

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 and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Monday, 22 September 2014
10 (The hearing starts in open session at 9.37 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, the case please.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor against William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR STEYNBERG: Good morning, your Honours. For the Prosecution lead counsel,
23 Anton Steynberg, is back today. Otherwise the team remains the same.
24 MR NARANTSETSEG: Good morning, your Honours. On our side our team
25 remains the same as before. Thank you.

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1 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the
2 same and Mr Sang is present.

3 MR HOOPER: We are the same, with the exception that Mr Khan and Mr Essa Faal
4 are not present at the present. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Mr Kigen-Katwa, today you begin your cross-examination, but before you start there
7 was a question I asked of the Prosecution.

8 Mr Garcia, as I said yesterday -- sorry, on Friday, towards the close of the proceedings,
9 just so we understand the point being made, we have a witness on the stand who had
10 been subpoenaed to appear and on the basis of course of the statement the witness
11 gave to you implicating the accused in criminal conduct.

12 The witness comes to the court, takes the stand. The first time the Prosecution
13 mentions the statement the witness says that everything that's in the statement was
14 put in there effectively by an investigator and an OTP trial lawyer.

15 You have vigorously cross-examined the witness, attacking his credibility especially
16 on that account.

17 The Ruto Defence in their cross-examination get up, they attack the witness's
18 credibility on other accounts and again returns to the allegation made against the OTP.

19 Mr Hooper made it very clear on two occasions that the Ruto Defence rejects the
20 witness's testimony that it is the OTP effectively that put those materials in the
21 witness statement. They made it -- Mr Hooper said that quite clearly. They do not
22 accept that from the witness.

23 The question then becomes what do you want to do with the testimony of this
24 witness?

25 MR STEYNBERG: Your Honour, if I may speak to this point? This is a matter

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1 which I suspect will not be unique to this witness.

2 The starting point, in my respectful submission, is that this and several other
3 witnesses gave relevant and incriminating evidence upon which the Prosecution
4 relied both in the confirmation hearing and in certain circumstances, but certainly in
5 drafting the charges which the accused currently face.

6 The Prosecution will argue that the reason why this witness and various other
7 witnesses have ceased co-operation with it and in many circumstances -- in many
8 cases have recanted their evidence, as with this witness, is because in the intervening
9 period between giving their original statements to the Prosecution and being called to
10 testify they were subjected to improper influence, which has materially affected their
11 co-operation with the Prosecution.

12 The Prosecution submits that to allow to simply throw up its hands and say, "Well,
13 we've done our best. The witnesses have withdrawn. We can take the matter no
14 further," would be to give in to the forces which are, we say, directly and concertedly
15 trying to derail the Prosecution case and assist the accused in evading what we say
16 will be justice.

17 Now, the Prosecution would obviously prefer to go forward with willing witnesses,
18 to call witnesses to lead their evidence, to have their evidence tested as it should be
19 and then to have your Honours reach a decision, but in the circumstances, that is not
20 possible. The Prosecution therefore seeks to avail what remains as we say an option,
21 or we will argue is an option, in the circumstances where these witnesses, if we can
22 establish that there has been improper interference, we say that there are sound legal
23 basis in the Statute and in the Rules for the admission of their prior statements as
24 proof of its content.

25 Now, the Prosecution will submit that it would not be in the interests of justice for the

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1 Chamber not to have this material before it to consider what weight, if any, it is to
2 give to this evidence.

3 Should the Chamber ultimately review the statements and conclude that no weight or
4 little weight should be given to them, well then the Prosecution will have done its job
5 and, with respect, the Chamber will have done its job too, but we submit that the
6 Chamber should at least have that opportunity.

7 And the fact -- the fact of the improper interference, if established, the Prosecution
8 will argue is an indicia of the reliability of the witness's earlier testimony, because
9 experience and common sense dictates that one doesn't go around bribing witnesses
10 who have -- do not have cogent and dangerous evidence which the accused would
11 have to meet.

12 So the purpose, what do we do with this testimony, your Honours? Your Honours,
13 we submit that the Chamber takes into account this testimony, takes into account the
14 transparently false and risible allegations that the witness has made against the OTP,
15 which my learned friend has quite properly - and we thank him for that - quite
16 properly rejected and considers what then to make of the earlier statement. We say
17 that the earlier statement should be admitted and should be considered by the
18 Chamber.

19 PRESIDING JUDGE EBOE-OSUJI: Just to be very clear, the Chamber is not at this
20 stage indicating any views on the testimony. We just want to be sure what it is that
21 the Prosecution intends to do with the testimony of this witness. Is it your position
22 that you will be insisting that the original account given by the witnesses, or this
23 witness in particular, in his statement is a correct version? Is that what you're
24 saying?

25 MR STEYNBERG: Yes, your Honour, in a nutshell.

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1 PRESIDING JUDGE EBOE-OSUJI: Then we'll leave it at that. Thank you.
2 There will be no debate back and forth on this and, Mr Kigen-Katwa, proceed and let
3 us know --

4 Mr Hooper, not on this matter. We're not debating.

5 MR HOOPER: No, no, I understand.

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MR HOOPER: And I am not going to discuss it. I've discussed this -- my particular
8 difficulty with Mr Kigen-Katwa and it merely comes to this, that there's one matter
9 that I overlooked to put on Friday. It's a matter that will only take minutes and I
10 overstepped it in my determination to conclude, and with the Court's leave I'd like to
11 have permission of the Chamber to ask just a few questions. It will take no more
12 than five minutes at the most; very most.

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 Let's bring -- Mr Kigen-Katwa?

15 MR KIGEN-KATWA: Mr President, and especially in view of the absence of the
16 witness, may I indicate that our team shares the position taken by Ruto's team in
17 respect to the conduct of -- or, rather, the collection of the statement.

18 More specifically it is our position that we do not share the witness's position that it is
19 the Prosecution which composed the statement and the allegations therein. That's
20 our position also.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Kigen-Katwa.

22 We will bring in the witness.

23 Ms Toumaj?

24 THE COURT OFFICER (via video link): Yes, Mr President.

25 MR STEYNBERG: While we are waiting for that, may I just indicate that I'm grateful

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1 to my learned friend for Mr Sang for that concession too.

2 (The witness enters the video-link room)

3 THE COURT OFFICER (via video link): Mr President, the witness has entered the
4 transmission room.

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

6 Witness, welcome back to the stand. Mr Kigen-Katwa was going to start
7 immediately. He will still be asking you questions a little later, but for now the
8 Chamber would allow Mr Hooper to ask you a few more questions that he had
9 forgotten to ask you last week, so Mr Hooper will now ask you some more questions.
10 Thank you.

11 Mr Hooper, we are in the open session.

12 MR HOOPER: Yes.

13 WITNESS: KEN-OTP-P-0495 (On former oath)

14 (The witness speaks English and Swahili)

15 (The witness gives evidence via video link)

16 QUESTIONED BY MR HOOPER: (Continuing)

17 Q. Good morning, Mr Witness.

18 A. Good morning, your Honour.

19 Q. Now, I only have just literally two or three minutes I want to spend with you
20 this morning, as His Honour just said, in respect of a matter that I overlooked to ask
21 you last week.

22 As it concerns a particular place that is identifying of you perhaps, I'd ask that we go
23 into private session.

24 PRESIDING JUDGE EBOE-OSUJI: Private session.

25 *(Private session at 9.49 a.m.) Reclassified into open session

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

2 MR HOOPER:

3 Q. Now in private session, I want to ask you about a place called (Redacted) . I've
4 got various spellings for it. In your statement it's spelt (Redacted) and I've seen
5 another spelling such as (Redacted) So we've got (Redacted) and a place called
6 (Redacted) close to (Redacted) I think I am right in saying that that's one and the
7 same place, is it not, Mr Witness? It's one place?

8 A. Your Honour, I did not understand the question.

9 Q. No, sir. Let me ask you this: Do you live near a place called (Redacted) ?

10 A. Your Honour, the place I know is a (Redacted) called (Redacted)
11 (Redacted)

12 Q. And very well. And is there a man who lives there called (Redacted) ?

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

14 Q. (Redacted) Do you know someone of that
15 name?

16 A. No, your Honour.

17 Q. Now, can you confirm that in your statement to the Prosecution, or at any other
18 time, you do not mention, do not speak about, any training of Kalenjin warriors
19 before the post-election violence? Let me put that question to you again. Do you
20 agree that in your statement you make no mention of any training of Kalenjin
21 warriors before the post-election violence; is that right?

22 A. Yes, your Honour. I have not mentioned any training before post-election
23 violence.

24 Q. Right.

25 MR GARCIA: I'm sorry. I'm sorry to interrupt counsel's cross-examination, but I'd

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1 just like to, in light of that question, just ask Defence counsel to look at paragraph 27
2 at page 0246 of the witness's statement.

3 MR HOOPER: I'm sorry, what are you -- what are you attracting my attention to?
4 Paragraph 27 in his statement?

5 MR GARCIA: It's paragraph 67.

6 MR HOOPER: Oh, sorry. Let me have a look. I don't know why I'm being drawn
7 to that paragraph when my question was clear.

8 Q. Mr Witness, let me repeat the question so that the Prosecution can understand it
9 too. Am I right in saying that at nowhere in your statement to the Prosecution do
10 you talk about any training of Kalenjin warriors prior to the post-election violence; is
11 that right?

12 A. Yes, your Honour.

13 Q. And did you ever hear of any training of Kalenjin warriors taking place in your
14 area where you live or near to the area where you live prior to the post-election
15 violence?

16 A. No, your Honour.

17 MR HOOPER: Thank you very much, Mr Witness. Sorry to have had to have come
18 back to you on that omission of mine and thank you again for your assistance.

19 PRESIDING JUDGE EBOE-OSUJI: Witness, now we will -- that concludes
20 Mr Hooper's questions to you and we will now invite Mr Kigen-Katwa to start his
21 cross-examination.

22 Mr Kigen-Katwa, we are in private session.

23 MR KIGEN-KATWA: I will request to start in private session very briefly.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MR KIGEN-KATWA: I will request the court officer to distribute our materials for

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1 cross-examination, please.

2 As that is being done, I could ask the witness a few questions.

3 QUESTIONED BY MR KIGEN-KATWA:

4 Q. Now, Mr Witness, could you confirm that in your statement paragraph 44 to 49,
5 you say that you attended a rally at Kipchoge Keino Stadium in Eldoret? And I
6 appreciate that you said that most of what is in that statement is not your narrative
7 and I am not interested in that. All I'm interested in is in the fact that when you are
8 asked by the Prosecution, you confirmed that in fact you signed that statement and so
9 I am taking you through that statement on that basis.

10 Now, I'll ask you the question again. You recall that in the body of that statement it
11 is said that you attended a rally at Kipchoge Keino Stadium from 23 December 2007?

12 A. Yes, your Honour, it is stated that way, but I did not attend.

13 Q. The next question I want to ask you in the private session is that it is your
14 testimony that after that rally at Kipchoge Keino Stadium, you proceeded to William
15 Ruto's home in Sugoi, isn't it?

16 A. Yes, your Honour, it is in the statement, but I never went to Mr William's home.

17 Q. Then the next thing of significance for us is that you arrived there, there was a
18 joint meeting and at 9 p.m. some people went into a different room, and amongst the
19 people who went into a different room was Mr Joshua Sang. Do you recall that that
20 is what you said in the statement? And that is more particularly at paragraph 46 and
21 47.

22 A. Yes, your Honour, that is what is in the statement, but that's not what I did.

23 Q. You also said, Mr Witness, that you left the -- Mr Ruto's home at 11 p.m., isn't it?

24 A. Your Honour, I was not in Mr Ruto's home so I was at home.

25 Q. Thank you, Mr Witness, I understand that. I am saying specifically from the

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1 statement that the statement says that you left Mr Ruto's home at 11 p.m. Do you
2 recall having said that? That is at paragraph 49, the last sentence -- the second last
3 sentence says this, "I left Ruto's house around 11 p.m. and went home. (Redacted)
4 (Redacted) Do you remember that -- that position being
5 stated in your statement?

6 A. Yes, your Honour.

7 Q. Now, you also told this Court that your home is in (Redacted) isn't it?

8 A. Repeat your question, your Honour.

9 Q. You told this Court that the distance from your home to Honourable Ruto's
10 home (Redacted)

11 (Redacted)

12 A. Yes, your Honour.

13 Q. Now, Mr Witness, are we to understand that you at 11 p.m., after you -- it is said
14 you had been in Ruto's home, (Redacted)

15 A. Your Honour, I was not at Ruto's home. I was at home.

16 Q. And just for -- may I correct the record. You said you come from (Redacted) not
17 (Redacted) isn't it?

18 A. Yes, your Honour.

19 Q. Now, in your statement you said at that paragraph 49 you (Redacted)
20 (Redacted) as I just read to you. May I ask you is that true? Did you (Redacted)
21 (Redacted)

22 A. Your Honour, I never (Redacted)

23 Q. And when the Prosecution were interviewing you, do you recall them asking
24 you for a (Redacted)

25 A. Yes, your Honour, but I never (Redacted)

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1 Q. Now, in your statement you have given a list of a number of people. The first
2 one at paragraph 46 and 47 you said amongst the people who went with Mr Sang for
3 a separate meeting are (Redacted)

4 (Redacted) and (Redacted)

5 May I ask you if you know these people? Do you know (Redacted) ?

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

7 Q. The spelling of (Redacted)

8 And if you do not know him, how did his name end up in your statement as being
9 amongst the people you know? Because that's what you said in your statement, that
10 you knew -- there were some people in that meeting you did not know, but others
11 you knew? You've actually said "I saw ..." -- there are people -- you have actually
12 specifically said these are the people you know. And my question is how did
13 you -- how did his name feature in your statement if you say you do not know him?

14 A. Your Honour, as I mentioned earlier, the statement was there on the table.
15 I was given to write it down. So I don't know (Redacted)

16 Q. Do you know (Redacted)

17 A. No, your Honour. I have never seen him or know him.

18 Q. (Redacted) ?

19 A. Your Honour, I do (Redacted) but I've never seen
20 him or know him.

21 Q. (Redacted) ?

22 A. No, your Honour. I do (Redacted) but I've never seen him or
23 know him.

24 Q. (Redacted) ?

25 A. Yes, your Honour, I know (Redacted) as once being (Redacted)

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1 Q. And (Redacted) ?

2 A. No, your Honour, I don't know (Redacted)

3 Q. So, Witness, it is your testimony that you neither attended a meeting allegedly
4 held at Kipchoge Stadium on 23 December 2007, nor did you attend a meeting at
5 Ruto's place in the evening of the same day?

6 A. Yes, your Honour, I did not attend any of the meetings.

7 Q. Mr Witness, would you be surprised that in fact there was absolutely no
8 meeting at Kipchoge Keino Stadium on 23 December 2007 where Honourable Ruto
9 and others addressed the public?

10 A. Your Honour, with me I am not interested in politics, so I never knew whether
11 there was a meeting or not, because I never went anywhere. I was at home.

12 Q. It is also your testimony before this Court that in fact you did not see Mr Sang at
13 Ruto's home in the evening of 23 December 2007, isn't it?

14 A. Your Honour, as it is written in the statement. Otherwise, I was not in the
15 meeting.

16 Q. I am asking you a question specifically in terms of whether you saw Mr Sang on
17 23 December 2007 in the evening at Mr Ruto's place?

18 A. Your Honour, how could I see Mr Sang when I am not in the first case in the
19 meeting?

20 Q. Now, I want you to look at -- you have testified already that you had an
21 interview with the Prosecution by phone before you met them. Do you recall that?

22 A. Repeat your question, your Honour.

23 Q. Do you recall that you had confirmed that before you met the Prosecution you
24 had had a telephone conversation with them, and I have the date 29 October 2012 as
25 being the date you had an interview with them on phone called the screening notes.

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1 Do you recall saying that?

2 A. Yes, your Honour.

3 MR SANG: I ask that we go to public session now, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Public session.

5 (Open session at 10.06 a.m.)

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

7 MR KIGEN-KATWA: Now, I would like the court officer in Nairobi to show you
8 that document, KEN-OTP-0095-0755, being the screening notes and it is in our tab 2 of
9 our bundle.

10 THE COURT OFFICER (via video link): Document KEN-OTP-0095-0755 is
11 presented to the witness.

12 MR KIGEN-KATWA:

13 Q. Now, Witness, I would like you to be shown paragraph 3 headed "Meetings."
14 Can you see that, Mr Witness?

15 A. Yes, your Honour.

16 Q. Now, the second last paragraph and the last paragraph in that page shows two
17 meetings. Can you see that?

18 A. Yes, your Honour.

19 Q. Now, I know we're in public session, but I can mention you had said that there
20 was a meeting on the 23rd in the two locations I asked you about, and my first
21 question is could you confirm that in fact in your screening notes you had not made
22 any reference to that meeting of the 23rd, the two meetings on the 23rd, the first one
23 in a stadium and the second one in a private location?

24 A. Yes, your Honour.

25 Q. Do you have an explanation why you had not made any mention of that

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1 meeting, Mr Witness, in that initial interview?

2 A. I never attended any of these meetings, your Honour.

3 Q. Could you also confirm that in the entirety of your statement, in the entirety of
4 your screening notes, you did not mention Mr Sang anywhere whatsoever?

5 A. Yes, your Honour.

6 Q. Now, I want to move on to a different issue. At paragraph 50 to 56 of your
7 statement you make reference to some events which according to you took place at a
8 location -- this is a public issue. Can you see that, Mr Witness, at paragraph 50, just
9 immediately above paragraph 50, on the 20 -- can you see that?

10 A. Yes. Yes, your Honour.

11 Q. Mr Witness, just before I finish that point, before I get into that point, may I ask
12 you could you confirm that apart from the position that you've just explained that
13 you did not mention Mr Sang that you actually made no reference to any rally in that
14 screening notes also?

15 A. Yes, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you pointed the witness --

17 MR KIGEN-KATWA: I could ask -- I think I -- I under -- I might -- (Overlapping
18 speakers)

19 PRESIDING JUDGE EBOE-OSUJI: Yes, so we don't cross the wires there.

20 MR KIGEN-KATWA: Mr Witness --

21 PRESIDING JUDGE EBOE-OSUJI: Sorry, just correct the matter.

22 MR KIGEN-KATWA: Yes, Mr President.

23 Q. Mr Witness, we were discussing the issue of two meetings on 23 December 2007,
24 one being a rally, the second one being in a private location, and I want to ask you
25 questions very specifically in respect to that 23 December 2007. May I ask you the

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1 first question: Could you confirm that in fact you did not mention any rally in your
2 screening notes of -- in your screening notes?

3 A. Yes, your Honour.

4 Q. Never did you mention the meeting in the private location that we've just gone
5 through, isn't it?

6 A. Yes, your Honour.

7 Q. Now, I request us to go to page 9 of the notes you have -- of your statement and
8 that is Ken --

9 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, let's get this right. Which
10 private location are you talking about? I believe that the two -- sorry, the private
11 location dealing with the accused person's residence was mentioned in public.
12 Wasn't that the case?

13 MR KIGEN-KATWA: I -- I thought it was in private session. I don't know.

14 PRESIDING JUDGE EBOE-OSUJI: I think we can mention it in public about whether
15 or not the witness was at Mr Ruto's home at a meeting and he says "No" to that. He
16 is saying so now. Is that the case? That's our understanding.

17 MR KIGEN-KATWA: Yes, may I ask him again?

18 PRESIDING JUDGE EBOE-OSUJI: All right --

19 MR KIGEN-KATWA: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: -- do that and also look at paragraph 50. I think
21 that location has also been mentioned in public session. The reason I say that is
22 when you say private location we do not know whether you are referring to one or
23 the other so we need to be clear on the record to avoid confusion later on.

24 MR KIGEN-KATWA: I am obliged, Mr President.

25 Q. Mr Witness, we've already confirmed that it is your testimony that in fact you

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1 did not mention the rally at Kipchoge Keino Stadium on 23 December 2007. The
2 other question I'd asked you was whether you mentioned the meeting allegedly held
3 at Ruto's home -- Ruto's house on 23 December 2007. Did you mention that in your
4 screening notes?

5 A. No, your Honour.

6 Q. Now, I want to move on to what is contained at page 50 to page 56, Mr Witness,
7 being events related to Brookside. Can you see that, Mr Witness?

8 PRESIDING JUDGE EBOE-OSUJI: Do you mean paragraphs 50 to 56, you mean?

9 MR KIGEN-KATWA: Yes, Mr President. I apologise if I didn't come out clear.

10 Q. Now, Witness, could you confirm that the events you've narrated at paragraph
11 50 to 56 were also not featured in your screening notes?

12 A. Yes, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Is that his screening note, Mr Kigen-Katwa?

14 That's one question. And the second question is does he have it as we speak? My
15 understanding is that a screening note is a document prepared by investigators after
16 meeting a witness -- a potential witness. Isn't that the case? So whether we can
17 characterise it as his screening notes.

18 MR KIGEN-KATWA: May I reformat my question, Mr President?

19 PRESIDING JUDGE EBOE-OSUJI: So it will be in the interview that resulted in the
20 screening note. Isn't that what we are getting at?

21 MR KIGEN-KATWA:

22 Q. Mr Witness, at paragraph 50 to 56 you've given a narrative of events relating to
23 Brookside. You can see that, isn't it?

24 A. Yes, your Honour.

25 Q. And these are events according to you that took place between 25 and

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1 26 December 2007, isn't it?

2 A. As it was stated in the statements.

3 Q. Now, you had just been shown the screening notes at tab 2.

4 If the court officer in Nairobi could show you KEN-OTP-0095-0755?

5 THE COURT OFFICER (via video link): The document is in front of the witness,
6 Mr Kigen.

7 MR KIGEN-KATWA:

8 Q. Witness, you can see it is headed "Screening notes"? You can see that?

9 A. Yes, your Honour.

10 Q. Now, my question is the screening notes is a product of discussion in an
11 interview you had with investigators. And my question is could you confirm if you
12 mentioned the events of the 25th and 26th at Brookside in the screening notes to the
13 investigators?

14 MR GARCIA: Just to be clear, your Honour, just for the record, and I stated this
15 initially I think, the screening note is actually the product of the investigators but
16 resuming what had been stated over a phone conversation. So that is the first point.
17 And just as to the way the Defence counsel is framing his questions, it should be
18 rather whether he told the investigators at that point this -- this information. This is
19 a screening note after all. The witness hasn't had a chance to confirm the
20 information that is on it at the time or later on, so it's basically what the investigator's
21 recollection, or what they've taken down as notes of the conversation with the witness,
22 and obviously it's subject to what questions were asked to the witness at that
23 particular time. So I understand that there has been a certain amount of cross on
24 that topic, but it can very well be that certain subjects were not broached. I will limit
25 myself to that at this point.

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1 MR KIGEN-KATWA: Mr President, I can reformat my questions so that it
2 accommodates the concerns of my recording.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. Keeping that in mind, as I had indicated
4 earlier, the screening note is a product of conversations had at the interview, so let's, if
5 we understand that, let's just keep it straight.

6 MR KIGEN-KATWA:

7 Q. Mr Witness, on that note that you've just been given the screening notes, you
8 will see there is a date -- can you see the date on that document, Mr Witness?

9 A. Yes, your Honour.

10 Q. Now, the question I'm asking you is: Did you mention to the Prosecutor -- to
11 the investigators the events you have narrated at paragraph 50 to 56 in your statement,
12 being specifically the narrative about the events at Brookside on 25 and
13 26 December 2007? Did you mention that to the investigators?

14 A. No, your Honour.

15 Q. Could you also confirm that on the face of the document you do not see any
16 reference to those events of Brookside on 25 and 26 December 2007?

17 A. Yes, your Honour.

18 Q. Now, the substance of what you say and which is relevant to Mr Sang is the first
19 sentence at paragraph 50 which I will read where it is said, "On the" --

20 PRESIDING JUDGE EBOE-OSUJI: We are now back to -- we have moved away
21 from the screening notes and back to the statement, is that it?

22 MR KIGEN-KATWA: Yes, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.

24 MR KIGEN-KATWA:

25 Q. Mr Witness, do you have the statement with you there?

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1 A. Yes, your Honour.

2 Q. Now, paragraph 50, the first sentence -- I will read only the first sentence and
3 then we go to paragraph 51. Paragraph 50 you said this, "On the evening of
4 25" -- you said that "On the evening of 25 ... there were rumours of ballot boxes being
5 transported by Mololine buses and 2 NK from Nairobi to Eldoret with cast votes
6 inside." You've seen that?

7 A. Yes, your Honour.

8 Q. Then at paragraph 51 is where you make specific reference to Mr Sang that "The
9 next morning on the 26 December at ... 7 a.m. " -- "... at around 7 a.m., I heard the
10 information about ballot boxes being announced by Sang on Lenet Emet, which was
11 Sang's program on Kass FM. I took this to be a warning that the ballot boxes ..."
12 were "... on the way." You can see that?

13 A. Yes, your Honour.

14 Q. Now, in the course of evidence in-chief through the Prosecution and
15 cross-examination by Ruto's team, you confirmed that it was in your general nature to
16 read newspapers. Did you say that?

17 A. Yes, your Honour, if I could come across a newspaper I read it.

18 Q. You also occasionally watched the TV and listened to the radio, isn't it?

19 A. Though I don't have a TV, so whenever I get one I watch.

20 Q. Now, could you confirm, Mr Witness, that the issue of the ballot boxes was the
21 same issue as the subject of administration policemen being used or allegedly being
22 used to -- by PNU in the build-up to 2007 elections? Could you confirm that that
23 was the same subject?

24 A. Your Honour -- your Honour, I am less concerned about the politics, so I don't
25 know exactly the relationship between the -- the ballot boxes, the Brookside and the

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1 police. I don't know.

2 Q. Do you recall, Mr Witness, that in the period of December 2007 there were
3 discussions that administration policemen were being used by PNU to rig elections?
4 To you recall that?

5 A. No, your witness, I never heard about it.

6 MR KIGEN-KATWA: Now, I will -- okay. I will -- I will play an audio that was -- a
7 video that was played to you by Ruto team on Friday. I want you to listen closely
8 and confirm if there is any relationship between the allegation made in that
9 paragraph 50 and 51 with what one Honourable Musalia Mudavadi say.
10 Mr President, that -- the translation is at our tab 9, Ruto's binder, and it is
11 KEN-009-0038-045 being the video which was already exhibited as EVD-T-D09-00261.
12 The translation itself is KEN-D09-0038-0469. We will play time stamp 0034 to time
13 stamp 0048. This is a video of events of 23 December 2007.
14 (Viewing of the video excerpt KEN-D09-0038-045)

15 MR KIGEN-KATWA:

16 Q. Mr Witness, the first thing I would request you to do is if you could summarise
17 to us what you heard Honourable Musalia saying in the video?

18 A. Your Honour, what I have already heard from the audio of Musalia is that the
19 policemen have -- have been mobilised all over and rigged the elections.

20 Q. And you recall that you were asked -- did you -- did you watch those events,
21 Mr Witness, those events of 23 December 2007 being featured in the video, that rally?

22 A. No, your Honour.

23 Q. Now, Mr Witness, I want to ask you, would you confirm that the issue of the
24 administration policemen being -- allegedly being used to rig elections is the same
25 thing that you have made reference to at paragraph 50 saying that there were fake

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1 ballot boxes being transported?

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

3 Q. My question, Mr Witness, is that at paragraph 50 you said there were rumours
4 of ballot boxes being transported by Mololine buses and 2 NK from Nairobi to Eldoret
5 and my question is, having watched the video, do you recall or does it occur to you
6 that there is a relationship between the allegations of ballot boxes and the use of
7 administration policemen to rig elections?

8 A. Yes, your Honour.

9 Q. Now, at paragraph 26 -- paragraph 51, could you confirm that according to you
10 Mr Sang announced this issue on 26 December 2007?

11 A. Your Honour, I did not hear. In fact, I had no radio on that day.

12 Q. Let me ask you this, Mr Witness. Paragraph 51 says that Mr Sang made this
13 announcement on 26 December. You can see that?

14 A. Yes, your Honour, I can see it in the statement.

15 Q. And you can see that Musalia was making or expressing concerns about it by
16 23 December, three days before the date referred to at paragraph 51? You can see
17 that, Witness?

18 A. Yes, your Honour.

19 Q. Two last questions on that issue. It is your position that this issue of the ballot
20 boxes were rumours, isn't it?

21 A. Your Honour, I believe they are rumours because in the first case I never heard
22 about it because I was at home.

23 MR KIGEN-KATWA: Now, I want to show you -- I want to show you a newspaper
24 report of the same date, 26 December 2007.

25 Your Honours, that is at our tab 5 and it is KEN-D11-0010-0125 and it was already

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1 marked as an exhibit, EVD 44.

2 I don't know if the court officer in Nairobi has shown you that newspaper cutting
3 KEN-D11-0010-0125.

4 Hello, court officer Nairobi, have you --

5 THE COURT OFFICER (via video link): Mr Kigen, I have -- I can't find the
6 document. Can I confirm with you the ERN number. Is it KEN-D11-0010-0125?

7 MR KIGEN-KATWA: Yes, and it was already marked as an exhibit, Exhibit 44.

8 THE COURT OFFICER (via video link): One moment, please.

9 PRESIDING JUDGE EBOE-OSUJI: It is a public document in any event, isn't it?

10 MR KIGEN-KATWA: It is, Mr President.

11 THE COURT OFFICER (via video link): I've found the document. The document is
12 presented to the witness.

13 MR KIGEN-KATWA:

14 Q. Now, Mr Witness, I want you to look at the first column to the bottom of your
15 left side with the heading "Agents in the night." Can you see that, Mr Witness?

16 A. Yes, your Honour.

17 Q. I will read. Please confirm if what I have read is correct. This is what the
18 newspaper -- could you first of all confirm what is that item you are holding?

19 What -- what is it?

20 A. It's a newspaper script, your Honour.

21 Q. Of which date, Mr Witness, and which newspaper?

22 A. Of 26 December 2007, your Honour.

23 Q. The Standard newspaper, isn't it?

24 A. Yes, your Honour.

25 Q. Now, could you confirm this is what it states in the first column, "With the

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1 elections only hours away, at least 20 civilian buses drove out of a high security
2 facility in Nairobi on Monday night as The Standard and KTN undercover reporters
3 and crew worked. The buses left Embakasi Administration Police Training College,
4 initially at intervals of between 10 and 20 minutes. Later, they left in much quicker
5 succession. Hours later, the destination of the buses and the mission of their
6 occupants became known ..." to "... TV footage and still pictures in our possession
7 show the names of the buses and their registration numbers. Several people ..." were
8 "... said to be APs were injured at Mbita in Suba District, when members of public
9 attacked them. They were also attacked in Sori in the volatile Nyatike constituency."

10 Can you see that, Mr Witness?

11 A. Yes, your Honour. I can see.

12 Q. Now, the first question I want to ask you is: Is this the same issue that you are
13 referring to as being the allegation of ballot boxes at Brookside on 25 and
14 26 December 2007?

15 A. Your Honour, I believe it could be the same issue that was there on 26th, though
16 I'm not very much aware.

17 Q. And, Witness, at paragraph 50 you said it is rumours. Can you see that it was
18 already featured in the newspaper of the 26th, which according to paragraph 21 is the
19 date that it is said Mr Sang made the announcement?

20 A. Yes, your Honour.

21 Q. And lastly from paragraph 1 could you confirm that apart from Standard
22 newspaper the issue was also featured by KTN as reported in that newspaper?

23 A. I don't know, your Honour, because I never heard about it in KTN. Neither I
24 never heard the radio.

25 MR KIGEN-KATWA: Okay, I want to take you to tab 9 -- tab 6, sorry, and that is -- I

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1 would request the court officer in Nairobi to assist. It is KEN-D11-0014-0211 and it
2 was marked as evidence EVD-T-D11-00045. I would request the court officer to
3 show you page 212.

4 THE COURT OFFICER (via video link): Document 0211 is before the witness and he
5 can view page 212.

6 MR KIGEN-KATWA:

7 Q. Now, Witness, could you confirm that that is a Standard newspaper report of
8 27 December 2007?

9 A. Yes, your Honour.

10 Q. Now, can you see the heading: "Calm restored in Nyanza" and then goes on to
11 say "Two APs killed by mob over allegations they would be used to rig today's
12 elections"? Can you see that?

13 A. Yet, your Honour.

14 Q. And then I want you to look at the next column where it is indicated "Don't
15 fight APs, Nyong'o pleads with supporters of ODM." Can you see that?

16 A. Yes, your Honour.

17 Q. Now, I will read the first paragraph and the fifth paragraph. The first
18 paragraph says that "ODM has appealed to party supporters to stop attacking
19 Administration Police officers." And then the first sentence in the next one is "ODM
20 Secretary-General Prof Anyang' Nyong'o told supporters to stop confronting the
21 officers, saying the move would affect voter turn out." And then at paragraph 5 it
22 says "Unsubstantiated claims have been doing the rounds that APs will be used to rig
23 elections." Can you see that, Mr Witness?

24 A. Yes, your Honour.

25 Q. Would you confirm if this is the general nature of the rumours that you have

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1 referred to at paragraph 50 of your statement -- of the statement?

2 A. Yes, your Honour.

3 Q. Now, could you confirm if in fact you heard Mr Sang make an announcement as
4 you -- as is stated at paragraph 51 that Mr Sang made an announcement on
5 26 December 2007?

6 A. I never heard, your Honour.

7 MR KIGEN-KATWA: Okay, I want to move in to a different issue. Mr President, I
8 appreciate the time, but the first two questions I'll ask will give me an indication
9 whether I have any more to ask him. Allow me to ask about two questions.

10 Q. Mr Witness, I want you to be shown by the court officer paragraph 80 of your
11 statement.

12 THE COURT OFFICER (via video link): Paragraph 80 is presented to the witness.

13 MR KIGEN-KATWA: Sorry, before we go to 80, I want you to go to paragraph 89, if
14 you could be shown paragraph 89.

15 THE COURT OFFICER (via video link): 89 is presented to the witness.

16 MR KIGEN-KATWA: Now, Witness, at paragraph 89 this is what you stated, "I
17 listened to the radio. I heard that so many areas were being burnt even Nairobi.
18 I was listening to Citizen FM. On Kass FM it was only music. I remained inside the
19 house." Can you see that, Mr Witness.

20 A. Yes, your Honour.

21 Q. Now, apart from hearing music, you say on Kass FM it was only music, did you
22 hear anything else?

23 A. No, your Honour.

24 Q. You heard music only from Kass FM?

25 A. I never had a radio, your Honour.

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1 Q. So let's -- let me just get it clear, Mr Witness. What do you accept as being the
2 true position of paragraph 89? Did you listen to Citizen FM?

3 A. No, your Honour. No, your Honour. I rarely have access to radio, especially
4 by that time no batteries, so I could not get the information from the radio.

5 Q. There is the part where you said you remained inside the house; is that correct?
6 And this is on --

7 A. I --

8 Q. -- 1 January 2008. I'm sorry, Witness.

9 A. All throughout I was within my compound, your Honour.

10 Q. What of the statement where you say, "I heard that so many areas were being
11 burned, even Nairobi." Do you recall having heard that?

12 A. Yes, your Honour.

13 MR KIGEN-KATWA: Mr President, I would like to leave my questions there.

14 I think I have no more questions.

15 Thank you, Mr Witness, for answering my questions.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Any re-examination?

18 MR GARCIA: No re-examination, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Witness, that will be all for you for now. We thank you very much for coming. We
21 wish you good luck with -- we wish you good luck in your discharge from the
22 testimony and also from your subpoena. Thank you.

23 (The witness and his counsel are excused)

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: We will take a break now in which time there

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- 1 will be the transition that will happen between the two witnesses.
- 2 Court will rise.
- 3 THE COURT USHER: All rise.
- 4 (Recess taken at 10.41 a.m.)
- 5 (Upon resuming in open session at 11.36 a.m.)
- 6 THE COURT USHER: All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 The next witness for the Prosecution would be Witness 516, appearing as a result of
- 10 the summons issued to him, and in Nairobi we understand that there is counsel
- 11 assigned to the witness. Is that the case?
- 12 THE COURT OFFICER (via video link): Yes, Mr President. The counsel of Witness
- 13 516 is present in the transmission room.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 15 Sir, could you kindly state your name for the record.
- 16 MR (Redacted) (via video link): Mr President, my name is (Redacted)
- 17 Could I spell it?
- 18 PRESIDING JUDGE EBOE-OSUJI: You spelt it last time; wasn't that the case?
- 19 MR (Redacted) (via video link): Yes, Mr -- yes, yes, Mr President.
- 20 PRESIDING JUDGE EBOE-OSUJI: Yes, we have it on the record, Mr (Redacted) . We
- 21 have been informed that you have been provisionally admitted to the list of counsel
- 22 entitled to represent persons before the Court. Is that the case?
- 23 MR (Redacted) (via video link): Yes, it is, Mr President. And I'm grateful.
- 24 PRESIDING JUDGE EBOE-OSUJI: Noted. We also understand, is that the case,
- 25 that you have been given access to the statement or statements of Witness 516? Is

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1 that the case?

2 MR (Redacted) (via video link): I have been given access. I have been able to go
3 through it.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. And have you had an opportunity
5 to review the statements with the Witness 516?

6 MR (Redacted) (via video link): I have had some time since Friday, Mr President,
7 but I -- I fear I didn't feel time was sufficient, but I understand the timelines.

8 PRESIDING JUDGE EBOE-OSUJI: You fear what? You --

9 MR (Redacted) (via video link): I feel maybe I could have gotten a little bit more
10 time, but I do appreciate the Court's timelines --

11 PRESIDING JUDGE EBOE-OSUJI: All right. So you --

12 MR (Redacted) (via video link): -- granted which I will do my best.

13 PRESIDING JUDGE EBOE-OSUJI: You could have needed more time, but you were
14 able --

15 MR (Redacted) (via video link): Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- to do what you could?

17 MR (Redacted) (via video link): That is so, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 We note that your role is limited solely to the question of the possibility of
20 self-incrimination by the witness and to advise the witness in respect of the applicable
21 provisions of the Court's basic documents that deal with that question, and also in
22 assisting with intervention that may be needed to be made in that regard in the course
23 of the testimony. Have you had occasion to review those provisions, specifically
24 Rule 74 of the Rules of Procedure and Evidence of the Court, as well as Articles 70
25 and 71 of the Rome Statute?

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1 MR (Redacted) (via video link): Yes, Mr President, I have had the time and the
2 chance.

3 PRESIDING JUDGE EBOE-OSUJI: You have had the time and the chance to review
4 them.

5 MR (Redacted) (via video link): That is so.

6 PRESIDING JUDGE EBOE-OSUJI: Yes. The Chamber will require you -- we do
7 require you to specifically advise the witness of those provisions. Have you done
8 that so far?

9 MR (Redacted) (via video link): Yes, I have, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Now, it is not the role of duty counsel appointed
11 in these circumstances, it is not your role to direct or guide the testimony of the
12 witness as to the merits of the case. The limitation -- the -- your mandate is simply
13 what I've indicated where the possibility of self-incrimination arises, to advise the
14 witness first, as you have said you've done, on the provision of the Rules, as well as
15 the Rome Statute, and also to be on standby in case that sort of possibility arises in the
16 course of the testimony for you to intervene at that stage and help the witness make
17 any observations or submissions that are -- legal submissions that may need to be
18 made at the appropriate time.

19 Also very, very critical in this -- in that task, in that task is to be on standby to signal
20 to the Court when an answer to a specific question might engage that possibility so
21 that we can go into private session to receive that answer. Ordinarily, it is the -- or,
22 generally speaking, it is the task of the lawyer who is asking the question to signal
23 that possibility, to tell us, well, we are now going in the direction or the territory or
24 the possibility of self-incrimination so that we will take the appropriate measures.
25 As well the Prosecution would be on the lookout for that and will tell us when that

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1 possibility arises, as well as Defence counsel, but you are also there to assist in case
2 there's been an omission to do so on the part of the questioners. Do you understand?

3 MR (Redacted) (via video link): I do understand that, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 MR (Redacted) (via video link): And I will be ready.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Now, the Prosecutor will have to advise us on the possibilities of self-incrimination
8 and we will go into private session to receive any submission the Prosecutor may
9 have.

10 We will go to private session now.

11 *(Private session at 11.43 a.m.) Reclassified into open session

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 Mr Steynberg?

15 MR STEYNBERG: Thank you, your Honours.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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

14 Now, while we're in private session, we will also deal with the question of

15 submissions on protective measures.

16 MR STEYNBERG: Thank you, your Honours.

17 Once again the Prosecution rests largely on its submissions in filing 1470-Conf. The

18 section relating to this witness is to be found under heading -- under paragraph C

19 from page 9 of that filing.

20 Additionally, your Honours, we are supported in this request for the usual suite of

21 in-court protective measures by the VWU'S assessment that was provided prior to the

22 testimony of the first witness in this session. And finally, as with the previous two

23 witnesses, the fact of possible self-incrimination under Article 74 also requires the

24 protective measures to protect the identity of this witness and various parts of his

25 evidence. Thank you.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 Counsel from the Defence side?

3 MR HOOPER: Subject to the view of the witness himself, we have no objection, but
4 we don't know if the witness himself has actually been asked about this, certainly not
5 be VWU whose observations, as I recall, are just, as I can put it, the usual; they're not
6 based, as I understand it, on anything this particular witness has said.

7 MS BUISMAN: Mr President, we share that observation. To be more precise on the
8 VWU report was issued on 29 August without having spoken to this witness, and
9 before these witnesses of this session have commenced their testimony, the normal
10 procedure was that the VWU would speak to the witness first and then come up with
11 a report, (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 So in light of these observations, we also request that the witness should be asked his
21 position at this stage.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR NARANTSETSEG: Thank you, Mr President, for this opportunity. On behalf
24 of victims, we support the Prosecution's application. In our respectful submission,
25 the requested protective measures are justified and proportionate and at the same

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- 1 time necessary, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 3 Prosecutor, any reply?
- 4 MR STEYNBERG: No reply, your Honours.
- 5 I omitted, however, to place on the record that the Prosecution team has changed
- 6 since the morning break. If I may just do that now? The Prosecutor is represented
- 7 now by myself, Anton Steynberg; and with me Regina Weiss; Lara Renton; and case
- 8 manager, Jasmina Suljanovic. Thank you.
- 9 MR HOOPER: And for the record, I see Mr Khan's roused himself and he's joined us
- 10 as well.
- 11 PRESIDING JUDGE EBOE-OSUJI: We will take a brief break and then we will
- 12 return in ten minutes.
- 13 The Court will rise.
- 14 THE COURT USHER: All rise.
- 15 (Recess taken at 11.50 a.m.)
- 16 *(Upon resuming in private session at 11.57 a.m.) Reclassified into open session
- 17 THE COURT USHER: All rise.
- 18 Please be seated.
- 19 PRESIDING JUDGE EBOE-OSUJI: We will go into public session.
- 20 (Open session at 11.57 a.m.)
- 21 THE COURT OFFICER: We are in open session, Mr President.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 23 We will render two rulings on the matters discussed by counsel: The first ruling on
- 24 Rule 74 and, secondly, we will render our ruling on the in-court protective measures.
- 25 After the ruling, we will adjourn and start back -- and return at 2.30 for the witness's

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1 testimony to commence in earnest. That will give Mr (Redacted) time not only to
2 advise the witness of the Chamber's ruling, but also there will be a little more time he
3 had indicated he could have used.

4 First, the ruling on Rule 74.

5 The Chamber notes that an issue of self-incrimination may arise in the context of the
6 anticipated testimony of Witness 516. The Chamber has heard the submissions and
7 the undertakings by the Prosecutor, and also we've heard the views, to the extent that
8 they expressed any views, put on the record by counsel for the Defence.

9 Where issues of self-incrimination arise, the Chamber may, having consulted in
10 particular with the Prosecution, provide an assurance under Rule 74 of the Rules of
11 Procedure and Evidence in order to enable a witness to testify truthfully without fear
12 of the consequences of self-incrimination.

13 As has been done in the past, these assurances granted with respect to Witness 516
14 under the same conditions as with previous witnesses, that is to say in relation to
15 Article 70(1), clauses (a) and (b), offences covered are offences committed in the face
16 of the Court in the course of testimony; perjury or giving evidence knowing the
17 evidence to be false or forged.

18 The Chamber does not absolve witnesses who come before it in relation to those
19 specific offences, but where a witness comes to Court and testifies truthfully, or does
20 not present false or forged evidence, that witness need not fear in carrying liability
21 under those two provisions.

22 In relation to Article 70(1)(c), information provided by the witness during his
23 testimony before this Chamber may not be used in any subsequent prosecution
24 against him or her directly, or indirectly, in relation to the offence indicated in Article
25 70(1)(c).

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1 For any part of the testimony of this witness where issues of self-incrimination arise,
2 the following measures will apply: The evidence shall be in private session or in
3 closed session; the identity of the witness and the content of such confidential
4 testimony shall not be disclosed in any manner; counsel for the accused, as well as
5 their clients, parties and participants and court staff present, or persons who
6 otherwise have access to the evidence or the testimony, are hereby specifically
7 cautioned that breach of this order may result in sanctions under Article 70(1) of the
8 Rome Statute; the relevant confidential transcripts of the evidence of this witness will
9 be placed under seal and the Court will apply appropriate protective measures to any
10 subsequent decisions in order to give effect to this order.

11 As indicated when I was directing remarks to Mr (Redacted) , it will be primarily the
12 responsibility of the parties to ensure that all questioning which may touch on aspects
13 of the witness's evidence, likely to give rise to issues of self-incrimination, is
14 conducted in private or closed session.

15 The witness or counsel on the witness's behalf may, in the same manner, also request
16 private or closed session if it is anticipated that an answer to any particular question
17 may give rise to self-incriminatory testimony.

18 Counsel is directed to ensure that the witness is fully informed of and understands
19 this ruling prior to the commencement of this -- of his testimony; the witness's
20 testimony.

21 Restrictions and contacts with witnesses during that testimony will apply in respect
22 of Witness 516. In particular, for the duration of his testimony counsel assigned to
23 him is only permitted contact with the witness on the conditions applicable to the
24 legal representatives of dual status witnesses.

25 Accordingly, counsel should refrain from holding any substantive discussions with

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1 the witness about the topics that are to be dealt with during his testimony, or
2 evidence that may be produced, but again, as indicated all along, the counsel for the
3 witness has been retained for the specific purpose for advising the witness as regards
4 Rule 74, or the possibility of self-incrimination and what may be done. For that
5 reason, he may at any time confer with the witness to give him appropriate legal
6 advice in that regard.

7 It is also the ruling of the Chamber that the basic principles of contact with witnesses,
8 as set out in the witness's preparation protocol, shall apply in respect of any contact
9 whether before or during the testimony of Witness 516, including any contact with
10 counsel. These principles prohibit coaching, training or practising of testimony, as
11 well as any attempt to influence a witness to testify to factual events the witness did
12 not observe or perceive.

13 This concludes the ruling of this Chamber at this time.

14 On the second ruling on protective measures for the witness in the courtroom, the
15 Chamber notes that the Prosecution had on 28 August 2014 filed the request for the
16 usual suite of protective measures, specifically image and voice distortion, the use of
17 pseudonyms, testimonies in private session when necessary and redactions to public
18 records where necessary to prevent identification of the witness.

19 On 5 September 2014, the VWU provided its observations supporting the Prosecutor's
20 request and noting in particular the circumstances in which this particular testimony
21 is being taken; in particular the witness is not here with us in the courtroom.

22 I also note that the Prosecution had indicated in their own submissions that the
23 circumstances of the possibility of self-incrimination is also a matter to be taken into
24 account in the Chamber's decision of protective measures during the testimony of the
25 witness.

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1 The Chamber has heard the observations of parties and participants in the case and
2 the Chamber grants the request made by the Prosecution.

3 That concludes our ruling on that matter.

4 We will adjourn now and come back at 2.30 for the testimony of the witness to start in
5 substance, during which time - during the intervening period – Mr (Redacted) will
6 have had more time to discuss with the witness, or advise the witness, and
7 specifically inform the witness of the Chamber's ruling.

8 MR HOOPER: There's one matter I can briefly raise perhaps. It needn't detain the
9 witness, nor his -- nor Mr (Redacted) and in fact it would be better said perhaps with
10 the connection severed, as it were.

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

12 *(Private session at 12.09 p.m.) Reclassified into open session

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

14 PRESIDING JUDGE EBOE-OSUJI: Is that severance of connection enough, or do
15 you also want connection severed with Nairobi?

16 MR HOOPER: We don't need Nairobi. That in fact was --

17 PRESIDING JUDGE EBOE-OSUJI: The point.

18 MR HOOPER: -- the point, yes.

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 MR HOOPER: We needn't be in private session, but we don't need the attendance of
21 either the witness nor his advocate.

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 Mr (Redacted) if you could step out for a moment. We want to hear what Mr
24 Hooper has in mind.

25 MR (Redacted) (via video link): Thank you, Mr President. Thank you.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.
- 2 (Mr (Redacted) exits the video-link room)
- 3 THE COURT OFFICER (via video link): Mr President, the counsel has left the
- 4 courtroom.
- 5 PRESIDING JUDGE EBOE-OSUJI: And you say we can return to public?
- 6 MR HOOPER: Yes. Yes, it is a brief matter. It needn't be in private.
- 7 PRESIDING JUDGE EBOE-OSUJI: We go back to public session then.
- 8 (Open session at 12.11 p.m.)
- 9 THE COURT OFFICER: We are in open session, Mr President.
- 10 MR HOOPER: As the Chamber will know, we received copies of material in various
- 11 degrees of redaction and sometimes the same material in progressive degrees of
- 12 unredaction.
- 13 The position here is that we've received the statement of this witness, 516, that's the
- 14 statement that's KEN-OTP-0087-0031, and the last version of that of which I was
- 15 aware and working with was R05, version 5. Normally they go up to two or three,
- 16 but this one had achieved five as a point of further redaction.
- 17 And we asked for the unredacted statement, not least of all because there were two
- 18 redactions or at least two redactions in the version R05, and those redactions related
- 19 to paragraph -- I think it's 34, let me just check on that -- 36 rather and also, and rather
- 20 surprisingly, to paragraph 124, a token of which I can show you from the bundle that
- 21 was compiled for me from the documents that the Prosecution are going to list in
- 22 evidence, that particular page appears like that. You can see that the entire
- 23 paragraph is blacked out.
- 24 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Hooper. Something just
- 25 occurred to me.

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1 Ms Toumaj?

2 THE COURT OFFICER (via video link): Yes, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Just in case, I remember when I told Mr (Redacted)
4 to step out I said "for a moment." He might be standing out there or sitting out
5 waiting to come back in. Now, he can move on now and do what he needs to do
6 with the witness. We will see him at 2.30.

7 THE COURT OFFICER (via video link): Okay, sir, I'll tell him.

8 MR HOOPER: So coming to paragraph 134, from your sight on the Bench you can
9 see from what you saw when I displayed the page that that particular paragraph was
10 still redacted. So we asked for -- with this witness now imminent for the Prosecution
11 to consider lifting that redaction or else place it again before the Chamber, and we
12 then last week received R06.

13 I'm occupied with another witness over this weekend, placed my attention of course
14 on the upcoming witness. I'm very surprised when I see the contents of 124, which
15 as far as the accused that we represent is concerned is the high point of this witness's
16 testimony.

17 And so I'm asking the Prosecution, through your Honour, to explain why it was that
18 this was redacted until just a few days ago and what the explanation is for that, given
19 their duties of disclosure and preeminently their duties of disclosure when it comes to
20 incriminating material because we, the Defence, have not had an opportunity to
21 investigate the allegation that's contained there.

22 And what's particularly perhaps striking about it in the little that we've -- I've been
23 able to uncover in any event is that Witness 613 in her testimony, you may recall, was
24 asked something about this subject and as I understand it clearly contradicts in her
25 testimony her evidence that she gave, the account that's contained in 124.

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1 I was deeply shocked and surprised when I saw the contents of that paragraph
2 revealed, and it's also the name was the redacted name, the name that appears in that
3 paragraph is, again, the redacted name that appears in the much-lesser-redacted
4 paragraph that appears at paragraph 36 that I refer to.

5 PRESIDING JUDGE EBOE-OSUJI: Hold on, Mr Hooper. I ordinarily, speaking for
6 myself, I try to avoid looking at witness's statements before they start testifying
7 because I want to have in my memory what the witness says in Court, so -- but now
8 that you've pointed or drawn our attention to paragraph 124, we don't even
9 have -- we have it redacted in the version we have, so we don't have paragraph 124.

10 MR HOOPER: Well, I was deeply surprised and shocked, and I don't like using
11 hyperbole, but those were the I think two adjectives that I think would describe my
12 reaction when I read that paragraph.

13 Now, it might be that the Prosecution have chosen not to rely on that paragraph, but
14 if they haven't, then I'd ask the Court to make it mandatory that they do ignore the
15 contents of that paragraph, because service on the Defence of incriminating evidence
16 of that kind cannot be done at the last -- relatively last moment. I don't know what
17 the explanation is, and I dare say the Prosecution may -- may be able to present you
18 with one, but I cannot see for the life of me what could possibly justify the position
19 that the Defence have now been placed in. And, your Honour, I'll say no more at the
20 moment.

21 PRESIDING JUDGE EBOE-OSUJI: I think you've made that point very clearly.

22 MR HOOPER: Yes, thank you.

23 MR STEYNBERG: Thank you, your Honours. The redactions in question deal
24 specifically, and I bear in mind we're in public session, but with a particular former
25 witness of the Prosecution's whom the Prosecution decided not to call as a witness as

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1 a result of serious security concerns relating to that witness. And as much as we
2 would have liked to have presented that witness to the Court and evidence relating to
3 that witness, the Prosecution took a conscious decision not to rely on the evidence of
4 that witness. The same goes for the paragraph which has been redacted.

5 However, your Honours are aware that as a result of --

6 PRESIDING JUDGE EBOE-OSUJI: Let me -- are you saying then that you will not be
7 relying on paragraph 124?

8 MR STEYNBERG: We will not be relying on paragraph 124, or any other matters
9 relating to that former witness that are referred to in this statement.

10 PRESIDING JUDGE EBOE-OSUJI: Does that satisfy you?

11 MR HOOPER: Yes, it does.

12 PRESIDING JUDGE EBOE-OSUJI: Okay.

13 MR HOOPER: Thank you very much.

14 PRESIDING JUDGE EBOE-OSUJI: We should not prolong the debate then.

15 MR HOOPER: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, we'll leave it at that.

17 MR HOOPER: I can calm myself over that.

18 PRESIDING JUDGE EBOE-OSUJI: Yes. So we hope that you recover from the
19 shock of it.

20 MR HOOPER: I believe so.

21 MR STEYNBERG: And, your Honours, I would have been happy to have advised
22 the Defence had they asked me of that.

23 PRESIDING JUDGE EBOE-OSUJI: That's why it's always important to exchange
24 views amongst counsel and, where matters are not resolved, then we can take them
25 up before the Chamber.

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- 1 Court will adjourn and we will come back at 2.30.
- 2 THE COURT USHER: All rise.
- 3 (Recess taken at 12.20 p.m.)
- 4 (Upon resuming in open session at 2.40 p.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 THE COURT OFFICER: We are in open session, Mr President.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Nairobi, are you with us?
- 10 THE COURT OFFICER (via video link): Yes, Mr President, we are with you.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you. And I do see the witness in the
- 12 courtroom -- in the -- on location in Nairobi; is that the case?
- 13 THE COURT OFFICER (via video link): Yes, Mr President. The witness is in the
- 14 transmission room.
- 15 PRESIDING JUDGE EBOE-OSUJI: All right. Witness 516. Can you please administer the
- 16 solemn declaration to the witness.
- 17 THE COURT OFFICER (via video link): Yes, Mr President.
- 18 WITNESS: KEN-OTP-P-516
- 19 (The witness speaks English and Swahili)
- 20 (The witness gives evidence via video link)
- 21 THE WITNESS: (Interpretation) I solemnly declare that I shall tell the truth, the whole
- 22 truth and nothing but the truth.
- 23 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome and thank you for joining us. The last
- 24 time we saw you was a brief introduction where I mentioned that --
- 25 THE WITNESS: Asante, Mr President.

26

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1 PRESIDING JUDGE EBOE-OSUJI: -- that you are appearing on the force of the summons
2 that was issued to you because the Prosecutor wanted you to appear and testify. Thank you
3 for coming. I want to tell you upfront that that summons that was issued to you remains
4 binding upon you until your testimony has been completed and the Chamber has discharged
5 you. Do you understand?

6 THE WITNESS: (Interpretation) Yes, your Honour. I understand.

7 PRESIDING JUDGE EBOE-OSUJI: You are joining us today by way of video conference.
8 That means effectively the courtroom has been extended from where we are in The Hague to
9 where you are in Nairobi, and we thank you for joining us in the courtroom as such. And as
10 I usually say to every witness who appears before the Court, that the courtroom -- this
11 courtroom belongs to them. I say the same to you, it belongs to you. This is your
12 courtroom as a member of the international community.

13 And the reason I say that in particular is to reassure you to be comfortable while you
14 are with us, with your testimony. Do not feel like a stranger when you are here.
15 This Court belongs to you as much as it does to the Judges here and as well to the
16 lawyers who will be asking you questions. So keep that in mind as you testify.
17 Do you understand?

18 THE WITNESS: (Interpretation) Yes, I understand you, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: You're here to help us with our work in conducting
20 inquiry into the post-election violence in -- that occurred in Kenya at the end of 2007,
21 beginning of 2008. The work we're to do, we will need your assistance very much in doing it
22 and the assistance we need from you is to answer the questions that the lawyers in this case
23 will ask you.

24 Do you understand?

25 THE WITNESS: (Interpretation) Yes, I understand, your Honour.

1 PRESIDING JUDGE EBOE-OSUJI: The first set of lawyers that will ask you questions, I
2 would say the first lawyer that will ask you questions will be a Prosecution lawyer who will
3 ask you questions. And after the questions from the Prosecutor, there will be questions from
4 the Defence lawyers. Mr Ruto has his lawyers in here, so too does Mr Sang. Each of --
5 lawyers from both teams will ask you questions after the Prosecutor has finished asking you
6 questions.
7 Now, it is important that you concentrate and listen carefully to the question that each
8 person would ask you. One question at a time. You understand the question and
9 then you answer it. It is important that you listen carefully and make sure you
10 understand the question you are being asked before you start answering.
11 It may be that you have all the answers to those questions, and that is fine, so you
12 give them to us in as brief a manner as possible. When you finish answering the
13 question in as brief a manner as possible, but still full, then you will stop. One
14 question at a time, this is important, stop and wait for the next question to come.
15 The way I'm speaking now, I'm speaking as you will see slowly, and that would also
16 happen in the questioning that will happen, that people will be asking you. The
17 reason why we speak slowly, it's not that we cannot speak fast. It's just that because
18 there are interpretations happening, interpretations of these questions you will be
19 asked.
20 And what happens sometimes is when the questioner slows down or stops, you may
21 think that this is time for you to kick in and start answering the question. It may also
22 be that you finish answering the question and the questioner hasn't started asking
23 you the next question immediately. This is the important one. You finish
24 answering one question, and the questioner has not started asking you a
25 question -- the next question immediately, then you may think that you've not said

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1 enough and you will continue. That is not the idea. The reason why the questioner
2 didn't start asking you questions immediately is because of the interpretation that is
3 going on. So the questioner is speaking slowly and pausing, so do not use that
4 opportunity to keep on talking feeling that you have not said enough.

5 This is very important. I take time and I spend time on it because I want you to
6 make sure that your answers are brief and to the point and then you wait for the next
7 question.

8 Do you understand?

9 THE WITNESS: (Interpretation) I understand, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Some of the questions that the lawyers will ask you may
11 appear difficult to you and some may appear even pointless. Some may even appear to be
12 repeating a question that has already been asked of you to which you've already given an
13 answer.

14 Do not worry about those. Just take it one question at a time and answer that
15 question, give the information that the question calls for and stop and wait for the
16 next question. Do not worry about whether or not the question is fair to you, or
17 whether the question is pointless. Keep on answering until I say, "No, do not answer
18 that particular question that is being asked of you." So this is very important for you
19 to keep in mind -- in mind as well.

20 Do you understand?

21 THE WITNESS: (Interpretation) I understand, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: I also need to stress to you about that matter of whether
23 or not you are being treated fairly by the lawyers who are asking you questions by the
24 manner of the questions they ask you. This is a matter that the Judges take very seriously.
25 The Judges do not like lawyers -- and that has not happened in this courtroom, I must tell you

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1 also, but we do guard against witnesses being treated unfairly. Because they have come to
2 the Court to obey the law and to respect the Court to sit and answer questions, we do not take
3 it kindly if lawyers take the opportunity to be unfair to the witnesses. So we will make sure
4 that you are protected from that point of view. I also want to say it has not been the practice
5 in this courtroom for lawyers to do that sort of thing.

6 Do you understand?

7 THE WITNESS: (Interpretation) Yes, I understand, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: One thing above all that we take the most seriously is to
9 speak the truth. We require you to speak to us only what is the truth as you know it. If you
10 do not know the answer to a certain question, do not be shy to say you do not know. If you
11 do not remember the answer, also you can say that. You can tell us you do not remember.
12 It will be for the lawyers to see what they can do to see if they can remind you of the
13 information if that is possible, but at all times it is important that you focus on telling us the
14 truth.

15 Do you understand?

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

17 PRESIDING JUDGE EBOE-OSUJI: And about speaking the truth, we've been told that your
18 lawyer, who has been assigned to be on hand during your testimony, has already advised you
19 that it is an offence under Article 70 of the Rome Statute to intentionally give false testimony
20 to the Chamber knowing that you are giving false testimony. It is also an offence for you to
21 present false or forged evidence to the Chamber knowing that the evidence is false or forged.
22 All that goes to the point of stressing the need for you to tell the truth.

23 Do you understand that?

24 THE WITNESS: (Interpretation) Yes, I understand, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: I also stress the need for you to concentrate on giving us

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1 information that you yourself know firsthand, things you saw yourself or words you heard
2 yourself, and if it is something you smelled yourself, assuming it's about smelling things that
3 the question asked for, it has to be something that you yourself perceived with your own
4 senses. Try to just give us that. Try to avoid guesswork, or drawing inferences.

5 When I say "drawing inferences," drawing inferences is when two things are put
6 together and then one says, "Because these two things are there, then the third thing
7 must be the case," even though you do not or did not see the third thing yourself. So
8 this is what I call drawing inferences.

9 The example I use is in simple mathematics one plus one. So one plus one would be
10 things that you would have known. Then equals to is the inference. Somebody
11 said, "If one plus one, then it has to be two." Try not to give us the two.

12 Concentrate on one plus one that you yourself perceived.

13 Do you understand what I'm saying?

14 THE WITNESS: (Interpretation) I understand, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Now, the Court has granted the Prosecutor's request that
16 certain measures be put in place to enable your testimony to be taken with minimal stress to
17 you and also to protect your identity.

18 What those measures are in essence is we will not be -- your image - your image, your
19 face - will not be broadcast to the public. Your voice also will not be heard directly
20 to the public. The Court has technology that's used to distort your image, as well as
21 your voice, so that members of the public who know you will not readily know that it
22 is you who is testifying.

23 We've also put in place - we've allowed - that your real name be not used when you
24 testify, but only your pseudonym will be used, and from time to time it may be
25 necessary to go into private session. That is when the public will not hear anything

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1 at all, not even your distorted voice. We go into private session to receive
2 information that may be identifying of you. So these are basic measures we've put in
3 place to make sure that your identity is not disclosed to the public.
4 Now -- but we hope that for the most part your testimony will be heard in public,
5 that's your evidence will be heard in public, but without your identity being
6 disclosed.

7 When we are in the public session it is important for you to avoid giving out
8 information that may identify who you are; information like your name, or names of
9 relatives of yours or close friends. It's important that you do not mention those
10 kinds of information when we're in the public session. Also addresses of those
11 people we don't want you to reveal in public. That includes your own address as
12 well.

13 In addition there may be information that, although it is not a name or address, it
14 could be a story, an event, that is very unique that somebody listening in public might
15 say it could only be you that would know that information. So that sort of
16 information we should also not give in the public session.

17 That is why we have the private session. It does not mean that names or addresses
18 or thoughts also of unique information I mentioned may not be given at all by you in
19 your testimony. It only means we will do that in private session.

20 Do you understand?

21 THE WITNESS: (Interpretation) Yes, I do understand, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: So please keep that in mind when we're in the public
23 session and a question has been asked of you that may lead to you mentioning names or
24 addresses of people close to you, or unique information. Be sure to keep in mind to draw my
25 attention to it and request for us to go into private session so you can speak freely on the

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1 information.

2 Now, there is a very important aspect of the advice I will have to give to you that
3 makes our work go well. That is how you speak. As I said some time ago, I'm
4 speaking slowly. I also mentioned that there are gaps that lawyers will observe. I
5 need to talk to you about that.

6 We have interpreters and court reporters who do their work. Without their work,
7 we cannot do ours successfully. Your testimony would not be properly recorded, so
8 they're here to help us keep record of the proceedings and we will like you to assist in
9 making their work easy for them; as easy as possible.

10 That requires you to not speak too fast during your testimony. That does not mean
11 you speak very, very slowly, but to speak at a moderate pace.

12 There is also another part to that useful information. That is the pause you need to
13 take between the end of the question being asked of you and you beginning to answer
14 it. We need you to observe a five-second pause. You observe that by counting to
15 five in your mind like this, one, two, three, four, five, and then you start answering.
16 That pause of five seconds will make sure that there are not two people overlapping
17 on the microphone; your microphone over there and mine over here and the
18 microphones of the lawyers who are asking you questions.

19 It is only through the microphones that the interpreters can hear you and the court
20 reporters can hear you to both interpret what you are saying and to record what
21 you've said. We do not want to crowd the microphone with two people speaking at
22 once. That is why the five seconds pause is important. When you observe it, it
23 makes sure that there is enough time for the interpreters to finish interpreting before
24 the next person starts talking, and that frees up the time, the space on the microphone
25 for your testimony to be captured properly.

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1 So please keep that in mind.

2 From time to time I may be reminding you of the need to remember this advice, but it is very,
3 very important for our work. Do you understand?

4 THE WITNESS: (Interpretation) I am not sure that I fully understood what you just said,
5 Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: All right, it boils down to this, and I'll repeat: You need
7 to speak slowly, but not too slowly. You also need to wait for five seconds between the time
8 somebody has finished asking you a question and the time you begin to answer the question.
9 I need you to observe, to wait for five seconds. As I said, I counted, one, two, three, four, five,
10 and then you can start answering. Do you understand that?

11 THE WITNESS: (Interpretation) Mr President, I understand you now.

12 PRESIDING JUDGE EBOE-OSUJI: Yes. Yes, thank you. So you observe those, count to
13 five in your mind. Count to five in your mind between the end of the question and then you
14 beginning to answer it, and then once you start answering you then speak slowly, not too fast.
15 That is the point I was trying to make. All right?

16 THE WITNESS: (Interpretation) I understand you, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Finally, there is a lawyer standing by with you there. I
18 see him sitting and taking notes. The reason why we appointed him to assist you or to be on
19 standby is because there may be times during your testimony when a question might arise
20 whether the answer you will give to a particular question might incriminate you in a crime,
21 that is why we have Mr (Redacted) Mr (Redacted) -- I forget. Can you please.

22 MR (Redacted) (via video link): (Redacted)

23 MR KHAN: (Redacted) I think.

24 PRESIDING JUDGE EBOE-OSUJI: Mr (Redacted) .

25 MR (Redacted) (via video link): That's right.

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1 PRESIDING JUDGE EBOE-OSUJI: I'm sorry about that.

2 MR (Redacted) (via video link): That's all right.

3 PRESIDING JUDGE EBOE-OSUJI: I'm sorry. Mr (Redacted) is on hand to assist you
4 when the time comes up and there is some concern that an answer you give may incriminate
5 you, he will assist with any intervention, but be also on the lookout for such questions
6 to indicate to the Court that that possibility exists, that if you give an answer in the
7 manner the question was asked it might incriminate you, Mr (Redacted) will then be
8 assisting with any submissions that may be made in that regard. It will also require
9 us going into private session if we're in public session for that answer to be given. I
10 understand that Mr (Redacted) has already advised you of what the legal position is,
11 what the Statute of the Court and the Rules say on that matter; is that correct?

12 THE WITNESS: (Interpretation) Yes, Mr President.

13 PRESIDING JUDGE EBOE-OSUJI: All right. With all that out of the way, I will now hand
14 you over to the Prosecutor, who will start questioning you. Mr Steynberg.

15 MR HOOPER: Yes, Mr Khan points out transcript page 54, line 7 and 8 might need a
16 correction. We're not sure, but we think probably.

17 MR KHAN: Your Honour, the line of course, the Judges do not like lawyers, I'm sure it's not
18 meant.

19 PRESIDING JUDGE EBOE-OSUJI: I'm sure you know that's not what was meant. All right.
20 Judges very much like lawyers. Judges are lawyers, too. So we will now have
21 Mr Steynberg start his questioning.

22 MR STEYNBERG: Thank you, your Honours. Before I do, perhaps one preliminary matter.
23 I notice that the witness has thus far been utilising the assistance of an interpreter. Much like
24 the last witness, your Honours, this witness also conducted his interview with the OTP in
25 English and provided a statement in English. So I wonder whether he might be able to assist

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1 us, at least initially, by giving his evidence in English with the proviso that the interpreter is
2 on standby to assist him if necessary.

3 PRESIDING JUDGE EBOE-OSUJI: Witness, that is an important matter that the Prosecutor
4 has raised, and I thank him for reminding me of that. I was actually going to also discuss it
5 with you.

6 We note that you are now speaking to us in Swahili, and we understand that that is your
7 preference. We understand why witnesses who come to court may want to testify in a
8 language they feel the most comfortable in. In this case that would be Swahili for you as
9 compared to English.

10 We would urge you to do your best to testify in English, and the reason for that is that
11 things would move a little faster, and we can finish sooner, and you will be done with
12 your testimony much sooner.

13 Also, and this is very, very important apart from the speed, it would also avoid any
14 arguments or confusion about interpretation, whether what you said in Swahili has
15 been correctly interpreted into English. It is for that reason that we encourage
16 witnesses who are proficient enough in the English language to testify in English.

17 We are not going to lock you out of Swahili altogether. The idea is not to say, well,
18 you must testify in Swahili all through -- sorry, in English all through. You can start
19 in English, and if there is some serious difficulty encountered from time to time for
20 which you feel that it is best for you to testify, express yourself more fully in Swahili,
21 we will accommodate that situation. Do you understand?

22 THE WITNESS: (Interpretation) Yes, I understand, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: So if we can start --

24 THE WITNESS: (Interpretation) Can I say something, Mr President?

25 PRESIDING JUDGE EBOE-OSUJI: Yes, you may.

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- 1 THE WITNESS: Can I say something, Mr President?
- 2 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.
- 3 THE WITNESS: (Interpretation) When I had a discussion with you, I expressed a desire to
- 4 testify in Kiswahili, which is the language I understand the most.
- 5 PRESIDING JUDGE EBOE-OSUJI: Is that what you wanted to remind me of or what you
- 6 wanted to tell me?
- 7 THE WITNESS: (Speaks English) Yes, Mr President.
- 8 MR HOOPER: Your Honour, may I -- sorry to intervene, but --
- 9 THE WITNESS: Yes, Mr President.
- 10 MR HOOPER: -- it may be of help because there is a slight implication in the way my friend
- 11 dealt with this matter, which I notice that in previous dealings with this witness interpreters
- 12 have been used, and indeed I can see from the transcript that I have, Prosecution transcript for
- 13 December --
- 14 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, one second.
- 15 MR HOOPER: Yes.
- 16 PRESIDING JUDGE EBOE-OSUJI: I wasn't really taken by whether or not the interpreter
- 17 had been used by the Prosecutor in the past.
- 18 MR HOOPER: No. No, it's not that. It's 2013. And this is the -- there is problems with
- 19 the line, but the OTP representative on that occasion, who I think is Ms -- well, I won't
- 20 mention his names - says, "I'm having real trouble understanding you," mentions the witness's
- 21 name. "It might be the case that I ring back later, maybe with an interpreter. Do you speak
- 22 Swahili?"
- 23 He says, "Yes."
- 24 He says, "Okay. I might try to arrange a bit later on possibly to speak with you with
- 25 an interpreter."

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1 The witness says: "Yes, it is better if you bring someone so we can talk Kiswahili
2 because English is not good for me."

3 And the interviewer says: "Yeah, I'm having trouble understanding you. The line
4 is not too clear ..." blah, blah. Is there another number as well?"

5 So I'm just putting that there is a history of this witness's expressing anxieties about having
6 to -- being limited to English.

7 (Pause in proceedings)

8 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Hooper, the court officer is saying that
9 there was difficulty, technical difficulty with the French booth hearing you. So they didn't
10 hear what you said in your last intervention. So everything you said wasn't captured. If I
11 may summarise, the sum of it is that Mr Hooper pointed out that the records indicate that the
12 OTP investigator did have difficulty with the witness on the matter of language, that the
13 witness during interviews had expressed difficulty with English then, and the
14 interpreter -- sorry -- the investigator or the interviewer did appear to have noticed that
15 herself and say that she would arrange for an interpreter to be on hand for subsequent
16 interviews, and the witness agreed with that.

17 That is the point of -- the sum of what Mr Hooper had said. We'll leave it at that.

18 Mr Witness, let's do this, but you can understand English, can you, even if you may
19 have difficulty communicating in English?

20 THE WITNESS: (Interpretation) Yes, I do understand some English, a little bit of English.

21 PRESIDING JUDGE EBOE-OSUJI: All right. Let's do this: Mr Steynberg will start his
22 questions and see how we go. He will ask you questions in English, and try to listen to him
23 in English. If you are having difficulty understanding him in English, tell us immediately.
24 He will speak to you in English and then you're free to answer in English or in Kiswahili. Do
25 you understand?

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1 THE WITNESS: (Interpretation) Yes, I do, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: But if you also have difficulty understanding his English,
3 also tell us immediately. We do not want you to answer a question that you did not
4 understand. Do you understand what I'm saying?

5 THE WITNESS: (Interpretation) Yes, I do understand, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, let's start. You have to be as simple as
7 possible in your English so that the witness can understand. That's why I've also tried to
8 speak in a similar way. I do not know if I succeeded, but I tried.

9 MR STEYNBERG: Thank you, your Honour. Similarly I will -- I will try my best.

10 QUESTIONED BY MR STEYNBERG:

11 Q. Good afternoon, Mr Witness.

12 A. (Speaks English) Good afternoon, sir.

13 Q. Before I start putting questions to you relating to your knowledge of the events in 2007
14 and 2008 for which you've been called to testify, I'd just like to confirm that, one thing, did
15 the -- or is it correct that the representatives of the Victims and Witnesses Unit asked you if
16 you would be prepared to undergo witness preparation with the Prosecution? Is that
17 correct?

18 A. It's correct, sir.

19 Q. And what was your response to that invitation, Mr Witness?

20 A. It was -- it was yes.

21 Q. Can I just confirm that you said that you were prepared to undergo witness preparation
22 with members of the Prosecution?

23 A. Yes.

24 Q. Because what was conveyed to us was that you did not want to undergo such
25 preparation; is that not right?

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1 A. Yes, but I had some little problems, so that's why -- that made me to say so.

2 Q. So the problems that you had made you say what exactly?

3 A. Because the women, they were -- can I talk in Kiswahili, please?

4 Q. Go ahead.

5 A. (Interpretation) When I was asked to testify, I did not say no. I was not well, and
6 that's the reason.

7 Q. I understand that. What I'm speaking about is not your testimony itself. My question
8 related to a request to meet with the Prosecution before your testimony in order to familiarise
9 you with your evidence before you got into the witness box. Do you understand?

10 A. (Speaks English) Yes. Mr President, ask me if I should -- I don't
11 know -- (Interpretation) The President asked me whether I wanted to meet the VWU staff or
12 staff from the OTP.

13 Q. Yes. And what -- and what did you choose?

14 A. (Speaks English) I choose VWU.

15 Q. Thank you very much.

16 MR STEYNBERG: Your Honours, at the outset I would like to place on record certain
17 personal particulars of the witness which in their nature will be identifying. Therefore, as
18 usual, may I ask that we go into private session? I expect that we can wrap this up in
19 approximately ten minutes.

20 PRESIDING JUDGE EBOE-OSUJI: Private session.

21 *(Private session at 3.25 p.m.) Reclassified into open session

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

23 MR STEYNBERG: Thank you, your Honours. And for the record my learned friends have
24 kindly indicated that the majority of this information is not in dispute, so I will lead the
25 witness until I get to an area I've been advised may be more sensitive.

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1 Q. Mr Witness, can you confirm your full names for the record are (Redacted)

2 (Redacted) is that correct?

3 A. (Speaks English) That's correct, your Honour.

4 Q. Is it correct that you're of the (Redacted)

5 A. Yes, your Honour.

6 Q. Is it correct that you speak English, (Redacted) and Kiswahili?

7 A. I speak fluently (Redacted) Kiswahili, but I've got broken English, not -- really
8 not correct enough.

9 Q. And is it correct, sir, you were born on (Redacted)

10 (Redacted) Kenya?

11 A. Yes, your Honour.

12 Q. (Redacted)

13 A. Yes, your Honour.

14 Q. And from (Redacted)

15 correct?

16 A. Repeat that, your Honour.

17 Q. (Redacted)

18 A. Yes, your Honour.

19 Q. From 1997 until the time when you gave your statement to the investigators in 2012, you
20 were living in (Redacted)

21 (Redacted) is that right?

22 A. No, your Honour.

23 Q. Which part is not correct, sir?

24 A. (Redacted)

25 Q. Where, in fact, were you a resident at that time?

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- 1 A. I was living near (Redacted)
- 2 Q. Is it correct, sir, (Redacted)
- 3 A. No, your Honour.
- 4 Q. So what is the name of the specific location that you now say you were living at at that
- 5 time?
- 6 A. (Redacted)
- 7 Q. (Redacted) Thank you.
- 8 Between 1990 and 1997, where were you staying?
- 9 A. I was saying (Redacted)
- 10 Q. All right. Is it correct, sir, that you attended the (Redacted) primary school,
- 11 (Redacted) Is that right?
- 12 A. Yes, your Honour.
- 13 Q. And thereafter is it correct that you attended the (Redacted) secondary school in
- 14 (Redacted)
- 15 A. Yes, your Honour.
- 16 Q. And what year of education did you complete in (Redacted) ?
- 17 A. I completed (Redacted)
- 18 Q. (Redacted) ?
- 19 A. Yes.
- 20 Q. And just for those who are not familiar with the Kenyan education system, what -- what
- 21 is the normal form that you would reach if you completed your entire secondary education?
- 22 A. That is O level.
- 23 Q. And how many years is that after (Redacted) ?
- 24 A. (Redacted)
- 25 Q. (Redacted)

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1 A. You do examination.

2 Q. (Redacted) ?

3 A. Repeat it again, sir.

4 Q. (Redacted) ?

5 A. (Redacted)

6 Q. All right. Now, I'd like to get some details please of your --

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, one second, please. Witness, what form
8 do people take O levels? At what form?

9 THE WITNESS: Form -- form 1 to form -- form 1 to form 4 is O level is when you do
10 examination then. A level is from form 5 to form 6 onwards.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 MR STEYNBERG:

13 Q. So would it be correct to say that at the end of form 4, if you are successful in your
14 studies, you will have completed your O levels? Is that right?

15 A. Yeah, yes, sir.

16 Q. And then from Form 5 onwards you start studying towards A levels if you choose to
17 continue?

18 A. Yes, sir.

19 Q. I see. I'd just like to get some details, please, Mr Witness, of your political affiliations,
20 that is, the political groups you supported during your life. Firstly, going back to 2002, is it
21 correct that you were a supporter of (Redacted) ?

22 A. Repeat that again, sir.

23 Q. Is it correct that in 2002 you supported (Redacted)
24 (Redacted) ?

25 A. Yes, sir.

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1 Q. And, in fact, is it correct that (Redacted) ?

2 A. No, sir.

3 Q. (Redacted) ?

4 A. No, sir.

5 Q. I see. Is it correct, sir, that in 2005 you (Redacted)

6 (Redacted) ? Is that right?

7 A. Yes, yes, sir.

8 Q. And is it true that in 2007 you (Redacted) ?

9 A. Yes, sir.

10 Q. And is it correct that in 2008 you (Redacted) as -- as at the time of your
11 statement in 2012, you had no political affiliations?

12 A. Correct, sir.

13 Q. All right. I'd like to move on then to your previous employment work and
14 related experience. Is it correct, sir, that at a certain stage you worked for (Redacted)
15 (Redacted) ?

16 A. Yes, sir.

17 Q. And for what years was that?

18 A. It was (Redacted) .

19 Q. And is it also true, sir, that at some stage you (Redacted) ?

20 A. Yes, sir.

21 Q. And what year or years was that?

22 A. The years that I was there living, I said I was living, (Redacted)

23 Q. So that was (Redacted) is that right?

24 A. Yes, sir.

25 Q. And for how many years did you (Redacted) ?

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1 A. (Redacted)

2 (Redacted)

3 Q. I see. Now, besides this employment work I've mentioned, were you --

4 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, can you have the witness repeat that
5 answer in Kiswahili and maybe your question should also be interpreted to him in Kiswahili
6 so we make sure he understands it.

7 MR STEYNBERG: Yes, thank you, your Honours.

8 Q. Just for clarity, Mr Witness, about (Redacted) I was asking you about - and
9 could I ask that this question be interpreted into Kiswahili - can you please again
10 explain when it was that you were (Redacted) ?

11 A. (Interpretation) I can't give you the exact year, but (Redacted)
12 (Redacted)

13 Q. And at what age did you finish your schooling? How old were you when you finished
14 going to school?

15 A. (Interpretation) I dropped out of school and went to (Redacted)

16 Q. (Redacted) you would have been approximately is it (Redacted) years
17 old at the time you finished school, or is it (Redacted) ?

18 A. (Int.) Well, if you calculate it that way I was -- yes, I was (Redacted) years old.

19 Q. In fact, it would be approximately (Redacted) to the end of (Redacted) . So
20 would it be correct then that, (Redacted)
21 (Redacted) ? Does that sound right?

22 A. (Interpretation) That's right.

23 Q. And can you just tell the Chamber, to wrap it up, (Redacted)

24 A. (Interpretation) (Redacted)
25 (Redacted)

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1 (Redacted)

2 Q. All right. Moving on then, were you at any stage involved in any NGOs,
3 non-governmental organisations? Firstly, do you know what an NGO is?

4 A. (Interpretation) Yes.

5 Q. And were you involved at any time in any -- working for any NGOs?

6 A. (Interpretation) Yes.

7 Q. Can you please one by one describe to the Court the name of the NGOs, your position
8 and the time or the time frame at which you worked for these NGOs? Start with the first one.
9 What was the first one called?

10 A. (Interpretation) The first NGO was called (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Just relating to the second one, is this the (Redacted) that
14 you're referring to?

15 A. (Interpretation) Yes.

16 Q. So the correct (Redacted) . And just for the record, the spelling of
17 (Redacted) ? Is that right?

18 A. (Interpretation) It's (Redacted) I wanted to explain to you how it was spelled.

19 (Redacted)

20 (Redacted) -- correction --

21 MR STEYNBERG: I'm sorry, Mr Interpreter, is there a correction coming?

22 THE INTERPRETER: Message from the interpreters: We are not quite sure
23 whether the witness has said (Redacted) or (Redacted)

24 MR STEYNBERG:

25 Q. Mr Witness, I think I heard (Redacted) Is that what you said?

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1 A. (Interpretation) (Redacted)

2 Q. All right, thank you. (Redacted)

3 A. (Interpretation) (Redacted)

4 Q. And for which years were you a member of this group; involved in this group?

5 A. (Interpretation) The group began in (Redacted) I don't know. I'm not sure
6 exactly when (Redacted) stopped their activities. (Redacted) but I don't remember
7 the exact months or dates.

8 Q. All right. That's something we can maybe return to in due course. So what was the
9 next NGO that you were involved in, sir?

10 A. (Interpretation) (Redacted)

11 Q. For how long?

12 A. (Interpretation) I worked for that NGO for (Redacted) because in actual fact
13 that was (Redacted) and it was a very short period of time.

14 Q. (Redacted)

15 (Redacted)

16 A. (Interpretation) (Redacted)

17 (Redacted)

18 MS BUISMAN: If I may very briefly? The image we get is very unclear. I'm not sure if
19 anything can be done about that?

20 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, we will continue. If anything can be done,
21 the Registry will look into it. That sort of concern was a similar one that Mr Hooper had
22 registered at one point. The same observation obtains. We have to proceed. The
23 experience has been sometimes the images would flicker to greater clarity, other times not,
24 but we have to keep going.

25 MR STEYNBERG: Thank you, your Honours.

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1 Q. Mr Witness, just to wrap up the issue of NGOs, I just want to understand clearly.

2 Besides (Redacted) were you involved with any other NGOs since (Redacted) ?

3 A. (Interpretation) No.

4 Q. All right. Then finally on the issue of your employment - and I don't think this will be
5 in dispute - is it also correct that at a certain stage you (Redacted)

6 (Redacted) ? Is that right?

7 A. (Interpretation) (Redacted) That's all.

8 Q. (Redacted) ?

9 A. (Interpretation) (Redacted)

10 Q. I see. Thank you. Perhaps while we're in private session, I'd just like to get
11 some clarity on two issues relating to your personal background -- three issues in fact.

12 You've corrected three things, well, two things that I put to you, that was firstly that
13 you were a resident in (Redacted) Do you remember you corrected me on that?

14 A. (No audible response)

15 Q. Do you remember that, Mr Witness, correcting me?

16 A. (Interpretation) Yes.

17 Q. You corrected me on the fact that you were (Redacted)

18 Do you remember that?

19 A. (Interpretation) Yes, I remember that.

20 Q. And finally on the issue of your involvement with various -- with NGOs, I'd just like to
21 ask you, sir, can you recall when you first met with members of the Prosecution? Do you
22 remember that? Which year was that firstly?

23 A. (Interpretation) Could you please ask me your question again.

24 Q. Do you remember which year it was when you first met face to face with OTP or
25 Prosecution investigators?

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1 A. (Interpretation) Yes, I remember.

2 Q. Tell us, please.

3 A. (Interpretation) It was in 2012, the 12th -- no, rather, it was from the 20th to the 24th of
4 November 2012.

5 Q. All right. And I don't want to --

6 THE INTERPRETER: The witness added: In (Redacted)

7 MR STEYNBERG:

8 Q. All right. And is it correct that you met with two investigators by the names of
9 (Redacted) Do you recall that?

10 A. Yes, I remember.

11 Q. And at the end of that interview is it correct you signed a witness statement?

12 A. (Interpretation) When I went to the place where the conversation was held, there was
13 a statement that included some things that were true and some things that were false.

14 MR STEYNBERG: Your Honours, I'm just debating whether we need to stay in private
15 session or we should go into public session for this. The reason why I'm in private session is
16 that the areas I intend to show to the witness deal with personal matters, but it seems that this
17 explanation might transcend those narrow issues. I'm in the Chamber's hands.

18 PRESIDING JUDGE EBOE-OSUJI: Let's go to public, and then if there is any difficulty, we'll
19 come back in. Public session.

20 MR STEYNBERG: Your Honours, perhaps before we can go into public session if I can just
21 explain to the witness the use of the PIS, and then so he knows that if we are going to mention
22 any names in public we can use that.

23 PRESIDING JUDGE EBOE-OSUJI: Can we do that in public as well, the use of the PIS?

24 MR STEYNBERG: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: Yes.

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1 MR STEYNBERG: Very well.

2 (Open session at 3.54 p.m.)

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

4 MR STEYNBERG: Thank you.

5 Q. Mr Witness, before you continue with that explanation, I'll come back to that in a
6 moment, but I'd just like to explain to you certain procedures I'm going to ask you to follow in
7 order to protect the protective measures that the Chamber has granted to you.

8 And I would ask the court officer, please, to call up page 2 of the protected information sheet
9 for the witness to see and confirm when that's done.

10 THE COURT OFFICER (via video link): Mr Steynberg, a paper copy of page 2 of the PIS is
11 (indiscernible) the witness.

12 MR STEYNBERG:

13 Q. All right. Mr Witness, as we are going through your evidence, it may be necessary to
14 refer to certain locations?

15 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we need to take that again. Not from
16 your end, but from the court officer's end. There is something that ended "indiscernible".
17 We want the matter to be clear on the record.

18 Court officer in Nairobi, you said to Mr Steynberg a paper copy of page 2 of the PIS, and then
19 we did not -- the record did not get the rest of what you said.

20 THE COURT OFFICER (via video link): The paper copy of page 2 has been presented to the
21 witness.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR STEYNBERG: Thank you, your Honour.

24 Q. Mr Witness, as I was saying, if you look at the page in front of you, there are various
25 places and names of people, so locations and people, that you might need to refer to in the

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1 course of your evidence, and if we were in public session, particularly in public session, I
2 would ask you not to mention those names and places since they might identify you to
3 members of the public. Do you understand?

4 A. (Interpretation) No, I haven't really understood what you said. Could you please
5 repeat?

6 Q. All right. Let's look at the first item on the page under the heading "Locations".
7 Without reading it out loud, because we're in public session, do you see the name of that
8 place?

9 A. (Interpretation) Yes.

10 Q. If in the course of your evidence you need to refer to that place, please don't say it out
11 loud, rather refer to location number 1. Do you follow?

12 A. (Interpretation) Yes.

13 Q. And similarly, also, if you need to refer to any of the persons listed below numbers 1 to
14 12, could you please refer to them as person number 1, person number 2, person number 3
15 and so on; understand?

16 A. (Interpretation) Yes.

17 Q. All right. All right, thank you.

18 Now, let's go back to the explanation you were -- you started to give to the Chamber
19 regarding the circumstances under which you came to sign a statement before the OTP.
20 Perhaps we can first start by just identifying the actual statement that you -- that you signed.
21 MR STEYNBERG: Madam court officer, I'm not sure whether you have a paper copy or an
22 electronic copy of that statement available. Can you please confirm which you have and also
23 which revision you have.

24 THE COURT OFFICER (via video link): Mr Steynberg, I have a paper copy of document
25 KEN-OTP-0087-0031. It's a redacted version, but I'm unsure which redacted version it is. I

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1 can however confirm that (indiscernible) paragraphs of that (indiscernible).

2 MR STEYNBERG:

3 Q. Can you just confirm whether paragraph 124 is redacted? That will help us?

4 THE COURT OFFICER (via video link): Yes, it is.

5 MR STEYNBERG: All right. Then I think you have revision 5, which will be fine for
6 present purposes.

7 Q. So, Mr Witness, can I ask you please to look at the front page of that document that the
8 court officer was showing you. Do you have that in front of you now?

9 MR HOOPER: I see the time, so perhaps this is a -- just a brief moment. Are we going to
10 actually ask the witness what his account is, or is my friend choosing to go straight to the
11 statement? And why is the PIS form headed by the name of someone who doesn't feature in
12 the evidence at all? And indeed, number 3 on the list is someone who doesn't feature in the
13 evidence. It's rather telling that the Prosecution is approaching the witness in this particular
14 way. Wouldn't it be better to ask the witness what his account is and come about in that
15 way?

16 MR STEYNBERG: May I start by correcting my learned friend that both of those persons are
17 distinctly mentioned in the statement. I refer to paragraphs 19 and 20. I do indeed
18 ask -- intend to ask the witness to give his account. I just wanted to identify this statement
19 we were talking about. And I do not intend to go to the contents, but as we've done in the
20 past, simply get him to identify his signatures thereon.

21 Perhaps we can just wrap up with that issue and then we can move on in the
22 morning.

23 Q. Mr Witness, do you recognise this document that's being shown to you?

24 A. (Speaks English) No.

25 THE INTERPRETER: Answer, "No."

Trial Hearing
Witness: KEN-OTP-P-0516

(Open Session)

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1 THE WITNESS: (Interpretation) Please repeat your question.

2 Q. Yes. My question was: Do you recognise the document, the statement that's being
3 shown to you by the court officer? Have you seen this before?

4 A. (Interpretation) Yes.

5 Q. And is that -- is it correct that that is your name, bearing in mind we're in public session,
6 don't read it out, that your name appears at the top left under the words "Witness
7 information"? Is that right?

8 A. (Interpretation) Yes.

9 Q. Thank you. And could you please just turn over to page 2, and at the top of page 2 just
10 above the bold words "Witness statement," can you confirm that your signature appears
11 there?

12 A. (Interpretation) Yes.

13 Q. And for the record, which one of those three signatures is yours?

14 A. (Interpretation) The first.

15 Q. Thank you. And then just to wrap this up, if you can then please turn to the very last
16 page of this document, it's page 23. Can you confirm that below the words "Witness
17 Acknowledgment," your signature appears again and the date 23 November 2012; is that
18 right?

19 A. (Interpretation) Yes. However, let me make a correction or two.

20 MR STEYNBERG: Your Honours, obviously the witness needs to be given the opportunity
21 to make that correction. I'm in the Chamber's hands as to whether we proceed with that now
22 or in the morning.

23 PRESIDING JUDGE EBOE-OSUJI: We might as well take the correction now. Let's see
24 what the witness has to say.

25 MR STEYNBERG: Thank you. I'm grateful, your Honour.

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(Private Session)

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- 1 Q. Please proceed with your correction, sir.
- 2 A. (Interpretation) When you asked me whether I went to (Redacted) and at what --
- 3 PRESIDING JUDGE EBOE-OSUJI: Let's stop --
- 4 THE WITNESS: (Interpretation) -- date --
- 5 PRESIDING JUDGE EBOE-OSUJI: -- let's stop now.
- 6 THE WITNESS: (Interpretation) -- or on which date.
- 7 PRESIDING JUDGE EBOE-OSUJI: Interpreter, can you stop interpreting for now, please.
- 8 We'll go to private session.
- 9 *(Private session at 4.05 p.m.) Reclassified into open session
- 10 THE COURT OFFICER: We're in private session, Mr President.
- 11 MR STEYNBERG: Thank you, your Honours. Obviously the word (Redacted)
- 12 should be redacted. May I make that application?
- 13 PRESIDING JUDGE EBOE-OSUJI: Yes, it will, to the extent that it has already escaped and
- 14 got into the public domain.
- 15 Witness, can you start again? Can you start over? We were in the public session.
- 16 The reason I interrupted your answer was because we did not want you mentioning
- 17 that location (Redacted) when we are in the public session. Can you start again with
- 18 the information you were giving us from the beginning, please?
- 19 THE WITNESS: (Interpretation) Thank you, Mr President. This is what I wanted to say:
- 20 I made a mistake when I said that I left that location on the 24th. It was instead on the 23rd.
- 21 That having been said, yes, indeed, the signature is mine and the date on the document is
- 22 correct.
- 23 PRESIDING JUDGE EBOE-OSUJI: Is that the correction you said you wanted to make?
- 24 THE WITNESS: (Speaks English) Yes, that is the correction, yes, Mr President.
- 25 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you. We will leave it there for today

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1 and then we will continue tomorrow and Mr Steynberg will continue asking you questions.
2 Please do not discuss your testimony with anybody when you are outside of the Court. In
3 other words, overnight do not discuss your testimony with anybody. The only discussion
4 we want you to have of your testimony is the one we want to hear from you directly when
5 you are giving your testimony. Do you understand? Thank you.

6 THE WITNESS: (Interpretation) Yes, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: So we will see you tomorrow.

8 And the Court will adjourn.

9 THE COURT USHER: All rise.

10 *(The hearing ends in private session at 4.08 p.m.) Reclassified into open session

11 RECLASSIFICATION REPORT

12 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
13 2013, the version of the transcript with its redactions becomes Public.