, and I'll not name the -- the village in question, but
- 25 it says "The real names of those beaten from ... village," and it has a list of ten names there.

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1 Do you see that?

2 A. Yes, your Honour.

3 Q. Now, if you look at the entry at number 1, there is numbers next to it. It starts out
4 with 07. Do you see that?

5 A. Yes, your Honour.

6 Q. What is that number exactly?

7 A. I believe this is the number for a phone call.

8 Q. So it's the phone number of a person that was beaten from the village in question, is that
9 it?

10 A. Yes, your Honour.

11 Q. Am I right in saying, Mr Witness, that this phone number doesn't appear anywhere in
12 this statement that we are looking at, the 17-page statement which you've initialled and
13 signed at the front and at the back? Am I correct in saying that?

14 A. I'm not getting your question, your Honour.

15 Q. Mr Witness, this information, the phone number of that first person, I'll not mention the
16 name, is it correct to say that this phone number doesn't appear in the statement, the
17 statement that you made to the OTP, the 17-page statement we've been speaking about for a
18 day and a half?

19 A. I can't remember whether it -- it appears.

20 Q. Now, Mr Witness, you've listed ten names there of people that were beaten from the
21 village in question; is that correct?

22 A. Repeat your question, your Honour.

23 Q. Mr Witness, you've listed there at the top, it says "Real names of those beaten from ...
24 village" and you've listed ten names. So these are ten names indicating people who have
25 been beaten from that village; is that correct?

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1 A. From the information in the page, the ten names are there, but I don't know the people.

2 Q. Now, you say you don't know the people. Mr Witness, am I correct in stating that
3 most of these names don't even appear in the statement? The tenth name doesn't appear in
4 the statement. The eighth name doesn't appear. The seventh, the sixth, the fifth, the fourth,
5 the third, the second?

6 PRESIDING JUDGE EBOE-OSUJI: All right, Mr Garcia. It's beginning to look like you're
7 making closing submissions.

8 MR GARCIA:

9 Q. Mr Witness, would you agree with me that the almost entirety of these names that are
10 there, the ten names, do not appear in the statement that you gave to the OTP?

11 A. I can't remember whether it appears because I have not gone through my -- my
12 statements.

13 MR GARCIA: I'll ask that the statement be put to the witness, page 0084-0248, please.

14 PRESIDING JUDGE EBOE-OSUJI: Tab?

15 MR GARCIA: Tab 7, your Honour.

16 THE COURT OFFICER (via video link): A paper copy of page 0248 is presented to the
17 witness.

18 MR GARCIA:

19 Q. Now, Mr Witness, if you read on this page 0248 - and it's entitled "31 December 2007,"
20 paragraph 74 and onwards - you'll see paragraph 75 says, "The youth brought back
21 maybe 15 people from ..." a village." Do you see that?

22 A. Yes, your Honour.

23 Q. And then you continue, "They were asked why they had not come to the meeting."
24 Then the next sentence says, "One was ...", and you give the name of the person, and you say,
25 "... his wife was also brought ..." and you give the reasons why she had been brought. And

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1 then you go on to explain what happened to these people, and in paragraph 76 you give more
2 information on what happened to you. Do you see that?

3 A. Yes, your Honour.

4 Q. Now, do you see anywhere in this, in this list or this indication you've given during the
5 statement of the people that were -- that were brought, do you see any of these names that I've
6 just shown to you at page 0084-0260?

7 A. Yes, your Honour.

8 Q. Am I correct in stating that person number 1 is there?

9 A. Yes, your Honour.

10 Q. Am I correct in stating that person number 2 is not there?

11 A. Yes, your Honour.

12 Q. Would I be correct in stating that persons number 3, 4, 5 and 6 are not there as well?

13 A. Yes, your Honour.

14 Q. Am I correct in stating that persons number 7 and 8 are not there as well in your
15 statement?

16 A. Yes, your Honour.

17 MR HOOPER: I'm sorry, just because we're on it, person number 2 is not there and he agrees
18 with that; is that right? I'm looking at person number 2 on the list. It's the same telephone
19 number and the same name.

20 MR GARCIA: (Redacted)

21 Q. Now, Witness, do you agree with me that the person at number 10 is not there as well
22 on the list that you have, or the names that you had indicated or that were indicated to
23 the OTP?

24 A. Yes, your Honour.

25 Q. So you agree with me, Mr Witness, that most of the names here in this notebook, that

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1 you said you wrote so that it could corroborate the statement are not even in the statement?

2 A. Yes, your Honour. But all the names I was also given so that I can write them to look it
3 was written a long time ago, but in the real sense all these things were done there.

4 Q. But, Mr Witness, how do you explain that a lot of these names, eight of them - eight of
5 the ten - don't even appear in the statement that you say was given to you so that you could
6 do the handwritten notes? How do you explain that?

7 A. Yes, I told you, your Honour, that I was given typed statements that contains all this
8 information. So I had to pick some names and put there.

9 Q. Now, Mr Witness, if you look once again at page 0260 - and I think you have it right
10 before you - there's a second section. The start is -- actually at the top we read the real names
11 of those beaten from a village, and then right below there's another title and it says "from two
12 other villages" and you give a list of seven people as well. Do you see that?

13 A. Yes, your Honour.

14 Q. Now, is that information anywhere in your statement from your recollection; people
15 that would have been beaten but from two other villages that I'll not name?

16 A. I did not indicate the names - these names - in my statement, but I had to write in the
17 notepads.

18 Q. But once again, Mr Witness, where did you get these names from?

19 A. All the names and all the information I got it from there.

20 Q. Yes, but Mr Witness I've just put to you the fact that in your statement you don't speak
21 about these names. It's only in the handwritten notes. How do you explain that?

22 A. (No audible response)

23 Q. Mr Witness, you've had a certain time to think about that. How do you explain that to
24 the Court, that there are names here from people that were beaten in other villages that you
25 don't make mention of in your statement? How do you explain that?

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1 A. If I had mentioned them in my statement it would look a repetition of the same
2 statement, but I had to make it different a bit to show that it was done earlier than when the
3 statement was written.

4 Q. So are you telling us that you invented these other names?

5 A. The names were there, but I was given to backdate them.

6 Q. I'm afraid I don't understand you. You're saying that you added other names that
7 maybe were not in the statement. Are these names that you invented, people that don't
8 exist?

9 A. It's not me who invented. I got the names there.

10 Q. Now, Mr Witness, I'd like you to go to page 0084-0266 of this same notebook.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, what is the object of this exercise?

12 MR GARCIA: Well, it's directly -- it regards directly the witness's contention that this
13 document was handwritten by him in order that he had been asked to hand write the
14 information to corroborate the statement. Now, that's exactly what I'm addressing in these
15 questions.

16 PRESIDING JUDGE EBOE-OSUJI: So the object of your line of question, isn't it to say that
17 the witness should not be believed in that assertion? Isn't that the object of your --

18 MR GARCIA: That's correct, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: All right. Just keep an eye when you are overdoing it.
20 See when you've done enough and move on and the Defence will have their chance.

21 MR GARCIA: Certainly, your Honour. I just have a couple of questions and then I'll move
22 on.

23 Q. Now, Mr Witness, page 0084-0266. Do you have that before you?

24 A. Yes, your Honour.

25 Q. Now, if you read the bottom half of that page, it starts with "Other ..." and I'll not say the

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1 next word that you submitted to an office. Do you read that sentence?

2 A. I'm not getting it properly, your Honour.

3 MR GARCIA: Can we go into private session, your Honour, for two or three minutes?

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 *(Private session at 10.24 a.m.) Reclassified as open session

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

7 MR GARCIA:

8 Q. Now, Mr Witness, the second half of that page reads, (Redacted)

9 (Redacted) Am I correct in stating that at that time during

10 the post-election violence you were indeed (Redacted) Is that

11 correct?

12 A. Yes, your Honour. I was (Redacted).

13 Q. So you were (Redacted), is that not correct, Mr Witness, and (Redacted)

14 (Redacted)

15 A. (Redacted), your Honour. (Redacted)

16 (Redacted).

17 Q. Is it your testimony, Mr Witness, that you never once (Redacted)

18 A. Yes, your Honour.

19 Q. So when we look at this and we see different mentions of (Redacted)

20 (Redacted) are those not (Redacted) at the time?

21 A. I did not (Redacted). Neither I don't -- I was not (Redacted)

22 (Redacted).

23 Q. Where did this information come from then? Information about different meetings,

24 five different meetings on different days in 2011, where did you obtain this information from?

25 A. All this, your Honour, was crafted from the statement that I was given.

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1 Q. Do you agree with me, Mr Witness, that nowhere in your statement do you address
2 anything regarding meetings in 2011? It just deals with the post-election violence. Do you
3 agree with me on that?

4 A. Repeat your question, your Honour.

5 Q. Mr Witness, do you agree with me that nowhere in your statement - typewritten
6 statement - of 17 pages does this information regarding meetings in 2011 appear? Is that
7 correct?

8 A. Your Honour, you are too fast. Please slow a bit for me to understand.

9 Q. Do you agree with me, Mr Witness, that nowhere in your typewritten statement of
10 17 pages do we find this information regarding meetings in 2011 that you would have
11 (Redacted)?

12 A. I'm not sure, your Honour, whether the statement is there or not, because I've not gone
13 through all the statement once again.

14 Q. Mr Witness, could you tell us (Redacted) during the campaign period in 2007,
15 was it (Redacted)

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Was it publicly known that (Redacted) at the time?

21 A. Actually, not so many people knew that (Redacted).

22 Q. Why not?

23 A. (Redacted).

24 Q. (Redacted)?

25 A. (Redacted)

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1 Q. But do you know why this was told to you? Why would it be important (Redacted)
2 (Redacted) at that time?

3 A. I really don't know exactly what was the reason, but that's what I was told.

4 Q. Would (Redacted)?

5 A. In my own observation, your Honour, I feel maybe because (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Did you ever have any (Redacted)

10 (Redacted)?

11 A. No, your Honour.

12 Q. Now, Mr Witness, I just want to finish your story regarding the statement. You've told
13 us now until date that you had a statement that was prepared for you and you signed it after
14 reading it, and that you also wrote a handwritten -- you also put in handwritten material in a
15 notebook that you also claim was given to you by the -- by the OTP. Now, did anything else
16 happen in those four days that you were with the OTP?

17 A. Your Honour, my main interest being there was about the offers that I was already
18 being given, so I can't exactly remember all the activities that happened over there.

19 Q. All right. Now I've understood that. I think you've mentioned that to us before, but
20 my answer -- my question is quite simple: You said that you signed a statement, that you
21 also wrote some information in a notebook, and we've gone through that, now, did -- did you
22 write anything else for the OTP while you were there with them, the four days?

23 A. I can't remember, your Honour.

24 MR KIGEN-KATWA: Your Honour, we could go to public?

25 MR GARCIA: We can, indeed, go to public your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Public session.

2 (Open session at 10.31 a.m.)

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

4 MR GARCIA:

5 Q. So I understand, Mr Witness, that you can't recall today whether anything else
6 happened with the OTP during those four days that you met them in 2012?

7 A. Yes, your Honour.

8 Q. Well, you've remembered having given them handwritten information in a notebook.

9 Do you remember having writing -- having written anything else down for the OTP during
10 the time you were with them?

11 A. I don't remember giving any handwritten documents to the OTP.

12 MR GARCIA: Your Honour, I'd like document KEN-OTP-0084-0254, and that's tab 12, to be
13 shown to the witness, please. That's obviously confidentially.

14 THE COURT OFFICER (via video link): Document KEN-OTP-0084-0254 is presented to the
15 witness.

16 MR GARCIA:

17 Q. Now, Mr Witness, what you have before you is -- if you look at the top left-hand corner,
18 it says "Annex B," and from what I can read here it's a map from -- "Scale map from Eldoret to
19 (Redacted)." Do you see that at the top of the page?

20 Look at the bottom right hand of the page, Mr Witness. Is that not your signature
21 with the date on it?

22 A. Yes, your Honour.

23 Q. All right. And if you look at the top, it says "Scale map from Eldoret to (Redacted); is
24 that correct?

25 A. Yes, your Honour.

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1 Q. And there we have different villages. Is that your handwriting as well?

2 A. Your Honour, I'd request for private session so -- for me to explain about it.

3 PRESIDING JUDGE EBOE-OSUJI: Private session.

4 *(Private session at 10.34 a.m.) Reclassified as open session

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

6 PRESIDING JUDGE EBOE-OSUJI: Before the witness starts explaining, there was a point a
7 while ago, when there was that exchange between Mr Garcia and Mr Hooper - it wasn't really
8 an exchange - but Mr Hooper had asked a question about person number 2, Mr Garcia
9 mentioned something about (Redacted) , probably about (Redacted) . That reference to
10 (Redacted) will need to be removed from the delayed broadcast.

11 MR GARCIA: Thank you, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now in closed session.

13 THE WITNESS: Your Honour, I was told to sketch a map from Eldoret to my home in
14 order -- in case of any relocation they would be ready to even come and collect (Redacted),
15 whether I'm not there, that is why -- that is why -- the -- the reason I requested for private
16 session is that when you mentioned (Redacted) that is my village and possibly whoever is
17 outside there might know that I come from there. Otherwise, the map, it is me who sketched
18 because I was told to sketch.

19 PRESIDING JUDGE EBOE-OSUJI: Also the reference to (Redacted) that was made in public
20 will be removed from delayed broadcast.

21 MR GARCIA:

22 Q. Now, Mr Witness, isn't it more the case that the reason why you drew this map is to
23 indicate all the places that you spoke about in your statement to explain where they were in
24 relation to Eldoret? Isn't that the case?

25 A. No, your Honour. I still repeat the answer that I mentioned that the sketch was for the

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1 investigators to be able to access to the -- the -- the (Redacted), whenever they want them
2 and in case of any security reasons. That is why I had to sketch that map.

3 Q. Is it not the case, Mr Witness, that all these places that are on the sketch are also
4 indicated in your statement; is that not the case?

5 A. Your Honour, all the locations that have been mentioned are there in the statement.

6 Q. Now, Mr Witness, why would the investigators need to know where (Redacted) is?
7 Why didn't you just put Eldoret and then (Redacted) maybe (Redacted) if you will? But why
8 (Redacted)

9 A. Your Honour, I was told "From Eldoret, where do you go from Eldoret?", and then I had
10 to direct them from Eldoret via (Redacted) all along to my village.

11 Q. Isn't it a fact, Mr Witness, that you referred to (Redacted) as the place where the youth
12 had to disembark, meet with other youths in your statement? Isn't that correct and that's
13 why you've indicated it here in the sketch?

14 A. My intention, your Honour, was to show that since the route from Eldoret goes to
15 (Redacted) there is (Redacted), there is a -- (Redacted) that goes through (Redacted) that is
16 why I indicated (Redacted) because (Redacted) is near (Redacted) and that is why it was
17 indicated there to give them an opportunity to know that, before they reach to (Redacted) or
18 the other (Redacted) they should branch to (Redacted) and then to my place.

19 Q. And just to continue on that, (Redacted) is mentioned at paragraph 81 of your
20 statement, and you said that -- you said "... that the youth going to Eldoret should go to
21 (Redacted) ..." That, I put to you,
22 is the reason why you put (Redacted) in your annex.

23 A. Your Honour, the intention is the one -- I'm telling you that I was sketching this map to
24 give them directions to my home.

25 Q. So is that the only drawing, other drawing that you provided to the Prosecution, to

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1 the OTP during your meeting with them for those four days?

2 A. I don't remember whether there is any other annex or any other map that I've also
3 sketched.

4 Q. Let me put it to you this way: Would you have indicated to the Prosecution specific
5 places in the region?

6 A. Your Honour, I don't understand what you are asking.

7 Q. I'd like the court officer to please put to the witness 0084-0253, and it's tab 13, please.

8 THE COURT OFFICER (via video link): Document KEN-OTP-0084-0253 is presented to the
9 witness.

10 MR GARCIA:

11 Q. Mr Witness, do you see the document that's before you?

12 A. Yes, your Honour, I see it.

13 Q. It's a document that's entitled at the top left-hand corner "Annex A." And am I correct
14 in saying that your signature appears at the bottom right-hand corner with the date
15 "9/11/2012"; is that correct?

16 A. I'm not seeing where you are talking about, your Honour.

17 Q. Is that your handwriting on this annex A? It says "(Redacted) map" at the top.

18 A. Yes, your Honour.

19 Q. And is that your signature at the bottom right-hand corner with the date?

20 A. Yes, your Honour.

21 Q. And do you agree with me that, if you look at this, you're indicating a place where there
22 is a meeting place at the left hand -- you indicate shops on four corners, and just to the left it
23 says "meeting place." Do you see that?

24 A. I see it, your Honour.

25 Q. Why would you be indicating to the investigator and the lawyer "meeting place" if,

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1 according to your testimony, yesterday and before, you've never been to any meetings?

2 A. Your Honour, this sketch was also there in the document that I was given. That is why
3 I was told to transfer it into a -- a pad, a notepad.

4 Q. I'm not sure I understand you. This is your handwriting, correct?

5 A. It's my handwriting, your Honour.

6 Q. So why -- why did you draw this map of (Redacted) and indicate "meeting place" as
7 well? Is it because you were at a meeting in (Redacted)

8 A. No, your Honour. I once said that the sketch map was already there with the
9 documents that I was given, but I was told to sketch it in a rough paper. That is why I did
10 that.

11 Q. Are you saying that there was already a map of this meeting place and that you just
12 copied that? Is that your testimony?

13 A. Yes, your Honour.

14 Q. And with this map that you looked at, what did it have exactly? Did it have
15 inscriptions? Did it have names, or it's just a map?

16 A. All the written information indicated there was also found in the other document that I
17 was given.

18 Q. And what does it say, Mr Witness? It says "meeting place", and over to the left what
19 does that say?

20 A. Repeat your question, your Honour.

21 Q. You can see at the left-hand corner it says "meeting place", and then right next to it it
22 says something, "(Redacted)" What is the rest of that? Can you make it out for us?

23 A. I'm not seeing what you are reading, your Honour.

24 Q. Just where it says "meeting place," do you see that there is words. Is it "(Redacted)" ?
25 Is that what it says?

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1 A. Yes, your Honour.

2 Q. Is it because the meeting took place (Redacted)

3 (Redacted)?

4 A. Your Honour, that is the information -- I also got it in the document I was given.

5 Q. So you got the information from the statement, but did you get a map? I don't see a
6 map here in this statement?

7 A. I was given a sketch map to -- to put it in my own writing.

8 Q. Who gave you the sketch map?

9 A. The investigators.

10 Q. When? You said you arrived there the first day, you didn't have a chance to do much.

11 And the second day you read the statement and signed it and then you did a handwritten
12 notes in the notebook. So when did this happen?

13 A. It was during that time when I was through with the notes, notepads writings, and then
14 I was told to sketch this.

15 Q. But if you look at the date, Mr Witness, at the bottom right-hand corner, it says, it's
16 the 9th of (Redacted); is that correct?

17 A. As it is written, your Honour, it is right, only that I was told to backdate it like the other
18 statements.

19 Q. All right. So your version is that this was also another document that you were told to
20 fabricate for the statement?

21 A. Yes, your Honour.

22 Q. Now, Mr Witness, I'd like to ask you this question. You've stated in your testimony
23 that you had spoken with person number 2, if I'm not wrong, in the month of August 2012.
24 And when did you speak again with -- when did you speak for the first time with the OTP
25 after speaking with person number 2 in August 2012?

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1 A. I spoke with her immediately as I went -- I came back from the meeting as with the OTP.

2 Q. When did you speak to members of the OTP for the first time? Do you remember that?

3 PRESIDING JUDGE EBOE-OSUJI: Are we supposed to remain in the private session?

4 MR GARCIA: We can go in public, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Public session.

6 (Open session at 10.47 a.m.)

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

8 MR GARCIA:

9 Q. Now, Mr Witness, when did you speak with members of the OTP for the first time?

10 A. Though I can't remember properly, your Honour, it was around December, November
11 or December of 2012.

12 Q. Is this the date on -- are you referring to the date on which you met with the
13 investigators to give your statement, the 17-page statement?

14 A. It was before I went to the location to give the statement.

15 Q. So I just want to understand this. You had already spoken with members of the OTP
16 before you gave your statement, from the 8th to the 11th, is that correct?

17 A. Yes, your Honour. For the first time they made a call to me.

18 MR GARCIA: I'd ask to go in private session five minutes, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, there was some submission that Mr Hooper
20 made. We did not consider that it was determinative of the question whether or not this
21 witness will be declared hostile. That's a separate matter.

22 There also remains a question of the purpose of the exercise that you are engaged in,
23 what it is you are seeking to achieve by this exercise with an eye always firmly placed
24 on the charges that the Court would have to determine at the end of the day.

25 If what I am going to say next is not the case, Mr Hooper will rise and rectify it. But

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1 from his suggestion he was fairly dismissive of whether or not anything needs to be
2 made of this witness. If he thinks that yes, the witness is to be believed, he will say
3 so, Mr Hooper. But if it is the case that the Defence are not going to say yes, rely on
4 this witness for anything, you need to consider how much you should be
5 cross-examining this witness.

6 I say no more.

7 MR GARCIA: Thank you, your Honour. I'm guided by the Chamber. I just need to go
8 into private session for five minutes.

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 *(Private session at 10.50 a.m.) Reclassified as open session

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

12 MR GARCIA:

13 Q. Now, Mr Witness, do you agree with me that you actually had a conversation with
14 members of the OTP, two investigators, (Redacted) and (Redacted) on 29 October 2012?
15 Do you recall that?

16 For the record, I'm referring to tab 18, your Honours.

17 A. I can't recall, your Honour. That is why I told you I don't know whether if it was
18 December or November. But I had a conversation with them.

19 Q. A phone conversation, indeed.

20 Do you recall, Mr Witness, that during that phone conversation you explained and you told
21 the investigators that you had attended, that there were several meetings
22 held in the (Redacted) and that you attended a meeting on 22 December
23 amongst other meetings? Do you remember saying that to the investigators at the
24 time?

25 A. I can't clearly remember, your Honour.

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1 Q. So it's a possibility that you told them this at the time, that you had attended a meeting
2 on 22 December, and that the chairperson was someone called (Redacted). Do you
3 remember that?

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

5 Q. Do you remember saying that he was a (Redacted), that he
6 was in communication with Honourable Ruto through (Redacted)? Do you
7 remember saying that to the investigators that called you up on that day?

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

9 Q. So just to be -- just to understand you, when you say you just -- you don't remember, I
10 imagine that there is a possibility you said this and now you don't remember? Is that one of
11 the possibilities?

12 A. Your Honour, since I had already been told by the lady that you need to co-operate with
13 the investigators, I don't know how much I spoke with them.

14 Q. Yes, but, Mr Witness, you've told us that the lady didn't give you any of the content of
15 the information that you were supposed to give to the investigators. Is that not correct?

16 A. I'm not getting you properly, your Honour.

17 Q. I'll put the question another way, Mr Witness. How is it that you had known all of this
18 information on 29 October if not because you really had lived through this? Nobody had
19 told you about this information before. That's what you've told us.

20 THE INTERPRETER: The witness speaking in Swahili.

21 A. (Interpretation) I haven't understood what you said.

22 MR GARCIA:

23 Q. Mr Witness, I'm reading here from the notes made by the investigators of a conversation
24 they had with you on 29 October 2012. At that point in time you would have told them that
25 you had attended a meeting on 22 December, and that it gathered youth, and the chairperson

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1 was someone -- somebody called (Redacted).

2 Where did the investigators get that information from if not from you?

3 A. (Speaks English) I don't know, your Honour.

4 Q. It also says that you told the investigators that (Redacted) was (Redacted)

5 (Redacted). He was in communication with Honourable Ruto through (Redacted)

6 (Redacted). (Redacted) is Ruto's (Redacted) P-495 observed that from

7 the ground.

8 Where did the investigators get this information if not from you, Mr Witness?

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

10 Q. You also said to the investigators, according to this note, that you attended a meeting on

11 25 December and it was chaired by the same (Redacted).

12 The next page says, "After the election there were four meetings that took place on 1st,

13 2nd, 3rd and 4th of January." Do you remember having given this information to the

14 investigators when you spoke to them on 29 October 2012?

15 A. No, your Honour.

16 Q. It goes on to say, "The youth were organised and attacks followed in Moi's Bridge,

17 Matunda, Soy and Eldoret town. In Eldoret town, these youths from Ziwa together with

18 other youth carried attacks all along the area from Chepkoilel, Moi University, Kimumu,

19 et cetera, until town."

20 Do you remember having given this information to the investigators on

21 29 October 2012?

22 A. No, your Honour.

23 Q. Do you have any idea of how the investigators would have known this information?

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

25 Q. One last thing, Mr Witness. It says here as well that you -- that you indicated that you

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1 had been present in a meeting on 31 December that took place in (Redacted). Did this
2 information come from you? Did you tell that to the investigators on 29 October?

3 A. No, your Honour.

4 Q. I put it to you, Mr Witness, that the reason why all of this information is here is that it
5 came from you, and you lived through this and that's why you gave the information, you
6 were able to give the information to the OTP. Do you agree with that?

7 A. No, your Honour. I don't know where they got the information.

8 Q. One last item, Mr Witness. In this conversation you had with the investigators, it says
9 here that you told them that (Redacted) was the chairperson of the meeting. He was (Redacted)
10 (Redacted) for Ruto and he was mobilising the youth as well.

11 Do you remember having said that to the investigators on 29 October 2012?

12 A. No, your Honour.

13 Q. And the name still means nothing to you, "(Redacted)"?

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

15 Q. Thank you.

16 MR GARCIA: We can go back into public session, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Public session.

18 (Open session at 10.58 a.m.)

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

20 MR GARCIA:

21 Q. Now, Mr Witness, just before we go to the first break, I'd like to ask just one question of
22 clarification. Yesterday I was asking you questions, and there is something you said that I'm
23 still not clear on, and I'd just like you to explain it if you can.

24 We were speaking about person number 2 telling you about investigators and being
25 called. And you responded, "After I was called by the investigators and given the

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1 document, I had to make a call to her and ask her whether there was a problem in that
2 statement."

3 And this is the part that interests me. You say, quote, "But she had already
4 confirmed to me that 'The statement that you are going to get, don't worry about it,
5 that is what I also did.'"

6 Can you explain what you mean by that?

7 A. Your Honour, I mean that immediately after being given the statement and writing
8 them, then I had to call her to confirm to her that what she told me is exactly what I've got.

9 Q. All right. But the part where you are saying "But she had already confirmed to me that
10 the 'Statement that you are going to get, don't worry about it, that is what I also did.'" What
11 does that mean, "that is what I also did"? Who are you referring to?

12 A. I was referring that, because she had told me that you don't worry about it, your work
13 was only to sign it, then I was referring that I also did the signing of the document.

14 Q. I just want if you can to clarify this just a bit more. In regards to this person number 2,
15 do you know if she had done it already, given a statement or not at that point?

16 A. Your Honour, repeat your question.

17 Q. When you're saying "that is what I also did," now, I just want to understand, to your
18 knowledge at the time had this person number 2 given a statement to the OTP or not?

19 A. Your Honour, I never know whether he had -- she had given her statement or not,
20 because what she told me is exactly what I got with OTP.

21 MR GARCIA: Your Honours, I see the time.

22 PRESIDING JUDGE EBOE-OSUJI: We will take our morning break.

23 THE COURT USHER: All rise.

24 (Recess taken at 11.01 a.m.)

25 (Upon resuming in open session at 11.35 a.m.)

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1 THE COURT USHER: All rise.

2 Please be seated.

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

4 We are in open session.

5 Mr Garcia?

6 MR GARCIA:

7 Q. Now, Mr Witness, when we left off we were speaking -- I had asked you questions
8 about at one point person number 2 on your PIS document, and I would like to put this to you
9 that the fact that I understand from your testimony that you're telling us and you've told the
10 Court that it's person number 2 who's put you -- who put you up to all of this and who
11 arranged with the investigators this whole thing of a fabricated statement; is that correct?

12 A. Yes, your Honour.

13 Q. Well, I put it to you, Mr Witness, that that's quite difficult to believe seeing as the OTP
14 only made first contact and had first conversation with person number 2 on 9 November?

15 PRESIDING JUDGE EBOE-OSUJI: The question is argumentative.

16 MR GARCIA: Your Honour, I'd ask to go in private session please.

17 PRESIDING JUDGE EBOE-OSUJI: Private session.

18 *(Private session at 11.36 a.m.) Reclassified as open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Garcia?

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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20 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

21 MR GARCIA: Good time for a break, your Honour, yes.

22 PRESIDING JUDGE EBOE-OSUJI: Yes. We will rise for the lunch-break.

23 Witness, you are still on the stand. Do not discuss your testimony with anybody

24 during the break, the lunch-break, and we'll see you back after lunch. Thank you.

25 Do you understand?

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- 1 THE WITNESS: Yes, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 Court will rise.
- 4 THE COURT USHER: All rise.
- 5 (Recess taken at 1.04 p.m.)
- 6 (Upon resuming in open session at 2.36 p.m.)
- 7 THE COURT USHER: All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 10 Welcome back, Witness and Mr Garcia. We're in open session.
- 11 Just so -- before we proceed, let's give an indication of what we're working with in
- 12 terms of timeline. The objective is to have Mr Garcia complete his examination of
- 13 this witness today and the Defence will then use tomorrow to do theirs and any
- 14 re-examination as well be accommodated tomorrow so that by Monday we start with
- 15 a new witness. That is what we are hoping to see happen in the case regarding this
- 16 witness and the next one coming.
- 17 MR GARCIA: Your Honour, I am guided by the Chamber's observations.
- 18 I'd ask, your Honours, that we go back into private session.
- 19 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 20 *(Private session at 2.38 p.m.) Reclassified as open session
- 21 THE COURT OFFICER: We are in private session, Mr President.
- 22 MR GARCIA:
- 23 Q. Good afternoon, Mr Witness.
- 24 A. Good afternoon, your Honour.
- 25 (Redacted)

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12 (Redacted)
13 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go out for a second and make
14 that announcement so that people understand.
15 (Open session at 2.40 p.m.)
16 THE COURT OFFICER: We're in open session, Mr President.
17 PRESIDING JUDGE EBOE-OSUJI: All right. We are in open session to -- we see
18 that there are some members of the public in the public gallery. We make every
19 effort to have all members of the public be part of the process, both in terms of what
20 they see and what they hear, but occasionally we have to be in private session,
21 meaning members of the public will not be hearing what's going on in the courtroom.
22 The second -- but they will be able to see what's happening.
23 The circumstances of the remaining exercise for today require that the rest of the
24 questioning of this witness for the rest of today will be in private session so that
25 members of the public should know that. Thank you.

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1 Let's go back to private session.

2 *(Private session at 2.41 p.m.) Reclassified as open session

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

4 MR GARCIA:

5 (Redacted)

6 (Redacted)

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8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: I think we've lost our link.

10 (Pause in proceedings)

11 PRESIDING JUDGE EBOE-OSUJI: All right. The update is that the -- there has

12 been a disconnection on the line. There has not yet been a determination about the

13 source of it or what the problem is, so we have to wait a while to find out if anything

14 there is to find out.

15 In the meantime it was communicated to me by the court officer, who made a phone

16 call to the location, that the witness requested to -- some convenience break. So I

17 have indicated it's all right for him to get it and come back to the room.

18 (Pause in proceedings)

19 (Trial Chamber confers)

20 PRESIDING JUDGE EBOE-OSUJI: Well, while we wait to see if there's any report

21 coming through, let's turn our minds to the judicial calendar, see if there is some

22 thoughts we can all explore.

23 On 7 and 8 October, there will be a status conference in the -- in the second case in

24 Trial Chamber V(b) in the Kenyatta case, so that necessarily means that we have to

25 yield space for that to occur since Judge Fremr is also in that case.

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1 And in the week of the -- of the 20th, we may take a break during that week because
2 the Appeals Chamber is sitting in the Lubanga case and it may also be a convenient
3 time to take a break just for that week.

4 Now, I'm talking here without the benefit of the entirety of the judicial calendar, but
5 we -- looking further down the line, of course it depends on what happens in the -- at
6 the outcome of the status conference in the Kenyatta case, we may have to revisit our
7 judicial calendar depending on what happens in that case, but looking further down
8 to December, the judicial recess starts on the 14th. It is our hope that by that time the
9 case for the Prosecution would have completed. That is speaking generally while we
10 are here just to make use of the time that's now been afforded what we are looking at.
11 In the nearer term, so 7 and 8 October would not be court days for us and the week of
12 the 19th as well.

13 Prosecutor, in the longer term, we've indicated it will be our hope, and we will be
14 pushing for that, for the case for the Prosecution to be done, if possible, before the
15 judicial recess. Any observations?

16 MR STEYNBERG: Your Honours, if all of the remaining witnesses can come before
17 the Court in that time and we sit more or less continuously, it would probably be
18 possible. Given that there are probably going to be some breaks of necessity, it
19 might present a challenge to finish all of them. I'm thinking in particular -- we're in
20 private session -- I'm thinking in particular of the two witnesses that are (Redacted)
21 (Redacted) one of whom appears at present to be willing to testify voluntarily. I
22 speak with some caution because he's indicated previously that he would speak voluntarily
23 and his mind has changed, but as presently advised, it seems that he will be prepared to come.
24 The other we will have to make the necessary arrangements
25 (Redacted) and there is I understand (Redacted) on that.

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1 Your Honours, if we are not able to finish all of the witnesses, I do believe we will
2 certainly be in a position to finish nearly all of them. There may be one or two that
3 are -- that are problematic for one reason or the other. For instance, (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted) I believe that if not all of the witnesses, we should certainly be
9 able to complete the bulk of them by the December recess.
10 PRESIDING JUDGE EBOE-OSUJI: All right. We will -- there's still no positive
11 news to report about the video link situation with Nairobi. We --
12 Mr Hooper, were you --
13 MR HOOPER: I was offering to take up some time.
14 PRESIDING JUDGE EBOE-OSUJI: All right, go on.
15 MR HOOPER: I can find something to talk about. Well, it's -- it's the calendar and
16 you're talking of 7 or 8 October and our initial understanding was that this session as
17 it were, or term, was going to finish on 2 October. So when you mention 7 and
18 8 October, clearly we understand that the Judges, you the Judges, are thinking of
19 continuing to sit in respect of this case into October, and at the moment I have no
20 instructions to raise any issues about that.
21 I understand that there's an -- the closing arguments in another case in --
22 PRESIDING JUDGE EBOE-OSUJI: Is that Bemba?
23 MR HOOPER: Yes, in Bemba, I think, so I don't know how long those are due in,
24 I think it's the 13th onwards, something like that, of October and perhaps that
25 position could be clarified because it would assist us in various plans obviously and

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1 you -- and you of course as well.

2 We see the two-day status conference in Kenyatta. It would be helpful again if we

3 could -- or all of us -- for all of us if we could have an indication how long the

4 Appeals Chamber is likely to take up with the Lubanga appeal case. My

5 understanding of that is there may be some witnesses to be called. I'm unclear about

6 that.

7 PRESIDING JUDGE EBOE-OSUJI: We don't know. Mr Hooper, the understanding

8 is -- the information we have is that they will need one day, possibly two, but for

9 other reasons as well, just coinciding with that, we would like to take a break during

10 that week, just so you know.

11 MR HOOPER: Yes, all right.

12 So, again, well, perhaps that can be clarified if we're going to have the week of the

13 20th off as it were.

14 PRESIDING JUDGE EBOE-OSUJI: That's the point, yes.

15 MR HOOPER: But that -- that --

16 PRESIDING JUDGE EBOE-OSUJI: We will --

17 MR HOOPER: -- will greatly --

18 PRESIDING JUDGE EBOE-OSUJI: -- confirm that later if that will be the case.

19 MR HOOPER: -- greatly assist that. And I believe there's a Blé Goudé confirmation

20 that may be imminent.

21 To be honest, we rarely know what's going on in another case and that's part of -- part

22 of the difficulties, but that also is a looming possibility.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, we are not -- we are all professionals in here.

24 We -- as indicated, it all depends on what materialises in the other case. If that case

25 is starting, then it starts, so the judicial calendar we have that stops on the 2nd was to

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1 allow room for that trial to commence if it does, but if it doesn't, then we have to
2 revisit our own schedule and see -- and make some time in this case. That is the
3 point being made.

4 MR HOOPER: I obviously understand the Prosecution's perhaps difficulty at this
5 stage in knowing how long the remainder of their witnesses may take and we hope
6 that that can be definitively reviewed in a relatively short -- well, by the end of the
7 month, say, because that would leave us just for October and November.

8 In the event that the Chamber's wishes are realised and that the Prosecution case does
9 conclude by the Christmas or New Year recess of 14 December, we'd very much ask
10 the Court to bear in mind that thereafter, as you can see glancing at these two teams,
11 we are or will be then thrown to the four corners of the world and it becomes very
12 difficult in fact to liaise and to work as a team as we'd wish. And I say that in the
13 context of what I anticipate will be submissions relating to the status of the case at
14 that juncture. And what we'd ask the Court to consider in order that we can meet
15 what may be, and I am sure will be, relatively complicated factual review of all the
16 evidence by that stage, is that we don't recommence the case in the event that we
17 finish it on 14 December before mid-February, 14 February; in other words, it gives
18 everyone both the Christmas break and then four weeks/five weeks' preparation in
19 terms of those submissions which we anticipate would be both written and oral.

20 I obviously aren't inviting -- am not inviting you, the Judges, to indicate anything at
21 this stage, but it would be both a great kindness but also, to a great extent, a
22 professional requirement for us to have that time so that we can do the job.

23 PRESIDING JUDGE EBOE-OSUJI: Your point being if we -- just so that it's clear
24 what you're saying, or to me at least, that assuming we're able to realise the ambition
25 of completing the Prosecutor's evidential case by the 14th you are saying, that -- and

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1 you've already -- it's no secret that your team in particular has been beating the drum
2 of half-time submissions upon resting the Prosecution's case, you're saying that you
3 will require to be able to -- to be allowed some time to prepare and do that and return
4 in February to make those submissions if you are going to make them?

5 MR HOOPER: Yes, indeed, and I'm sure of course very much so with the Sang
6 Defence, Mr Sang's Defence. It's not a -- it's quite analogous in a way to a closing
7 brief and we all know the difficulties of preparing those, these are difficult documents,
8 and they have to be done right and in detail, as we all know, and it's always a difficult,
9 both drafting and administrative, task and, for that reason, we submit that the parties
10 deserve appropriate time in order to make those written submissions. And I know
11 Mr Khan's raised this with me and discussed this with me. He hasn't told me the
12 exact time. I think he was hoping for two months. Well, in a way, that would meet
13 that.

14 PRESIDING JUDGE EBOE-OSUJI: All right.

15 Mr Kigen-Katwa?

16 MR KIGEN-KATWA: Your Honours, on our part, may we clarify that we also
17 propose to make submissions half-time.

18 The second thing, your Honour, is we already sent an email to the Chamber. We
19 had very much hoped to take a break in October and, in reviewing and considering
20 the next judicial calendar, we request for consideration of that request to admit on our
21 part.

22 Lastly, we support the proposition that if we complete the Prosecution's case mid or
23 14 December, we would pray to resume approximately mid-February. Thank you,
24 your Honours.

25 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We've heard you, we will -- again,

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1 we are all exchanging ideas, so we know what everyone is thinking about these things
2 at this time.

3 Mr Steynberg?

4 MR STEYNBERG: Sorry, your Honour, just one further point. It's really a logistical
5 and a practical issue: The Prosecution would appreciate it very much if we could
6 have certainty as to the next session as soon as possible for the reasons -- logistical
7 reasons attached to the issuing of summonses. Before the session can be conducted,
8 the Registry will have to issue summonses for the remaining witnesses, they will have
9 to be communicated to the Kenyan authorities, the Kenyan authorities will have to
10 have time to locate and serve those summonses on the witnesses. The Registry will
11 have to make arrangements with the Kenyan authorities to book the courtroom,
12 et cetera. These are all issues which will take considerable time. I would imagine
13 that that whole process would probably take in the region of three-to-four weeks. So
14 the sooner we know that the sooner we will be able to commence those sort of
15 arrangements.

16 PRESIDING JUDGE EBOE-OSUJI: All right. We've heard that. Again, we will
17 take that into account, but the thing to keep in mind in the near term again is for
18 lawyers in this courtroom to be prepared to -- to be prepared to push on depending
19 on the outcome in the other case, what they decide to do, and that's what we are
20 trying to signal. We realise the need for everyone, lawyers and Judges, to take a
21 break, but sometimes we have to push on to make some time.

22 MR KIGEN-KATWA: Your Honour, one more thing: There is a set of witnesses
23 who are supposed to have come in the next session. We are also made to
24 understand that Witness Number 28 may be willing to come and there was an
25 indication that probably the Prosecution might want to bring him ahead of the other

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1 set of witnesses.

2 I think it is common ground that Witness Number 28 is very important to all the
3 parties here, and we would really appreciate to have an indication from the
4 Prosecution at what point in time they propose to call him, as to whether they will
5 place him ahead of the second set of witnesses, or after?

6 PRESIDING JUDGE EBOE-OSUJI: That is a good question to raise.

7 MR STEYNBERG: Your Honours, it's always my firm belief that if we have willing
8 witnesses we should get them into the box as soon as possible. So as soon as we
9 know the Court schedule, we can start making those arrangements.

10 As presently advised, we were advised, I think it was last Friday, that he was
11 prepared to come through his lawyers.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 And Defence counsel should be prepared to take that witness on in short order if that
14 is possible to do.

15 (Trial Chamber confers)

16 PRESIDING JUDGE EBOE-OSUJI: All right. Well, it looks like we have to adjourn
17 for the day.

18 Mr Garcia, do you have something to say?

19 MR GARCIA: Yes, if I may, your Honour, there is the -- just one question: There is
20 some documents that the Prosecution wish to have tendered as exhibits. Either we
21 could do that right now, if the Court wishes, or tomorrow.

22 PRESIDING JUDGE EBOE-OSUJI: Let's do it now and use the time.

23 MR GARCIA: The first document would be the PIS that I have referred to several
24 times with the witness.

25 PRESIDING JUDGE EBOE-OSUJI: The PIS is admitted as the next in the

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1 Prosecution's Protected Information Sheet.

2 THE COURT OFFICER: The Prosecution PIS related to Witness KEN-OTP-P-0495
3 will bear the number KEN-PIS-0001-0081.

4 MR GARCIA: The Prosecution also wishes to have an exhibit number for the
5 witness's statement. It's at tab 7, KEN-OTP-0084-0236, along with annex A and B
6 and, as well, the notebook at tab 9, 0084-0256.

7 PRESIDING JUDGE EBOE-OSUJI: Is the notebook not a separate material?

8 MR GARCIA: The notebook is referred to in the statement actually, your Honour,
9 and I can refer to the paragraph.

10 PRESIDING JUDGE EBOE-OSUJI: What I am saying is shouldn't we take it one at a
11 time?

12 MR GARCIA: Indeed, your Honour. I was just listing the documents.

13 So for the statement it's KEN-OTP-0084-0236.

14 PRESIDING JUDGE EBOE-OSUJI: Defence?

15 MR KIGEN-KATWA: Your Honour, we have been through this process. We
16 would maintain our objection as raised earlier on in the previous -- in respect to the
17 previous witness. We maintain that the aspects of that statement, that the
18 Prosecution intended to rely on, were already read into the court record and there is
19 no need to put in the statement. We would object on that ground.

20 PRESIDING JUDGE EBOE-OSUJI: That's not really precisely -- I am not saying you
21 deliberately are not stating it correctly but, in this particular occasion, I do recall that
22 out of delicacy when we were in the public session there were instances the
23 Prosecutor will start one -- the opening words of a sentence and then the closing word
24 of the sentence without reading the whole thing on to the record. Wasn't that what
25 happened on a lot of occasions?

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1 MR KIGEN-KATWA: It did happen, your Honour. Your Honour, in that --

2 PRESIDING JUDGE EBOE-OSUJI: Does that change your position then?

3 MR KIGEN-KATWA: Your Honour, it doesn't necessarily change my position. My
4 position remains that whatever the Prosecution wanted to get out of the statement
5 should have been obtained from the statement and read it into the court record, your
6 Honour, and if they chose not to it is their own fault. For those reasons we object,
7 your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

9 MR HOOPER: Well, plainly, these documents aren't being admitted for truth of
10 content, at least these last three, and on that basis I have no objection.

11 PRESIDING JUDGE EBOE-OSUJI: And Mr Garcia, you need to confirm that.

12 MR GARCIA: That's correct, your Honour; they are simply being tendered as
13 exhibits for the question of impeaching the witness and on questions of his credibility
14 at this specific moment. And I know that Mr Steynberg, lead counsel, had already
15 indicated that in the future there might be an application for these statements to be
16 tendered in for the truth of their content, but at this specific moment it's simply for the
17 question of the credibility of the witness.

18 PRESIDING JUDGE EBOE-OSUJI: On that basis, the document is admitted as the
19 next Prosecution exhibit.

20 THE COURT OFFICER: Mr Garcia, could you please confirm which redacted
21 version of the statement would you like to have admitted into evidence?

22 MR GARCIA: It is the R05, the redacted 5 version. Thank you.

23 THE COURT OFFICER: Thank you. The document KEN-OTP-0084-0236_R05,
24 confidential, will bear the number EVD-T-OTP-00149.

25 MR GARCIA: Your Honour, there were two annexes as well that were shown to the

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- 1 witness. Annex A, it is tab 13, 0084-0253. We are the asking for an exhibit number
2 for that annex as well.
- 3 PRESIDING JUDGE EBOE-OSUJI: Where is the tab?
- 4 MR GARCIA: Tab 13, annex A. It's the (Redacted) meeting point.
- 5 PRESIDING JUDGE EBOE-OSUJI: Defence counsel?
- 6 MR KIGEN-KATWA: I do not object to that, your Honour.
- 7 MR HOOPER: No objection.
- 8 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you are not captured on the record.
- 9 MR HOOPER: Sorry, there's no objection to those two documents being given
10 EVD numbers -- given exhibit numbers.
- 11 PRESIDING JUDGE EBOE-OSUJI: Yes, I see you were captured, but it was delayed
12 captured.
- 13 The document is admitted as the next Prosecution exhibit.
- 14 THE COURT OFFICER: The document KEN-OTP-0084-0253 will bear the number
15 EVD-T-OTP-00150.
- 16 MR GARCIA: Annex B, which is tab 12, that's 0084-0254, the Prosecution is also
17 requesting an exhibit number for that annex.
- 18 MR KIGEN-KATWA: We do not object, your Honour. We do not object.
- 19 MR HOOPER: No objection, thank you.
- 20 PRESIDING JUDGE EBOE-OSUJI: Document is admitted as the next Prosecution
21 exhibit.
- 22 THE COURT OFFICER: The confidential document KEN-OTP-0084-0254 will bear
23 the number EVD-T-OTP-00151.
- 24 MR GARCIA: And the last document for today is tab 9, it's the notebook, 0084-0256.
25 It is referred to in the statement at paragraph 104 of page 0251.

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1 PRESIDING JUDGE EBOE-OSUJI: Counsel?

2 MR KIGEN-KATWA: We are not objecting, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

4 MR HOOPER: No objection, thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Prosecution exhibit.

6 THE COURT OFFICER: The document KEN-OTP-0084-0256_R02 will bear the

7 number EVD-T-OTP-00152.

8 MR GARCIA: That is all, your Honours. Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 We will -- Mr Garcia, still I know we required you to complete today, but this has

11 happened, but still think about whether or not you need to keep on at it. It appears

12 to us that your points in the last -- in private session has been to as you said in the

13 beginning during Mr -- both Mr Steynberg's submissions relating to the last witness

14 and also arising from your own submissions relating to this witness to explore the

15 circumstances that might explain the resiling that you allege has been done.

16 You need to consider whether the point has been made, or whether you need to keep

17 on at it.

18 We will adjourn at this point.

19 THE COURT USHER: All rise.

20 *(The hearing ends in private session at 3.42 p.m.) Reclassified as open session

21 RECLASSIFICATION REPORT

22 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September

23 2013, and the instructions in the email dated 8 January 2015, the version of the

24 transcript with its redactions becomes Public.

25