

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 Friday, 19 September 2014
10 (The hearing starts in open session at 9.40 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.
23 For the Prosecution appearances remain the same.
24 MR NARANTSETSEG: Good morning, your Honours.
25 On our side our appearance remains the same.

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1 Thank you.

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

4 MR HOOPER: And so does that of Mr Ruto. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Witness, welcome back. Mr (Redacted) in Nairobi, we note your appearance on the
7 record as well.

8 MR (Redacted) (via video link): Thank you, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Witness, we're happy to have you back.

10 Unfortunately we could not continue yesterday because of technical difficulties in the
11 literal sense. We're glad to be continuing today.

12 Mr Garcia?

13 MR GARCIA: Good morning, your Honours. Indeed, but for the rest of the
14 examination of this witness, your Honour, I'd ask to go back into private session. I
15 don't foresee us coming back out of private session given the nature of the topics that
16 I'm going to be dealing with this witness.

17 PRESIDING JUDGE EBOE-OSUJI: How much longer do you intend to stay with the
18 witness?

19 MR GARCIA: No more than an hour, your Honour. I understand that yesterday
20 we stopped at about 3.08/3.09, so I'll not take more than an hour.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, it looks like the bulk of the
22 cross-examination on the Defence side might be yours. How much time so far do
23 you think you might take?

24 MR HOOPER: Well, you've indicated that you want this witness concluded today,
25 in terms of both Defences and re-examination or re-cross-examination I suppose as it

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1 would be, and I hope we can achieve that.

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

3 We will go to private session.

4 *(Private session at 9.43 a.m.) Reclassified as open session

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

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

7 (The witness speaks Swahili and English)

8 (The witness gives evidence via video link)

9 QUESTIONED BY MR GARCIA: (Continuing)

10 Q. Good morning, Mr Witness.

11 A. Morning, your Honour.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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- 9 PRESIDING JUDGE EBOE-OSUJI: Let us stop.
- 10 (Trial Chamber confers)
- 11 PRESIDING JUDGE EBOE-OSUJI: The Chamber will rise for ten minutes and we'll
- 12 come back.
- 13 THE COURT USHER: All rise.
- 14 (Recess taken at 10.03 a.m.)
- 15 *(Upon resuming in private session at 10.14 a.m.) Reclassified as open session
- 16 THE COURT USHER: All rise.
- 17 Please be seated.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 19 Mr Garcia, please continue.
- 20 MR GARCIA:
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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25 PRESIDING JUDGE EBOE-OSUJI: Now, it's 11 o'clock. We'll leave it at that for

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1 now.

2 Witness, we'll be taking our morning break.

3 Mr Garcia, you said you would be finished within the hour. I'm sure we've gone
4 well past -- over the hour.

5 MR GARCIA: Your Honour, if I could just request ten minutes after the break,
6 I can -- I can wrap it up?

7 PRESIDING JUDGE EBOE-OSUJI: Can the witness be excused from the courtroom,
8 Ms Toumaj, or from the other end.

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 THE COURT OFFICER (via video link): Yes, Mr President. Should the counsel also
12 leave the courtroom?

13 PRESIDING JUDGE EBOE-OSUJI: No, he can remain.

14 THE COURT OFFICER (via video link): Okay, thank you. I will confirm when the
15 witness has left.

16 (Witness exits the video-link room)

17 THE COURT OFFICER (via video link): Mr President, the witness has left the
18 courtroom.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Mr Hooper, Mr Kigen-Katwa, Mr Garcia has said he may -- he's requested ten more
21 minutes after the break. I'm concerned that we finish this witness today. That is
22 what's driving this pressure from the Bench. If he gets the ten minutes, would that
23 be too disruptive of your own projection?

24 MR HOOPER: Well, we'd hoped to finish today, but it compresses us when one
25 considers the amount of time the Prosecution have had. I think that's a factor. I

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1 know that the Chamber -- we may have to go into Monday. So I can't make a
2 promise that we'll finish today, but I will do my utmost to do so and I hope the Court
3 will understand.

4 PRESIDING JUDGE EBOE-OSUJI: So far -- so far, how much time do you think you
5 will need so far? I mean we're not holding you to it now.

6 MR HOOPER: No. I've been consistently unreliable on time, to be honest, not just
7 in this case but in others and I really hesitate to commit, but I'm saying that I hope
8 that we can conclude. We could sit, for example, at 2 o'clock. That would win us
9 another half an hour.

10 PRESIDING JUDGE EBOE-OSUJI: All right. We'll leave it there.

11 Mr Kigen-Katwa, and you, any indication of how much time you think you will need
12 with this witness? I stress the word "need".

13 MR KIGEN-KATWA: Mr President, my original estimation of the time I would need
14 with this witness is two hours. I must say that in the course of time -- the two hours
15 is informed by what he had put in his statement. In the course of time, there are
16 circumstances that require me to reconsider. The time could be shorter -- the time I
17 require could be much shorter than the two hours, but just as a precaution that is the
18 time I had estimated I would require with this witness.

19 PRESIDING JUDGE EBOE-OSUJI: We will require everyone to do their utmost to
20 finish this witness today and we will keep an eye on things.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 The Court will adjourn.
- 5 (Recess taken at 11.06 a.m.)
- 6 *(Upon resuming in private session at 11.44 a.m.) Reclassified as open session
- 7 THE COURT USHER: All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 10 We will stop this discussion in 10 minutes, as I indicated, and we will
- 11 take -- Mr Kigen-Katwa, you are standing already?
- 12 MR KIGEN-KATWA: Yes, Mr President. On the issue you have asked us to
- 13 address you within ten minutes. I wanted to apply that you allow us to respond on
- 14 Monday so that we have enough time to look at it. It is an issue that will keep
- 15 coming up. It is likely to keep coming up from the disclosures that the Prosecution
- 16 has given us in respect of the remaining witnesses, and we would like to be very
- 17 deliberate and conscious. We do not mind a time limit within which we are to
- 18 respond, but we request for relocation to Monday.
- 19 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, do you join that prayer?
- 20 MR HOOPER: Well, I'm looking at the time now at quarter-to-12. It certainly
- 21 perhaps would mean we could press on now, so yes.
- 22 PRESIDING JUDGE EBOE-OSUJI: You do join the prayer?
- 23 MR HOOPER: Yes.
- 24 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 25 Prosecutor?

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1 MR GARCIA: Your Honours, I am not sure if the Chamber is considering having
2 this whole debate postponed until Monday. I mean, on my behalf, I have a
3 maximum of ten minutes to -- of submissions on the matter. I think it is a factual
4 issue and it's not that complicated.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Better still, let's do this: Let's have
6 submissions in writing on the matter, so that we don't spend too much time, and by
7 Monday file your submissions. And let's keep things to ten pages, please, no more
8 than that.

9 All right. Mr Garcia, please proceed.

10 MR HOOPER: Sir, when you say Monday, 1600, the usual time?

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MR HOOPER: Yes.

13 MR NARANTSETSEG: Excuse me, your Honour, do I understand that your
14 Chamber -- your Honour invites also the legal representatives' view on this?

15 PRESIDING JUDGE EBOE-OSUJI: Yes, go ahead, please.

16 MR NARANTSETSEG: Okay, thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Ms Toumaj, please bring in the witness so we will continue.

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

20 (The witness enters the video-link room)

21 THE COURT OFFICER (via video link): Mr President, the witness is back in the
22 room.

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

24 And, Witness, welcome back.

25 Mr Garcia, you will finish in ten minutes, no more.

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1 MR GARCIA: Court officer, I'd like to have document -- actually it is Prosecution
2 exhibit 256 to be shown to the witness. It's tab 9, KEN-OTP-0084-0256. More
3 specifically, I'd like page 0266 to be shown to the witness.

4 PRESIDING JUDGE EBOE-OSUJI: What tab again, sorry?

5 MR GARCIA: Tab 9, your Honour.

6 Q. Mr Witness, do you see that page 0266 before you?

7 THE COURT OFFICER (via video link): Page 0266 is now presented to the witness.

8 MR GARCIA:

9 Q. Now, Mr Witness, it says here, at the second half of that page, " (Redacted)

10 (Redacted) (1) (Redacted) / 2011 - meeting

11 held in the home of (Redacted) , chaired by (Redacted) .

12 (Redacted) "

13 I'd like to have the witness shown the document at tab 1, KEN-OTP-0082-0255, please.

14 THE COURT OFFICER (via video link): KEN-OTP-0082-0255 is presented to the
15 witness.

16 MR GARCIA:

17 Q. Now, Mr Witness, do you agree that at the top of this document it says "Meeting
18 held on (Redacted), 2011.

19 Venue (Redacted)'s home at night."

20 And it reads: "Members in attendance."

21 And one of the -- and at the bottom of the page, last paragraph, it says: "The meeting
22 was done in a (Redacted) chaired by (Redacted)."

23 Do you see all those -- all that writing?

24 A. Yes, your Honour, I'm seeing them.

25 Q. Is this the same (Redacted) that is being referred to in your -- in Prosecution exhibit

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1 256 in the -- in your notebook, the first one?

2 A. I don't know, your Honour, because I don't even -- where the (Redacted) came from.

3 Q. But you agree with me, Mr Witness, that the information is similar, is the same?

4 A. Your Honour, all these documents I don't know where they come from.

5 Q. Now, second inscription, at the bottom of 0266, it says. "(Redacted) 2011 meeting
6 at home of (Redacted).

7 (Redacted)

8 I'd like to have shown to the witness tab 2, document 0082-0267.

9 MR HOOPER: Can I just ask the Prosecution at this stage for clarity as to what they
10 say the source of these documents is?

11 MR GARCIA: That is exactly, your Honour, what we're asking the witness and the
12 witness will answer.

13 Q. And, Mr Witness, you see before you document 0082-0267 and it says (Redacted)
14 (Redacted)

15 A. Yes, your Honour. Yes, your Honour.

16 Q. It says, (Redacted) of the meeting held on (Redacted) 2011 at (Redacted)
17 home." Do you agree with me that that is what it says?

18 A. Yes, your Honour.

19 Q. Do you recognize this document?

20 A. No, your Honour.

21 Q. I'd like you to like to page 0084-0267.

22 THE COURT OFFICER (via video link): We are at page 0267.

23 MR GARCIA:

24 Q. It says on page -- at the top, number 3 -- (Redacted) 2011 meeting was held at
25 (Redacted) s home in (Redacted). Present were (Redacted) and it was chaired by

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1 (Redacted)

2 Now, I'd to look -- like for you to look at the document at tab number 3 and it's

3 KEN-OTP --

4 MR HOOPER: I'm sorry, I've got page -- oh, 84. Sorry.

5 MR GARCIA: KEN-OTP-0084-0266 -- 65, actually.

6 THE COURT OFFICER: Mr Garcia, could you please say the digits slower.

7 MR GARCIA: Certainly, yes. So it's KEN-OTP-0082-0265. It's at tab 3.

8 THE COURT OFFICER (via video link): KEN-OTP-0082-0265 is presented to the
9 witness.

10 MR GARCIA:

11 Q. Do you agree with me, Mr Witness, that at the top of this report it says

12 (Redacted) and right below it says (Redacted) of elders meeting at (Redacted)

13 (Redacted) home (Redacted) on (Redacted) 2011." Are you familiar with (Redacted)

14 A. Your Honour, I am not familiar with this (Redacted) but this is what I -- I was given
15 to type -- to write on the other notepad when it was already typed.

16 Q. Did you write this (Redacted) Mr Witness?

17 A. I never wrote any (Redacted) your Honour.

18 Q. Have you ever seen it before?

19 A. No, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Witness, (Redacted) for now, but did
21 you write this document?

22 THE WITNESS: No, your Honour, I never wrote this document.

23 MR HOOPER: Would it be helpful just to intervene at this stage? I've got the word
24 "typed." Bearing in mind the witness's, to some extent, difficulty with language,
25 does he mean "typed"?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 2 MR GARCIA: I think he said -- yes, indeed, your Honour, the witness corrected
- 3 himself. So it's not "type". It's "write". It's page 38, line 15.
- 4 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you have to leave it at that.
- 5 MR GARCIA: That will be all, your Honour.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 7 MR GARCIA: Your Honour, I am going to be asking for certain other items of
- 8 evidence that have been shown to the witness or under which -- on which the witness
- 9 has commented to be placed into the record either as exhibits or as MFIs.
- 10 MR HOOPER: Before we --
- 11 PRESIDING JUDGE EBOE-OSUJI: We can do that in public, can't we?
- 12 MR HOOPER: Yes, I think so.
- 13 Just before we leave this point, in terms of the tab 1, 2, 3 and 4 that have been referred
- 14 to, those document, now my friend has finished his questioning, can the Prosecution
- 15 please clarify what they say is the source -- the author of those documents?
- 16 PRESIDING JUDGE EBOE-OSUJI: Let us -- let's go to public.
- 17 (Open session at 11.57 a.m.)
- 18 THE COURT OFFICER: We're in open session, Mr President.
- 19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 20 Mr Garcia, are you in a position to assist Mr Hooper with the question he asked for
- 21 clarification?
- 22 MR GARCIA: Yes, your Honour. As to the question of who wrote these reports
- 23 and the --
- 24 PRESIDING JUDGE EBOE-OSUJI: Right now he said the documents at tab 1, 2, 3,
- 25 the source. We can speak in terms of the documents and the source.

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1 MR GARCIA: Your Honour, they were provided to the Prosecution by a

2 Prosecution witness. It's person number 1 on the PIS list.

3 MR HOOPER: I'm rather concerned if that's -- is that a full answer from the

4 Prosecution? Are they saying that that person is the author, or could it be, for

5 example, person number 2, or could it be the present witness? Which do

6 the -- which of these perhaps people do the Prosecution suggest is the author?

7 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, beyond the question of whether or

8 not it is this witness that is the source of it, do we need to have that concern -- your

9 very last concern cleared up at this moment?

10 MR HOOPER: Well, it's merely that it was being suggested, it seemed to me, to this

11 witness that he was the -- he was the author of the documents.

12 PRESIDING JUDGE EBOE-OSUJI: But does the Prosecutor's answer say that or give

13 a possibility that there is an interpretation in that direction?

14 MR HOOPER: Well, the difficulty is that -- well, it's not a difficulty. The

15 Prosecution know they have a witness statement from someone who says they are the

16 author.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Let's leave the discussion now.

18 MR HOOPER: Right.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you wanted to put some documents

20 on the record, either as exhibits --

21 MR GARCIA: Yes, indeed, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: -- or to be marked for identification.

23 MR GARCIA: As for -- as exhibits, your Honour, the recorded conversation between

24 the witness and another witness, it's at KEN-OTP-0115-0248. That's the audio.

25 PRESIDING JUDGE EBOE-OSUJI: Tab?

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1 MR GARCIA: That's the audio and the tab -- the transcript is at tab 15 and the
2 translation at tab 14.

3 THE COURT OFFICER: Mr Garcia, may I have the ERN number of the translation,
4 please?

5 MR GARCIA: The translation is KEN-OTP-0129-0740, tab 14.

6 PRESIDING JUDGE EBOE-OSUJI: So the first -- the parent document, as it were,
7 would be tab 15; is that it?

8 MR GARCIA: Tab 15 would be the transcript and the translation is tab 14. The
9 evidence itself is the audio is at KEN-OTP-00115-0248.

10 PRESIDING JUDGE EBOE-OSUJI: Defence, beginning with the audio?

11 MR HOOPER: No objection.

12 MR KIGEN-KATWA: I will not object, Mr President.

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

14 MR HOOPER: Having said that, it's obviously with the reservation as to what may
15 pass on Monday. In fact, I'm just wondering whether these should be entered now
16 or whether we should have an application on Monday in respect to it. It will --

17 PRESIDING JUDGE EBOE-OSUJI: Well, let's --

18 MR HOOPER: -- be difficult to perhaps undo.

19 PRESIDING JUDGE EBOE-OSUJI: This does not pertain to the application on
20 Monday.

21 MR HOOPER: All right.

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

23 THE COURT OFFICER: The document KEN-OTP-0115-0248 will bear the number
24 EVD-T-OTP-00153.

25 MR GARCIA: I'm assuming that the transcript and the translation also follow with

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1 that?

2 PRESIDING JUDGE EBOE-OSUJI: Any objection to those going in as well, the
3 transcript and the translation?

4 MR KIGEN-KATWA: None, your Honour.

5 MR HOOPER: No.

6 PRESIDING JUDGE EBOE-OSUJI: Be admitted in series as the next Prosecution
7 exhibits.

8 THE COURT OFFICER: The transcript of the -- of the audio material bearing
9 number KEN-OTP-0129-0707_R02 will bear the number EVD-T-OTP-00154.

10 The transcript of the audio material bearing number KEN-OTP-0129-0740_R02 will
11 bear the number EVD-T-OTP-00155.

12 MR GARCIA: I'd also ask for an exhibit number to be given to

13 KEN-OTP-0114-0471.

14 PRESIDING JUDGE EBOE-OSUJI: Tab?

15 MR GARCIA: It's -- the translation is at -- the transcript is at tab 28. The translation
16 at tab 29. The witness was questioned on this. It's a conversation between the
17 witness and another witness, person number 1 on the PIS.

18 PRESIDING JUDGE EBOE-OSUJI: Sorry, tabs 28 and 29 you say?

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

20 PRESIDING JUDGE EBOE-OSUJI: I was looking at tab 27. Sorry about that.

21 Thank you.

22 Counsel?

23 MR HOOPER: This does perhaps concern the issues that may be discussed on
24 Monday and I'd ask that it be marked for identification at this stage.

25 PRESIDING JUDGE EBOE-OSUJI: No, this is not. The issue for Monday would be

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1 at tab 27. Tab 26.

2 MR GARCIA: Your Honour, the 55(2) interview proper starts at tab 21, actually.

3 It's KEN-OTP-0130-0462. And then it continues in tabs 26, 27, 22, 23 and 24.

4 PRESIDING JUDGE EBOE-OSUJI: But what you just introduced is not -- 28 and 29
5 are not part of that?

6 MR GARCIA: 28 and 29, your Honour, are the controlled conversations, the ones
7 that were recorded between this witness and Witness Number 1.

8 PRESIDING JUDGE EBOE-OSUJI: Between witnesses and not investigators?

9 MR GARCIA: It's not the 55(2) interview, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Yes. So let's look at 28 and 29 for now.

11 MR KIGEN-KATWA: Mr President, I would submit that they fall within what we
12 are to discuss on Monday. As the Prosecutor said, these are controlled conversations.
13 They are within the same interview, Mr President. They are within the same
14 interview. This is a phone call initiated by the Prosecution. Yes.

15 PRESIDING JUDGE EBOE-OSUJI: All right, I see the point. Yes, yes. All right,
16 let's hold off on these. Marked for identification if you want to so we can --

17 MR GARCIA: Indeed, your Honour, or we can just hold off on the tabs concerning
18 the 55(2) and the recorded conversations until Monday if that suits the Chamber?

19 PRESIDING JUDGE EBOE-OSUJI: Let us mark them for identification for now so
20 we have them on the record in that way.

21 MR GARCIA: Indeed.

22 PRESIDING JUDGE EBOE-OSUJI: After any ruling that may have been made on
23 Monday, then we will revisit --

24 MR GARCIA: Certainly, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: -- the matter for conversion.

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1 THE COURT OFFICER: Mr Garcia, could you please confirm that the ERN number
2 of the transcript and the translation of those transcripts are bearing the number
3 KEN-OTP-0130-0610 and KEN-OTP-0130-0563?

4 MR GARCIA: Let me just correct that. The transcript is indeed 0130-0610 and
5 that's at tab 29 and the -- actually, that's the translation. And the transcript is at tab
6 28 and that's 0129-0760.

7 THE COURT OFFICER: The audio document KEN-OTP-0114-0471 will bear the
8 number MFI-T-OTP-00156.

9 The document KEN-OTP-0130-0610 will bear the number MFI-T-OTP-00157.

10 And finally the document KEN-OTP-0129-0760 will bear the number
11 MFI-T-OTP-00158.

12 MR GARCIA: I'd also ask as an exhibit the second conversation. It's
13 KEN-OTP-0114-0472. The transcript number is 0129-0765 and the translation is
14 0130-0617.

15 PRESIDING JUDGE EBOE-OSUJI: Counsel?

16 MR GARCIA: It's tabs 30 and 31, your Honour.

17 MR KIGEN-KATWA: We have no objection to it being MFI'd, being marked for
18 identification.

19 MR HOOPER: We support Mr Katwa's application.

20 PRESIDING JUDGE EBOE-OSUJI: Prosecution?

21 MR GARCIA: Also, your Honour, as MFI for the moment KEN-OTP-0114-0468 and
22 the translation for that -- the transcript, actually, is found at tab 21 and it's
23 KEN-OTP-0130-0462.

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

25 THE COURT OFFICER: The document KEN-OTP-0114-0472 will bear the number

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- 1 MFI-T-OTP-00159.
- 2 The document KEN-OTP-0129-0765 will bear the number MFI-T-OTP-00160.
- 3 The document KEN-OTP-0130-0617 will bear the number MFI-T-OTP-00161.
- 4 These three documents are confidential.
- 5 KEN-OTP-0114-0468 will bear the number MFI-T-OTP-00162.
- 6 And finally document KEN-OTP-0130-0462 will bear the number MFI-T-OTP-00163.
- 7 These two documents are also confidential.
- 8 MR GARCIA: Also as MFI, your Honours, KEN-OTP-0114-0469. That is the audio.
- 9 And the transcribed transcripts are at KEN-OTP-0130-0478, that's at transcript
- 10 26 -- I'm sorry, tab 26 indeed. KEN-OTP-0130-0507, it's at tab 27.
- 11 KEN-OTP-0130-0540 at tab 22. KEN-OTP-0130-0563 at tab 23. And
- 12 KEN-OTP-0130-0566 at tab 24.
- 13 PRESIDING JUDGE EBOE-OSUJI: Will all be marked for identification.
- 14 THE COURT OFFICER: The document KEN-OTP-0114-0469 will bear the number
- 15 EVD -- sorry, will bear the number MFI-T-OTP-00164.
- 16 The document KEN-OTP-0130-0478 will bear the number MFI-T-OTP-00165.
- 17 The document KEN-OTP-0130-0507 will bear the number MFI-T-OTP-00166.
- 18 The document KEN-OTP-0130-0540 will bear the number MFI-T-OTP-00167.
- 19 The document KEN-OTP-0130-0563 will bear the number MFI-T-OTP-00168.
- 20 And finally the document KEN-OTP-0130-0566 will bear the number
- 21 MFI-T-OTP-00169.
- 22 MR GARCIA: And, your Honours, as MFI at tab 1, KEN-OTP-0082-0255. It's one of
- 23 the documents that was shown to the witness.
- 24 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.
- 25 THE COURT OFFICER: The document KEN-OTP-0082-0255 will bear the number

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1 MFI-T-OTP-00170.

2 MR GARCIA: Also MFI, KEN-OTP-0082-0267. It's tab 2, another document that
3 was shown to the witness.

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

5 THE COURT OFFICER: The document KEN-OTP-0082-0267 will bear the number
6 MFI-T-OTP-00171.

7 MR GARCIA: And the last document marked for identification,

8 KEN-OTP-0082-0265. This was the last document that was shown to the witness.

9 PRESIDING JUDGE EBOE-OSUJI: Where is it in the tab?

10 MR GARCIA: Tab 3, your Honour.

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

12 THE COURT OFFICER: Document KEN-OTP-0082-0265 will bear the number
13 MFI-T-OTP-00172.

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

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

16 It is now 20-past-12.

17 Witness, Defence counsel will begin asking you questions.

18 Who goes first? Mr Hooper?

19 Defence counsel for Mr Ruto will begin his cross-examination.

20 QUESTIONED BY MR HOOPER:

21 Q. Good afternoon, Mr Witness.

22 MR GARCIA: I am sorry, your Honours, to interrupt, but the Prosecution didn't get
23 a binder with the documents that the Defence is intending to use.

24 MR HOOPER: I believe it's with the court officer. There we are.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, let's try and put these documents in

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1 as soon as we've finished using them to avoid these pile-ups.

2 MR HOOPER: Well, I think given the time, I'm going to try and put as few as
3 possible in.

4 PRESIDING JUDGE EBOE-OSUJI: Good. So we will --

5 MR HOOPER: So I --

6 PRESIDING JUDGE EBOE-OSUJI: -- begin.

7 MR HOOPER: -- might not be troubling the Registry over much. We may be able
8 to step over some matters.

9 Q. So good afternoon, Mr Witness.

10 A. Good afternoon, your Honour.

11 Q. Now, my name's David Hooper and, as you can see, I'm a lawyer and I'm
12 representing and asking questions of you on behalf of Mr Ruto.

13 And, your Honour, for the record, can I just state that Mr Khan joined us again at
14 11.30 after the break. I had omitted to mention that.

15 So, Mr Witness, I'd like you to look, please, and have provided you the statement that
16 you provided the Prosecution in (Redacted) of 2012. I'd like you to be given the hard
17 copy of that, please.

18 And that's at our tab 7 in your Honours' bundles; Prosecution bundles.

19 THE COURT OFFICER (via video link): Can you also please confirm the ERN
20 number?

21 MR HOOPER: Yes, that's KEN-OTP-0084-0236.

22 THE COURT OFFICER (via video link): Okay. The paper copy has been provided
23 to the witness.

24 MR HOOPER: Thank you very much.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, we are in open session just to remind

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1 you.

2 MR HOOPER: Thank you.

3 Q. Now, you have that paper copy in front of you, Mr Witness, and we've already
4 seen this. You now have the advantage of having it in hard copy. You've been
5 through some aspects of this, the Prosecution having asked you questions about it,
6 and we can see and remind ourselves it's dated 11(Redacted) 2012.

7 Now, I'm not concerned at this juncture as to how this statement of yours came into
8 existence, what prompted it or provoked it. We've heard your account. But the
9 essence of what you say, as I understand it, is this: That for the most part the facts
10 that are contained in this, your statement, are untrue. Have I understood that
11 correctly?

12 A. Yes, your Honour.

13 Q. Now I'd like to take you, if I may, to a particular part of this statement and if
14 you can turn to paragraph 31 of the statement.

15 THE COURT OFFICER (via video link): Paragraph 31 is in front of the witness.

16 MR HOOPER:

17 Q. And I remind myself and you, Mr Witness, that we are of course in public
18 session, so I'm not going to mention names, but all those who need to have that
19 statement in front of them here in the court, the Judges, myself and everybody else
20 here. We're not going to make certain matters in that statement public.

21 But you will see, of course, that that portion of your statement, which is at page 6 and
22 runs from paragraph 31 through to 36, deals with the meeting on 22 December of 2007
23 and we can see in paragraph 31, as you've already been referred to, where that
24 meeting took place. You see that.

25 And turning to paragraph 34, you then refer to a second meeting in the same place, on

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1 the same day in someone's home and that person -- and I'm just looking at the first
2 sentence of paragraph 34, you say there in the statement that it was announced that
3 there was to be an ODM rally on 23 December in Eldoret at Kipchoge Stadium. We
4 all see that and you agree that that is what is written there, isn't it?

5 A. Yes, your Honour.

6 Q. And of course, just pausing there, you've said, well, that meeting didn't take
7 place, or those meetings didn't take place on 22 December. You've told us that
8 already and I'm not going to go through that again with you.

9 So the next day, being 23 December, I want to take you now to the matters you have
10 under that heading of "Rally 23 December 2007" from paragraphs 37 down to and
11 through the next page. Just look at that and remind yourself, and let's just go
12 through matters which I think can be safely said in public because they won't be
13 identifying but you, on 23 December 2007, looking at paragraph 37 with me please,
14 you say you left your house at about half-past-8 in the morning and you go to, I think,
15 it is location 4. You left there about 10 o'clock, you took public transport, you get to
16 Eldoret, you go to Kipchoge Stadium. You say you went by yourself to see with
17 your own eyes because you had a certain activity - I'm not going to mention the
18 nature of that activity, we can see that - and it would be useful to get information so
19 that you could make a report. And, indeed, you say you did later make a report to a
20 particular organisation.

21 Paragraph 38, you say the stadium was full with people from different tribes.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper.

23 MR HOOPER: Yes.

24 PRESIDING JUDGE EBOE-OSUJI: Hold your question, please. When you made
25 reference to location 4, that was in the OTP PIS, isn't it?

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1 MR HOOPER: Yes. Yes, it is. I am trying to keep to the same documents as we
2 had.

3 PRESIDING JUDGE EBOE-OSUJI: It makes sense. It makes a lot of sense to do it
4 that way.

5 MR HOOPER: Yes.

6 PRESIDING JUDGE EBOE-OSUJI: So you don't have your own PIS?

7 MR HOOPER: I have one in my back pocket but, again, I thought it would be saving
8 time if I tried to limit myself --

9 PRESIDING JUDGE EBOE-OSUJI: That's fine.

10 MR HOOPER: -- to the locations and the way that they have been expressed.

11 PRESIDING JUDGE EBOE-OSUJI: Not only does this save time, it also makes more
12 sense so we don't have different locations indicated in different people's PISes
13 numbered differently.

14 Proceed. I just want it to be clear on the record.

15 MR HOOPER: Yes. Thank you very much.

16 Q. So coming back to that, there you are in Kipchoge Stadium and you are
17 describing how it was full with people from different tribes, but mostly Kalenjin, and
18 among the VIPs you describe there how you recognized Mr Ruto, Mr Nyagah,
19 N-Y-A-G-A-H, Kikuyu you have in brackets, from Central Province, Tuju, T-U-J-U,
20 Luyha from Western Province and Mr Raila Odinga. Mister -- yes, Mr Tuju is not
21 someone I think we've met. Would that be Raphael Tuju that you say you saw, a
22 Luo?

23 A. Yes, your Honour.

24 Q. I mean that's as it's put in this statement.

25 And then you go on that while you're at the stadium you heard three speakers,

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1 Mr Ruto, Mr Odinga and Mr Nyagah and you repeat or have there some things that
2 Mr Ruto said. We can see there that "... we needed to vote as a bloc against the
3 Kamama, which means our uncles. He ... used the term Kiplemet which means
4 people who" wear "the white hat or have white hair. Something I'm probably
5 qualifying for, I suspect.
6 Anyway, it goes on that you say, "I took this to mean ... Kikuyu." You go on to say
7 some other things that were said.
8 Over the page, at paragraph 41, "Nyagah" who you've previously identified as a
9 Kikuyu, is, you say, telling the Kikuyu to, quote, "to lie low and vote the way the Rift
10 Valley wants."
11 You say at 42 that Mr "Odinga spoke and said that if the PNU steals the election we
12 will mobilise 1 million people to march to the State House."
13 So that is the account that you gave or, I should say, the account that we find in your
14 statement. And, again, I'm not concerned to ask you how that came to be written
15 down in the statement you signed, I am not concerned with that this morning.
16 Now, if we move on, and I'll come back to these matters, but if we move on for
17 completeness now to paragraph 44, we have it headed "Meeting at Ruto's Sugoi
18 home - 23 December 2007," and you describe how after the rally you attended a
19 meeting at Ruto's house and that the primary reason you went was that you wanted
20 to know what he would say. You were let in. You describe some aspects of the
21 house and you say this big meeting was held in a room, page 45 -- paragraph 45.
22 "There were chairs inside the room where the meeting was held."
23 You go on to say that the meeting "... included male youths from different areas,
24 perhaps 400-500 ... They appeared to be Kalenjin. And you name a lot of names.
25 Paragraph 47 that "The meeting started at 9 p.m." and that several people left the

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1 room, including Mr Ruto, and then in their absence, in his absence, a man

2 Kibet -- called Kibet said certain things. And that's your account for that day,

3 23 December.

4 Now, you told us that all that is untrue; is that correct?

5 A. Yes, your Honour.

6 Q. So we have though a clear statement there that on 22 December you're told of

7 the Kipchoge Stadium rally, you yourself go to the Kipchoge Stadium rally the next

8 day and, having left the stadium, you made your way to Mr Ruto's home. That's

9 what appears in the statement, isn't it?

10 A. Yes, your Honour. That's what is in the statement.

11 Q. All right. Now, I'm going to deal with this I hope quickly by stepping over

12 some matters that we've already met here in this Court, but those are, Mr Witness,

13 briefly as follows: We know that on 19 August there was an ODM rally at the 64

14 Stadium in Eldoret where Mr Ruto, Mr Odinga, Mr Balala and Mr Nyagah were all

15 present.

16 I say that, we've seen the videos and those are in evidence. That's EVD-T-D09-0073,

17 Defence exhibit 73. We've seen it. I'm not going to bother you with it, Mr Witness.

18 We know that there -- and also that rally is now admitted by the Prosecution.

19 PRESIDING JUDGE EBOE-OSUJI: Witness, when the -- when counsel say "we

20 know," it means they on the Defence side because the Chamber has not yet made a

21 finding on these things. Sometimes some of these propositions the lawyers, both for

22 the Prosecution and the Defence, may be stating to you are matters that the opposite

23 side disputes, and we will have arguments and make findings on that. So keep that

24 in mind when counsel says "we know".

25 MR HOOPER: I may have said it in that way, but we're assisted by in that particular

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1 case, 19 August, 64 Stadium, ODM rally, those participants, the Prosecution have
2 agreed that. We've had an email correspondence and they've agreed that fact.
3 Similarly, it's been agreed, as between the parties, on 10 November 2007, again 64
4 Stadium, ODM rally with Mr Ruto, Mr Odinga, Mr Mudavadi and Charity Ngulu,
5 you may recall who then joined the Pentagon, and we saw videos of that.
6 I will just mention one, the main one, EVD-T-D09-0078, Defence exhibit 78.
7 And we've also seen a video and received documentation in the case presented by the
8 Defence of an ODM rally on 20 December. That's 20 December, which is significant
9 for our conversation this morning, Mr Witness. So that's 20 December, a rally held at
10 Huruma Grounds, which we may recall we had a Prosecution witness who, in fact,
11 claimed to be there on that day and identified the video. And that's been admitted
12 too, that's -- I say "admitted", the exhibit's been admitted. That's EVD-T-D09-00062.
13 And we've seen part of that with Mr Ruto and Mr Odinga speaking. A big mass of
14 people, Huruma Grounds.
15 Now, I was going to play that, but given the time I'd be assisted by your Honours as
16 to whether, given it's some time since we showed that to you, you may not have it in
17 mind, whether you'd feel you would be assisted by seeing the Huruma Grounds
18 20 December rally video and documentation in support of the date of 20 December?
19 We've seen it before. Would you like the opportunity of seeing it again?
20 PRESIDING JUDGE EBOE-OSUJI: Are you asking the witness questions?
21 MR HOOPER: I'm actually now asking your Honours, asking your Honours
22 whether your Honours would feel assisted by seeing the Huruma Grounds -- I think
23 we could probably show it quite easily. Let's see it. I had intended to show it, so
24 let's play that.
25 Q. So, Mr Witness, we are just going to show you a brief video of a meeting that

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1 took place we say on 20 December in a place called Huruma Grounds there in Eldoret.

2 So --

3 (Viewing of the video excerpt EVD-T-D09-00062)

4 MR HOOPER: I just want to clarify a matter and that is we are showing the
5 complete clip, Mr Witness, and your Honours, and what we've just seen is in fact a
6 meeting the same day at Kabarnet, which is north -- northwest of Eldoret and now we
7 move, we're going to see the later part of that day with this meeting at Huruma
8 Grounds.

9 (Viewing of the video excerpt EVD-T-D09-00062)

10 MR HOOPER: All right. I'm not going to produce the ancillary material relating to
11 newspapers and the like that were published the next day. There's 20 December.

12 Q. So, Witness, you've seen that. I'm not asking you to comment on it. It is what
13 we've seen.

14 Now, in your statement, a statement that you say is untrue, you have a meeting of
15 course as we've been through in your statement in Eldoret, ODM meeting, with the
16 principal players of the ODM attending on 23 December.

17 It's my case - our case - that there was no ODM meeting in Eldoret on 23 December.

18 It's our case that there never was a meeting - a political meeting - at Kipchoge
19 Stadium. So we make that position quite clear. In other words, we support what
20 you say when you say that what you said there about events going from location 4 to
21 Eldoret to Kipchoge Stadium to hearing ODM people speaking and to you then going
22 on afterwards to Mr Ruto's Sugoi home, those facts are all demonstrably untrue.

23 Now, in terms of the --

24 PRESIDING JUDGE EBOE-OSUJI: Is that a question, Mr Hooper, for the witness to
25 answer?

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- 1 MR HOOPER: I don't need him to answer it or not. He's said --
- 2 PRESIDING JUDGE EBOE-OSUJI: All right.
- 3 MR HOOPER: -- it's untrue.
- 4 PRESIDING JUDGE EBOE-OSUJI: The reason I say that is let's save what is best left
- 5 for submissions to that --
- 6 MR HOOPER: Yes.
- 7 PRESIDING JUDGE EBOE-OSUJI: -- so that we can make -- move on with the
- 8 process.
- 9 MR HOOPER: It's so that's it's absolutely plain.
- 10 Q. You understand what I'm saying, Mr Witness, do you?
- 11 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, we can move on.
- 12 MR HOOPER: I didn't -- I didn't get an answer.
- 13 Q. Mr Witness, you've understood what I've -- what I've said about this meeting
- 14 that you claim took place at Kipchoge Stadium, that it never, ever took place? Do
- 15 you agree with that? Are you in a position to agree with that?
- 16 A. Yes, your Honour.
- 17 Q. And it would follow that you were never told the day before that there would
- 18 be a meeting at Kipchoge Stadium; do you agree with that?
- 19 A. Yes, your Honour.
- 20 Q. And you would never have been in a position to travel from Kipchoge Stadium
- 21 on 23 December, or any other day to travel from Kipchoge Stadium to Mr Ruto's
- 22 Sugoi home; do you agree with that?
- 23 A. Yes, your Honour.
- 24 Q. And what I submit it comes to is that the heart of your statement concerning
- 25 Mr Ruto is all lies, isn't it?

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1 A. Yes, your Honour.

2 Q. Now, you've said that it was the Prosecution investigator who gave you all this
3 material to write down in your statement; that's your account in any event, isn't it?

4 A. Yes, your Honour.

5 Q. And I'm not seeking to make any comment at the moment about that. I'm
6 going to ask you though in this context about an individual on the PIS form who's
7 individual number 1. You know who I'm talking about?

8 A. Yes, your Honour.

9 Q. Would it surprise you to know that he made a statement to the Prosecution
10 before you made your statement where he too said that he went to a political rally at
11 Kipchoge Stadium in Eldoret on 23 December 2007? Would that surprise you, that
12 he too went to a non-existent rally and he speaks of Mr Ruto and Mr Mudavadi and
13 Mr Odinga and Mr Nyagah and speaks about that? It's a strange coincidence, I
14 suggest.

15 Was it perhaps Mr -- number 1 who discussed with you and put forward this
16 fictitious event? Was it his idea, or not?

17 A. Your Honour, we never discussed anything with number 1.

18 MR HOOPER: Now, I'm going to ask to go into private session for a moment in
19 order just to raise one matter.

20 PRESIDING JUDGE EBOE-OSUJI: How long?

21 MR HOOPER: Literally just a few seconds.

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 *(Private session at 12.50 p.m.) Reclassified as open session

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

25 MR HOOPER:

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1 Q. Now, you say that you were (Redacted)

2 (Redacted), in that area, little villages there. Was there any other

3 (Redacted), do you say, in 2007 in that place?

4 A. Your Honour, I could not identify whether there's (Redacted) anywhere,
5 because you could not (Redacted).

6 Q. Right. I ask you that because in the same statement Mr 1 says, quote, at his
7 paragraph 53, (Redacted)

8 (Redacted)

9 (Redacted), and he names the attendees and that the main purpose of the meeting
10 was to plan how to evict Kikuyu.

11 Again, was that something that you discussed with (Redacted)? Was that your
12 (Redacted) do you know, that he is apparently talking about, your (Redacted) that
13 you refer to in your statement?

14 A. Your Honour, we never discussed anything with (Redacted). Neither I never
15 wrote any (Redacted).

16 MR HOOPER: We can go back I think into -- into public session, please.

17 PRESIDING JUDGE EBOE-OSUJI: Public session.

18 (Open session at 12.52 p.m.)

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

20 MR HOOPER:

21 Q. I'm not going to dwell very much on your statement. You still have it in front
22 of you, so can I please request that you pick it up again. And I'm looking at your
23 paragraph 50 which is under the heading "26 December 2007 Brookside" and you've
24 been taken to that already by Mr Garcia.

25 The principal part of your statements relating of events is at paragraph 54 onwards.

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1 You may remember page -- paragraph 53 you were taken to that bit where it said, "On
2 the way to Brookside, I saw two ..." members of a certain organisation with the DC,
3 and there's your event that you say in your statement that you go to Eldoret, you go
4 to the Brookside Dairy, you witness events there and then people leave the dairy and
5 they go to Tusks (sic), a supermarket in Eldoret, and then they go on, you say, to the
6 police station. That's the order of events. And -- in fact, it's Tuskys. Tuskys
7 supermarket in Eldoret.

8 Anyway, so there's the ordering of events. You go to Eldoret, you go to the dairy,
9 events at the dairy, march to Tuskys, go to the police station and that's the conclusion
10 of those events.

11 Now that's the order you have them there, and you've told us that in fact you didn't
12 go to Eldoret on 26 December and you didn't witness any events concerning the
13 Brookside Dairy; is that right?

14 A. Yes, your Honour, I was at home.

15 Q. And indeed as we have heard and we will hear from other
16 witnesses - Prosecution witnesses perhaps - that events were rather in the reverse.
17 That it started at the police station and then the crowd looking for these ballot boxes
18 went to the dairy. Quite a reverse position.
19 So that again would support -- if that's right, if that was the true order of things and
20 you've got it quite the other way round, perhaps that goes again to support what you
21 say that what you say here is untrue because you didn't witness it. Do you
22 understand what I say?

23 MR GARCIA: Your Honour, that's argumentative and it's an extremely long
24 question for the witness to respond to.

25 MR HOOPER: Your Honour --

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1 PRESIDING JUDGE EBOE-OSUJI: Objection sustained on both counts.

2 MR HOOPER:

3 Q. In any event, Mr Witness, you claim that you never were at Brookside Dairy
4 and that what you've said there was a fabrication; is that right?

5 A. Yes, your Honour.

6 MR HOOPER: (Microphone not activated) I'm going to jump to a different area.

7 I'm going to leave your statement, if I may. Oh, before I do that, I am pressing on
8 even quicker than I should. Dealing with 23 December, we have a statement which

9 you, the witness, say was untrue; namely that there was a big ODM meeting in

10 Eldoret on that day at the Kipchoge Stadium.

11 I'm just going to ask that a video be played, in the run-up to the luncheon

12 adjournment, and this video will show other and different events which supports the

13 Defence case, we say, that Mr Ruto was nowhere near Eldoret, nor were the Pentagon.

14 They were all busy doing the final assault, as it were, on Western Province. We will
15 play that video, if we may, in respect of that?

16 (Playing of the video excerpt)

17 PRESIDING JUDGE EBOE-OSUJI: Let's pause the video.

18 Mr Hooper, do you need to put your question now, or do you need to have this video
19 continue playing? We will adjourn.

20 MR HOOPER: I don't think there is very much left of it actually, is there? No, I

21 think -- well, I will review that over the luncheon adjournment, and I should mention

22 that it is at tab 9 of the Defence bundle, the translation. It's not particularly essential

23 we look at it, but it is there, a full translation of what is said in other than English of
24 course.

25 PRESIDING JUDGE EBOE-OSUJI: All right, but pose a question to the witness.

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1 MR HOOPER: I'll come back to that, if I may, after the break?

2 PRESIDING JUDGE EBOE-OSUJI: All right. We'll take our lunch-break now.

3 MR HOOPER: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: We will be back in one-and-a-half hours.

5 THE COURT USHER: All rise.

6 (Recess taken at 1.01 p.m.)

7 (Upon resuming in open session at 2.35 p.m.)

8 THE COURT USHER: All rise.

9 Please be seated.

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

11 Witness, welcome back.

12 Mr Hooper. Mr Hooper, before you begin, the Chamber is of the view that this
13 could move along faster than it has done so far in your cross, and we -- we need to
14 avoid the idea of putting long passages to the witness, only to tell the witness that
15 you agree with his assertion that he had lied the first time. The witness has said that
16 in the -- in the testimony. I think that's clear enough. We don't need to dwell on it,
17 for us to be told or the witness to be told that the Defence agrees with it. Let's ask
18 questions that move the process along.

19 MR HOOPER:

20 Q. Good afternoon, Mr Witness. Before I come back to events on 23 December, I'd
21 like to go back to your statement just very briefly and to your account of the -- the
22 account, I should say, that appears there at paragraph 38. I referred to this
23 gentleman earlier and it's the line -- the concluding sentence of paragraph 38, "Among
24 the VIPs, I recognized Ruto, Nyagah (Kikuyu) from Central Province, Tuju ..."
25 T-U-J-U "... (Luhya) from Western Province and Odinga."

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1 I just want to come back to that person mentioned there, Tuju. Raphael Tuju is a Luo;
2 is that right? Not a Luhya, he's a Luo. Do you agree with that, or what?

3 PRESIDING JUDGE EBOE-OSUJI: Did we lose our audio?

4 THE COURT OFFICER (via video link): Mr President, I think we can hear you.
5 Can you hear us?

6 MR HOOPER: Well, we heard your voice then asking if we can hear you, so it
7 would appear so.

8 Let me repeat my question to the witness.

9 Q. Mr Witness, I'm asking you about the name Tuju (Luhya) that appears at
10 paragraph 38 of your statement. And I was asking you in respect of Tuju, is that, in
11 fact, Raphael Tuju, first of all; and secondly, is he a Luo? Do you know, or not?

12 A. Your Honour, as I understand Tuju, who was called Raphael Tuju, he's a Luo.

13 Q. And can I ask you, if you know, to confirm that in December 2007 Raphael Tuju,
14 who had been a minister in the Kibaki government, as a foreign minister, was, in fact,
15 an active member -- political member of the PNU and not the ODM. Do you know if
16 that's right?

17 A. Your Honour, I'm not a fan of politicians or politics, so I know nothing about
18 politics.

19 Q. Very well. Well, we can perhaps have that point addressed in another -- in
20 another way.

21 Now, just before the luncheon adjournment I'd shown you a video relating to the
22 ODM campaign in Western Province, and it was a campaign that was set in
23 Kakamega on 23 December 2007. You remember seeing that video?

24 A. Yes, your Honour, I saw it.

25 MR HOOPER: That video, if I can just read in at this stage, its ERN number is

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1 KEN-D09-0038-0451, and the translation of that video, your Honour, appears at tab 9
2 in the Defence bundle and that is KEN-D09-0038-0469. I'm not going to go through
3 the translation with the witness as it will take up time, but those are the documents.
4 Now, I'd like in fact in support of the date -- and this is at your tab 8 again in the
5 Defence bundle.

6 Q. You don't have this, Mr Witness. We're going to ask for it to be put up on the
7 screen so that you can see. And that's KEN-D09-0039-0043. And we can see -- let's
8 get it up.

9 Given the comments or -- made by the Prosecution last week in respect of a
10 newspaper, we've put in the first four pages leading up to the relevant article. Page
11 1, and that's up on the screen. You can see that, Mr Witness. It's The Standard
12 newspaper, a well-known Kenyan newspaper, and can you see it's dated "Monday,
13 December 24, 2007"?

14 THE COURT OFFICER (via video link): Mr Hooper, I would ask the court officer in
15 The Hague to show us the first page that we don't have here.

16 MR HOOPER: Well, on my screen I have the first page.

17 THE COURT OFFICER (via video link): We see it now, Mr Hooper.

18 MR HOOPER: Oh, very well. And there's The Standard. It's very full-blown on
19 my screen. If you can just go back a bit, top -- just beneath "The Standard" banner is
20 the date, "December 24, 2007."

21 Q. Do you see that, Mr Witness, "Monday, December 24, 2007," on the newspaper,
22 dating it?

23 A. Yes, your Honour.

24 MR HOOPER: Thank you very much. And can I take you to page 4 and to the
25 Court and my friends to page 4?

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1 And incidentally, if at any time the Prosecution want to indicate that they don't
2 dispute certain matters and save me time, I'd be very grateful.
3 Page 4 of that newspaper, bottom right-hand corner, so scroll down. There we are,
4 "Raila wants Kibaki disqualified," it reads. And if we look at the -- headed "Standard
5 Team," and if we look at the middle column of that section, right at the bottom, "Raila,
6 who was addressing a campaign rally at Muliro Gardens in Kakamega yesterday ...",
7 and he goes on.
8 And we can also see, "ODM Pentagon member Mr William Ruto said ...," et cetera,
9 et cetera, and then, "The Kakamega rally was also attended by ODM presidential
10 running mate, Mr Musalia Mudavadi, Pentagon members Charity Ngilu and Najib
11 Balala and the party's parliamentary and civic candidates from Western."
12 So there we have -- and it goes on, "Earlier, Raila urged party supporters to embrace a
13 three piece voting system in the December 27 general election ..." saying "... the system
14 would enable ODM change the Constitution within a record six months of coming
15 to power."
16 You see all that. And the purport of all of that - the relevance of that - is that is a
17 reference to the Western campaign rally held the previous day, the Sunday, December
18 23rd.
19 And finally in this respect, can I also take you to a media press article which has been
20 taken off the web, and that's at KEN-D09-0039-0038 and it's at tab 10.
21 And if that can be put up?
22 THE COURT OFFICER (via video link): The document is presented to the witness.
23 MR HOOPER: And there's just a very brief reference. Two-thirds of the way down
24 that page there's a subheading "Declare public holidays," and then a few lines down
25 from that we have, "On Sunday, Mr Odinga and ODM Pentagon members Musalia

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1 Mudavadi, Najib Balala and William Ruto were on a whirlwind tour of Western
2 Province, where they urged voters to turn out in large numbers and vote for
3 Mr Odinga and the party's civic and parliamentary candidates."
4 A little further down, "As ODM leaders campaigned in Western, President Kibaki was
5 at the coast," et cetera.

6 Q. And do you see that, Mr Witness?

7 A. Yes, your Honour.

8 Q. All of which strongly supports, do you agree, the contention that the ODM
9 Pentagon were not in Eldoret, not in Kipchoge Stadium, but were in fact in Western
10 Province campaigning on Sunday, 23 December. Do you agree?

11 A. Yes, your Honour.

12 MR HOOPER: Can I ask that those matters be admitted in evidence?

13 PRESIDING JUDGE EBOE-OSUJI: Let's begin with the first item you want. Can
14 you tell us again where it is?

15 MR HOOPER: Well, the first thing I'd ask is the video, "Raila campaigns in
16 Kakamega - 23 December 2007," KEN-D09-0038-0451. It's the video we just -- we just
17 watched.

18 PRESIDING JUDGE EBOE-OSUJI: And did you say there is no transcript for that?

19 MR HOOPER: There is. And indeed the transcript, which accompanies it, which is
20 at tab 9.

21 PRESIDING JUDGE EBOE-OSUJI: All right.

22 Beginning with the video, Prosecution?

23 MR GARCIA: Unless I'm mistaken, your Honour, I didn't see the witness properly
24 identifying the place where that video was held, or the rally was held. I'm not sure if
25 that's on the record.

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- 1 MR HOOPER: Well, the video commentator was stating that. Are the Prosecution
2 genuinely concerned as to any misidentification of place, or date?
- 3 PRESIDING JUDGE EBOE-OSUJI: Let us deal with the matter of -- you've now
4 pointed out where the place name is -- where the information comes in. You say it is
5 in the voice-over.
- 6 MR HOOPER: As supported by the ancillary material, of course.
- 7 MR GARCIA: I have no objection, your Honour.
- 8 MR KIGEN-KATWA: I have no objection, Mr President.
- 9 MR HOOPER: Thank you. And coming to the --
- 10 PRESIDING JUDGE EBOE-OSUJI: The document admitted as the next in the
11 Prosecution -- Ruto Defence exhibits.
- 12 THE COURT OFFICER: The document KEN-D09-0038-0451 will bear the number
13 EVD-T-D09-00261.
- 14 MR HOOPER: And the next item is the transcript that accompanies it at tab 9. Do
15 you have the reference for that? KEN-D09-0038-0469.
- 16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 17 MR GARCIA: No objection, your Honour.
- 18 MR KIGEN-KATWA: No objection.
- 19 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 20 MR HOOPER: And then we have two --
- 21 THE COURT OFFICER: The document --
- 22 MR HOOPER: Oh, I am sorry.
- 23 THE COURT OFFICER: The document KEN-D09-0038-0469 will bear the number
24 EVD-T-D09-00262.
- 25 MR HOOPER: There's then the media press article at your tab 8 which we saw,

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1 which is KEN-D09-0039-0043, which was the four-page article with the reference to
2 the Pentagon activities in Western.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

4 MR GARCIA: I understand that the witness has not identified, but the Prosecution
5 does not object to it going in as an exhibit.

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

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

8 THE COURT OFFICER: The document KEN-D09-0039-0043 will bear the number
9 EVD-T-D09-00263.

10 MR HOOPER: And finally there's the last press article, your tab 10, at
11 KEN-D09-0039-0038, the one-page again dealing with the whirlwind tour of Western
12 Province.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

14 MR GARCIA: No objection, your Honour.

15 MR KIGEN-KATWA: We have no objection, Mr President.

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

17 THE COURT OFFICER: The document KEN-D09-0039-0038 will bear the number
18 EVD-T-D09-00264.

19 The four documents are confidential -- public, sorry.

20 MR HOOPER: Thank you very much.

21 And now may we move into private session, please?

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 *(Private session at 2.54 p.m.) Reclassified as open session

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

25 MR HOOPER:

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- 1 Q. And the area I want to discuss, Mr Witness, concerns (Redacted)
2 (Redacted), and which you refer to in your statement from
3 page -- sorry, paragraph 17. I'll just check on that. Yes, paragraph 17 and 19,
4 essentially, and then it makes some other appearances in other parts of your
5 statement.
6 So, (Redacted) And when you were first asked by Mr Garcia as to when you
7 (Redacted) - and this is back at transcript 137 at page 78 - you said, quote, "I can't
8 remember specifically, but it was (Redacted)," unquote, and then later
9 that day you were asked whether you'd been (Redacted) before the elections
10 and you said to that question "Yes."
11 Now I suggest, Mr Witness, that (Redacted). What
12 do you say to that?
13 A. Your Honour, (Redacted)
14 (Redacted).
15 MR HOOPER: All right. Now, I passed some names to the stenographers and
16 interpreters to assist, so I hope we can go through this a little quickly.
17 Q. Have you heard or had you heard of (Redacted)
18 (Redacted)
19 A. Yes, your Honour.
20 Q. I understand that (Redacted)
21 (Redacted). Is that correct to your knowledge?
22 A. Yes, your Honour.
23 Q. I'm going to mention some names. The first one is -- and all I want you to
24 know is -- to acknowledge is whether you've heard of these names or not and I'm
25 asking them in this context of (Redacted)

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- 1 (Redacted) Before we come to that, (Redacted)
- 2 I understand, (Redacted). Can you help me as to that? Do you know
- 3 when (Redacted)
- 4 A. Your Honour, I don't know.
- 5 Q. Now, aside from (Redacted), the following were (Redacted) and perhaps others
- 6 as well, but I'm asking about these particular people: (Redacted) is that right?
- 7 I'm asking if you know the name and whether you know they were (Redacted)
- 8 (Redacted) at some time?
- 9 A. I don't know, your Honour.
- 10 Q. (Redacted)
- 11 A. I've only heard about the name, your Honour.
- 12 Q. (Redacted)?
- 13 A. I've never heard about that name, your Honour.
- 14 Q. (Redacted)?
- 15 A. It was recently in the newspapers, your Honour.
- 16 Q. (Redacted)?
- 17 A. I've never heard that person, your Honour.
- 18 Q. (Redacted)?
- 19 A. Yes, I know (Redacted), your Honour.
- 20 Q. Thank you. Now, have you heard of (Redacted)
- 21 (Redacted)?
- 22 A. I'm not aware about that one, your Honour.
- 23 Q. Very well. Well, I won't ask you then questions in respect of that. (Redacted)
- 24 (Redacted)?
- 25 A. Yes, your Honour, that's what I -- I understand that -- that (Redacted).

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- 1 Q. And (Redacted), was he not?
- 2 A. Your Honour, I do not know when (Redacted).
- 3 Q. And another man called (Redacted)
- 4 (Redacted); is that right?
- 5 A. Yes, your Honour.
- 6 Q. I suggest you didn't (Redacted).
- 7 A. (No audible response)
- 8 MR HOOPER: Perhaps we should go into --
- 9 PRESIDING JUDGE EBOE-OSUJI: Let's get him to react.
- 10 MR HOOPER: Yes, certainly.
- 11 PRESIDING JUDGE EBOE-OSUJI: Witness, the -- when the lawyer says I suggest
- 12 something to you and then he puts a proposition, it's for you to agree with him or not
- 13 or, if you have any short comments to make to that, you can make it.
- 14 So he says that you didn't work (Redacted) What do you say to that?
- 15 Do you agree or not that you did not (Redacted)?
- 16 THE WITNESS: Your Honour, by the year (Redacted)
- 17 only that I -- I was not (Redacted), so I don't know whether (Redacted)
- 18 (Redacted) or not.
- 19 MR HOOPER:
- 20 Q. And who were (Redacted); do you know?
- 21 A. I don't know (Redacted), your Honour.
- 22 Q. And what particular (Redacted), if any?
- 23 A. It was (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 Q. Was there any particular (Redacted) you can remember that you (Redacted)
2 (Redacted)?

3 A. I was not (Redacted)
4 (Redacted)

5 Q. Can you remember any particular (Redacted)?

6 A. It's a long time ago, your Honour. I can't remember.

7 Q. Now, (Redacted), as you've described it, (Redacted)
8 (Redacted). It was, as you've
9 already said in your evidence, not (Redacted) in any way. So is
10 it right to say this, that it would have no (Redacted)
11 (Redacted)? It would have no (Redacted) in that, would it?

12 A. (Redacted), your Honour, (Redacted)
13 (Redacted)

14 Q. Now, if we can go into -- we are in private. We remain in private for the -- my
15 next question and this concerns (Redacted)
16 (Redacted) and which is referred to, I think, at your paragraph 19 -- no, sorry, 20. If
17 you look at that you can see that, (Redacted)
18 (Redacted)
19 Now, (Redacted) was, you told us, (Redacted); is that right?

20 A. Yes, your Honour.

21 Q. Am I right in saying that (Redacted), and that is (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 PRESIDING JUDGE EBOE-OSUJI: Did you understand the question, Witness?

10 THE WITNESS: No, your Honour.

11 MR HOOPER:

12 Q. Was the object of (Redacted)

13 A. No, your Honour. It was for (Redacted)

14 Q. All right. I'll pass on from that.

15 Now, you became a witness, together with others, only in late 2012, in your case

16 (Redacted) 2012. Do you know why you were not approached as a witness until

17 late 2012?

18 A. I did not get the question, your Honour.

19 Q. Let me put it again: You were first seen as a potential witness in

20 (Redacted) 2012 and at some time after proceedings in this case and investigations

21 had commenced and, indeed, after the confirmation of proceedings in this case.

22 Now, do you know why it was that you weren't approached until (Redacted) 2012?

23 MR GARCIA: I'm going to object to that question, your Honour. Actually, I have

24 no idea how the witness can answer that question. It calls for speculation on the

25 matter.

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1 MR HOOPER: Let me put the question another way.

2 Q. Did you contact or offer yourself to the OTP as a witness before

3 (Redacted) 2012?

4 A. No, your Honour. They are the OTP who contacted me towards the end
5 of 2012.

6 Q. And did the OTP tell you why they were -- how they came to know about you
7 and were contacting you?

8 A. No, your Honour. I only found them calling me and including my names.

9 Q. Now, as I understand it, your motive in all this, in agreeing to become a witness
10 and providing a statement, was in order to better yourself financially; is that right?

11 A. Yes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Should we remain inside?

13 MR HOOPER: The difficulty is, as the cases progress, that say the matrix of sensitive
14 areas becomes quite difficult to walk through, so given the time, I'm quite happy not
15 to go in and out and to progress as quickly as I can.

16 Q. Mr Witness, we are in private session. You know (Redacted) that's right,
17 isn't it?

18 A. Yes, your Honour, I know (Redacted)

19 Q. And indeed, as you've said, he was involved with (Redacted) that's right, isn't
20 it?

21 A. Yes, your Honour, he was (Redacted)

22 Q. And you knew (Redacted) that's right? She was (Redacted) a
23 (Redacted) is that right?

24 A. Your Honour, I knew that she was a (Redacted) but
25 I could not establish the name (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: Spelling, Mr Hooper?
- 2 MR HOOPER: (Redacted) In fact the full name is (Redacted) so it's
- 3 two words. (Redacted) at least that's the spelling I have because I have seen
- 4 another spelling for that, but anyway - and then (Redacted)
- 5 Q. Do you know someone called (Redacted)
- 6 A. No, your Honour, I don't know.
- 7 Q. Let me just say that name again. (Redacted)
- 8 A. I don't know, your Honour.
- 9 Q. Would he be correct or incorrect in asserting that he met you at (Redacted)
- 10 (Redacted) and knows you (Redacted)
- 11 A. Your Honour, the person I still remember that I met (Redacted)
- 12 (Redacted)
- 13 Q. I'm asking about (Redacted) who worked for (Redacted) And
- 14 I've got a different spelling for (Redacted) I'll give them both just for the record. The
- 15 other spelling I've got for (Redacted), I've given one, is (Redacted) and not (Redacted) .
- 16 Anyway, (Redacted) He worked with (Redacted) in (Redacted) Does that ring a
- 17 bell now? You met him at a (Redacted) in 2008.
- 18 A. Yes, your Honour, I met in 2008.
- 19 Q. So you -- so you accept you met, just so I'm clear, (Redacted) in -- (Redacted)
- 20 (Redacted) in 2008? Is that correct, or incorrect?
- 21 A. Your Honour, the only (Redacted) I went in (Redacted) was that one that we met
- 22 with (Redacted) so if (Redacted) was there I could not recognize him because I was so
- 23 much interested in the lady than the man.
- 24 Q. Well, do you claim ever to have worked (Redacted)
- 25 A. Your Honour (Redacted) no one knows each other,

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1 unless by coincidence. Otherwise I don't know anyone, except (Redacted)

2 (Redacted)

3 Q. Is it correct or incorrect that in 2011, after (Redacted)

4 (Redacted) was in contact with you? Can you remember?

5 A. I have forgotten, your Honour.

6 Q. Do you know if (Redacted) is a Prosecution witness, or not?

7 A. I know (Redacted) as a witness.

8 Q. And you know (Redacted) and (Redacted) are witnesses; is that right?

9 A. I did not get the question, your Honour.

10 Q. All right, I'm sorry. Let me repeat it. And you also know that (Redacted)

11 and (Redacted) they're also Prosecution witnesses; is that right?

12 A. Yes, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, are you telling him, or are you

14 asking him, if he knows these things about other witnesses?

15 MR HOOPER: I'm asking if he knows and I'm doing it directly so that I can

16 complete this questioning.

17 PRESIDING JUDGE EBOE-OSUJI: Do we have difficulty with that, Mr Garcia?

18 MR GARCIA: Well, your Honour, I do recall that with the previous witness it was a

19 question of whether questions from Defence should be neutral on certain subjects,

20 given that the witness was having a tendency of agreeing with most of the

21 propositions, and I suggest that on subjects such as this one neutral questions be put

22 to the witness, or questions that are less suggestive than the ones that have been put.

23 PRESIDING JUDGE EBOE-OSUJI: That wasn't really what I had in mind, although

24 there is something to that as well, but I'm more worried for other reasons.

25 MR GARCIA: Your Honour --

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1 MR HOOPER: May I say I framed that question in that way "and you know that"
2 because my understanding was - my understanding was - that that's what he'd said
3 already in his evidence.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 MR HOOPER: So I'm not putting something that --

6 PRESIDING JUDGE EBOE-OSUJI: I was --

7 MR HOOPER: No, no, I understand. I've just reviewed the type. I can see where
8 your Honour's concern was.

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR HOOPER: But I've been at pains not to -- he's not our witness. I must stress
11 that.

12 Q. Now, (Redacted) a Prosecution witness, gave a statement to the Prosecution
13 over four or five days, 24 to 29 October 2012, to (Redacted) and (Redacted) He made a
14 statement and concluded and signed that statement on 29 October. Did you know
15 that? Did you know that before you were contacted on that day, 29 October, when
16 you were first contacted by the Prosecution, that (Redacted) had provided a
17 statement?

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

19 Q. A statement where he also, as we explored earlier, had gone to (Redacted)
20 (Redacted) Did you know that he had provided that
21 statement?

22 MR GARCIA: Your Honour, I object to that. In light of the witness's first response,
23 I don't see how the Defence counsel can put to him this second question.

24 MR HOOPER: Well, let me rephrase it.

25 Q. On 29 October you were first contacted, Mr Witness, by the Prosecution, and I'm

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1 asking you were you aware that (Redacted) had already spent the previous five
2 days with the Prosecution making his statement?

3 A. No, your Honour.

4 Q. And when did you first become aware that (Redacted) was a witness?

5 A. I -- I came to understand that (Redacted) was a witness in 2013, around
6 March.

7 Q. Now, in -- you make your statement on 8 to 11 (Redacted) as we've heard,
8 with -- in the presence of (Redacted) and (Redacted) . May I make it plain that this
9 Defence does not accept your account of the role of (Redacted) sorry, in that
10 episode. And in the course of the time that you're being questioned, between 8 and
11 11 (Redacted), on 9 (Redacted) is first contacted by the Prosecution.

12 My question is this: Did you know that (Redacted) was going to be approached
13 by the Prosecution?

14 A. Your Honour, I also did not know that (Redacted) was -- had talked with the
15 investigators.

16 Q. On 20 November, I've seen an investigator's note relating to that date - for my
17 friend it's 0116-0706 - where you complain to the OTP that a friend called (Redacted)
18 (Redacted) contacted -- sorry, that a friend was called by (Redacted)
19 So let me get that right. So a friend of yours is called by (Redacted) to say that they
20 knew, or he knew, that you were out to hang Ruto. Do you remember making that
21 report to the investigator?

22 A. No, your Honour.

23 Q. On another matter, when you were first contacted by the Prosecution can you
24 recall telling the investigators that your contact with the ICC could lead you to be
25 killed? Do you remember saying that?

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1 A. I have forgotten, your Honour.

2 Q. Do you remember in February of last year, 2013, contacting the investigators
3 and reporting (Redacted) Do you
4 remember doing that?

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

6 Q. I mean was there (Redacted) or was this a ruse? Was it true, or not?

7 A. There was no (Redacted)

8 Q. And on 23 February, that's just two weeks after the (Redacted) report, again I've
9 seen a note that you were in contact with the investigators saying that there'd been a
10 (Redacted) Do you
11 remember making that report?

12 A. No, your Honour.

13 Q. All right. My understanding is that you didn't indicate, according to the
14 note -- and it makes this note. No indication of the source, but a later report on 4
15 March '13 reports that 495, which is your pseudonym, said (Redacted)
16 (Redacted) Do you remember saying any of
17 that?

18 MR GARCIA: I'm sorry to interrupt. Can we have the ERNs for all the reports that
19 are being mentioned?

20 MR HOOPER: Yes.

21 MR GARCIA: I notice the information is being put, but not the ERN.

22 MR HOOPER: It's 0116-07070, the (Redacted) report is 0104-0675, the (Redacted)
23 report is 0116-0706 and the investigator's notes relating to could be killed is 0104-0675.

24 Q. So I'm just coming back, because I'm not sure -- I can't see my transcript here.

25 Did you -- I was asking you is that right, did you report (Redacted) and later say that

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1 the source for your information was (Redacted)

2 A. Your Honour, I never reported (Redacted)

3 Q. Now, these reports that you make about (Redacted) and about risk of being
4 killed, was any of that true?

5 A. No, your Honour.

6 Q. And what was the purpose then of making such reports to the investigators?

7 A. To the best of my knowledge I never made such a report.

8 Q. Now, in terms of other reports you've been referred today, as we've seen at tab 2,
9 3 and I thought 4, to (Redacted) if I can put it like that. Let me -- you've
10 probably got them -- remember them, Mr Witness, but as a courtesy, may I -- may I
11 ask that you be shown what we have, for example, at tab 1, that's
12 KEN-OTP-0082-0255, just to remind you so that you can see the (Redacted) that I'm
13 looking at, the nature of the (Redacted) There's several of them fashioned in the
14 same way.

15 THE COURT OFFICER (via video link): KEN-OTP-0082-0255 is shown to the
16 witness.

17 MR HOOPER:

18 Q. You may recall that there's a series of (Redacted)

19 Incidentally, just before coming to that, can I ask you this: How far is Turbo away
20 from (Redacted)? Do you know?

21 A. Your Honour, if I can guess, from (Redacted) and
22 then from Eldoret to Turbo is about 30, so approximately (Redacted) .

23 Q. All right. So clearly not -- not an area that you'd be very familiar with, would
24 that be right, (Redacted) kilometres away?

25 A. Yes, your Honour, I'm not familiar with Turbo.

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1 Q. Just that some of these (Redacted) obviously relate largely to Turbo. In fact, I
2 think, they all do, the Turbo area.

3 Now, when you first saw the Prosecution -- or, rather, when you were interviewed by
4 them to make your statement, as we know, you had a notebook which is at our tab 9,
5 and we've already been referred to this. At tab 9, if we turn to page
6 KEN-OTP-0084-0266, and if that could be put on your screen, this is part of the
7 notebook that you've seen before.

8 And this particular part of the notebook halfway down reads in handwriting, "Other
9 (Redacted) ..." All right, so there's -- at the screen at the moment we've got one of
10 the typical (Redacted) of a sequence of (Redacted) And having reminded of you of
11 that, if we could then go to 0084-0266, that page of the notebook.

12 THE COURT OFFICER (via video link): Page 0266 is in front of the witness.

13 MR HOOPER: No, no. Let me start again. The document itself is

14 KEN-OTP-0084-0256.

15 THE COURT OFFICER (via video link): Yes.

16 MR HOOPER: And it's up there. No, you've done it. Thank you very much
17 whoever you are.

18 Now, halfway down that page you will be familiar with this.

19 PRESIDING JUDGE EBOE-OSUJI: It is Ms Toumaj, T-O-U-M-A-J. That's the name
20 of the court officer on the other end.

21 MR HOOPER: Indeed.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR HOOPER: Thank you. Thank you, Ms Toumaj.

24 Q. "Other (Redacted) are as follows."

25 You see -- you see that.

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1 And then we have the (Redacted) dated (Redacted) 2011, (Redacted) and (Redacted)

2 (Redacted). So we have those -- (Redacted) referred to. And under the line

3 (Redacted) -- we're having a --

4 PRESIDING JUDGE EBOE-OSUJI: We want the unredacted copy.

5 MR HOOPER: We want the -- Ms Toumaj, we need the unredacted copy.

6 THE COURT OFFICER (via video link): Yes, the witness is seeing the unredacted

7 copy.

8 MR HOOPER: Oh, very well. It's just it's been superseded by -- by another one.

9 Q. Mr Witness, you're with us, or you, as to what we're looking at? We're looking
10 at that matter concerning the (Redacted) and what you say in your notebook about
11 them.

12 Now, you've told us about that. In whose handwriting -- after seeing them over the
13 last day or so, in whose handwriting are those (Redacted) do you know?

14 A. Your Honour, the handwriting in this notepad are mine.

15 Q. In the notebook it's yours, and we can see your handwriting, we have become,
16 perhaps, familiar with it, but the (Redacted) themselves, I showed you
17 one a moment ago.

18 Perhaps we should put it up again, tab 1? The (Redacted) themselves. Can we
19 have it up again so there's not confusion? I may be confusing the witness.

20 KEN-OTP-0082-0255.

21 Right. So that's the first of the (Redacted) and there's a sequence of them, and I'm
22 asking you, do you know who the authors are?

23 A. Repeat your question, your Honour.

24 Q. Do you know who wrote them?

25 A. Your Honour, the document before me I don't know who wrote it.

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1 Q. Now, as we heard from the Prosecution this morning, these -- these documents,
2 these sequence of (Redacted) came into the possession of the Prosecution when they
3 interviewed (Redacted) on 29 October 2012, and he produces those (Redacted) and he
4 claims he got them from you, he recognized your handwriting. Now, do you know
5 why he might say that, why he might say he got those (Redacted) from you?

6 A. No, your Honour. The information contained in this document I'm very much
7 not aware of the persons, the events, the time, so I don't know the document itself,
8 how it came about.

9 Q. Well, thank you.

10 Now, I want to ask you to turn, if you can, to a statement -- another statement you
11 made to the Prosecution, this one on (Redacted) 2013. And it is at our
12 KEN-OTP-0097-0050, Prosecution bundle, tab 11.

13 THE COURT OFFICER (via video link): Document KEN-OTP-0097-0050 is in front
14 of the witness.

15 MR HOOPER: Thank you very much.

16 Q. And, Mr Witness, looking at that, have you had the opportunity of seeing this
17 statement before? I hope it's been -- I think it's been provided to you. Have you
18 seen it before? Look at its contents, particularly page 3.

19 Do you have the hard copy there, Mr Witness?

20 A. Yes, your Honour.

21 Q. That's very helpful. Thank you very much.

22 Now, if you look at page 3 -- first of all, if you recognize this document, do you? If
23 you turn to the back page, I suggest that's your signature; is it not?

24 A. That is my initials, your Honour.

25 Q. Yes. And it's dated (Redacted) 2013. Do you remember making this statement?

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1 A. Yes, your Honour, it was the statement I made during that period when we met
2 with the investigators.

3 Q. All right. So, so far we have (Redacted) saying these are your documents,
4 written by you, produced by you (Redacted) Then we have your interview, your
5 notebook where you say, "I produced these (Redacted) " or (Redacted)

6 And now we come to this document where you say -- and they go through each of
7 them. I'm not going to go through, take up time doing that.

8 The first one, though, you say, "The handwriting belongs to (Redacted)

9 (Redacted) I recognize his handwriting because (Redacted) He
10 regularly wrote (Redacted)

11 And the second document you're shown you say, "I think this (Redacted) is from
12 somebody called (Redacted) . I'm not as familiar with her handwriting." Do you
13 remember saying that?

14 A. Your Honour, in fact, I don't remember going through this document.

15 Q. And then the third document, you're shown, KEN-OTP, et cetera, you think that
16 it's part (Redacted) and part (Redacted) Again, do you remember making that
17 comment on the document?

18 A. No, your Honour.

19 Q. And then for the rest of it you -- you are either not sure or in three cases you say
20 it's (Redacted) handwriting -- (Redacted) handwriting. Again, have you any
21 recollection saying that in April 2013?

22 A. (No audible response)

23 Q. I don't know if we got a reply. I'll ask again.

24 Do you remember saying any of that, any of the comments you make there in that
25 statement? Do you remember making any of those comments?

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1 A. No, your Honour.

2 Q. And after you've made that statement, (Redacted) is seen again, 0097-0063 is
3 the reference, on 5 April, so two days later, and he tells the Prosecution that each of
4 those documents was sent to him by (Redacted) or (Redacted) all in a -- one envelope
5 sent through the registered post. Did you -- did you ever hear about that that those
6 documents in fact came from -- or, are said to have come from (Redacted) and sent
7 to (Redacted)

8 A. No, your Honour, I never heard of it.

9 Q. And then (Redacted) herself, on 5 April, same day, also makes a statement
10 where she agrees she (Redacted) all of them, to (Redacted) Have you ever
11 discussed that with (Redacted) or (Redacted)

12 A. No, your Honour, I never (Redacted) to either (Redacted) or
13 (Redacted)

14 Q. Now, I'm not suggesting, may I say, that any of those documents, (Redacted)
15 (Redacted) were composed by you or that you (Redacted) them or had
16 anything to do with them, but why is it in your notebook you claim that you
17 (Redacted) them?

18 A. Your Honour, I did not (Redacted) any -- any document to either (Redacted) or
19 (Redacted) The only thing I was given on the table is the document to sign and
20 that is why I indicated my signature and my initials.

21 Q. Or was it the case that you and (Redacted) and (Redacted), all of you, put your
22 heads together on this plan to entice the Prosecution to support you and that these
23 documents were submitted in order to make you all look attractive, more attractive to
24 the Prosecution? Was that the reason that they were submitted, false documents
25 submitted in order to have the Prosecution view you as witnesses?

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1 A. Your Honour, if there was a certain idea of that nature I don't know because
2 with me I went to the location I was called to go and continue with the statements
3 I was given.

4 Q. Thank you. We're still in private session. Are you also known as (Redacted)?

5 A. I'm not getting the question, your Honour.

6 Q. Do you have a nickname or are you known as (Redacted)?

7 A. Yes, your Honour.

8 Q. Now, you've told us something about yourself, we can see you're (Redacted),
9 (Redacted) You referred earlier in your evidence to (Redacted)
10 (Redacted) at the time when you approached the Prosecution -- and is that right, did
11 you have (Redacted)?

12 A. Yes, your Honour.

13 Q. At that stage, you also mentioned that (Redacted); is that
14 right?

15 A. Yes, your Honour.

16 Q. And what (Redacted) may I ask?

17 A. (Redacted) your Honour.

18 Q. And when you came to the Prosecution towards the end of 2012 (Redacted)
19 (Redacted)?

20 A. No, your Honour.

21 Q. You've also made mention, and I ask this discreetly and in private, that you had
22 (Redacted)
23 (Redacted)

24 A. Yes, your Honour.

25 Q. (Redacted)

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1 A. (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 (Redacted)

5 A. Yes, your Honour.

6 Q. Now, when you approached the Prosecution you told us you did it in an
7 expectation and they, in turn, held out some promise to you of various things. Now,
8 don't tell me where you went, if you went, but were you ever relocated?

9 A. Yes, your Honour, I was relocated.

10 Q. Can I just ask was that inside or outside of the country? Don't tell us where,
11 just was it within the country Kenya or was it outside?

12 A. Inside the country, Kenya.

13 Q. All right. (Redacted)?

14 A. Yes, your Honour. (Redacted)

15 Q. (Redacted)

16 A. Yes, your Honour.

17 Q. And having been -- can you remember approximately when you were relocated?
18 Your interview was in (Redacted) 2011. How -- sorry, 2012 -- (Redacted) 2012. Can
19 you remember when you were relocated in relation to that time? Was it before that
20 first interview, or when?

21 A. (Redacted)

22 Q. And for how long were you relocated?

23 A. (Redacted)

24 (Redacted)

25 Q. All right.

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1 A. (Redacted)

2 Q. Okay. And while you were -- during the approximately (Redacted) -- well,
3 from the time you became a -- was interviewed and contacted by the Prosecution, did
4 you receive any money from the OTP or VWU? How were you financially
5 supported? Do you know how much you got?

6 A. Your Honour, I was supported.

7 Q. All right. What about education, did your children, in fact, benefit from
8 education?

9 A. Yes, I had to take my children to a -- a better schools and also I was given
10 money for food, for air time and for paying the rent for the house I was living in.

11 Q. I've received figures of a total expenditure by the OTP of just over \$2,000 and
12 of -- by the VWU of \$3,300, a total of just -- well, \$5,500. So that's \$5,500, I'm not
13 saying that's money that's been pressed into your hand and given to you, but it's
14 expenditure with dealing with you, but did you actually receive money and, if so,
15 approximately how much did you receive over the time that you were a witness?
16 Can you remember?

17 A. Your Honour, though I cannot remember properly, but I received the first
18 money for processing my passport, the temporary passport; later on I received
19 another money for processing now the original passport, the international one; apart
20 from that I was given money for transport to and fro from the location I had -- I was
21 going to -- to see them; I was also given money for maintenance at home (Redacted)
22 (Redacted) before I was relocated; and then during the time of relocation I was given
23 money for relocating (Redacted) all along from where I was to the new site where I
24 went, and from there they always sent 60,000 Kenya money for food, 45,000 for -- for
25 rent and they paid the (Redacted) in full.

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1 Q. And that 105,000 for food and rent, how often would you be paid that?

2 A. They normally send the whole amount, in fact, the same day. They sent 70,000,
3 then sent 35,000, so I withdraw it from the M-Pesa, then next month they do the same.

4 Q. All right. So my understanding is those -- you're talking of monthly payments
5 of that nature. All right.

6 Now --

7 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, one second. We see it is
8 10-minutes-to-4.

9 Mr Garcia, any --

10 MR GARCIA: No questions in re-examination at this point.

11 PRESIDING JUDGE EBOE-OSUJI: All right, but about next week and the next
12 witness, any news on when that witness will be ready to get on to the stand?

13 MR GARCIA: I'm not so sure, your Honours. I think we're expecting him to
14 possibly start on Monday, but I have to verify that and perhaps we can send an email
15 to the Chamber confirming that later on today.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 Mr Hooper, how much longer are you staying with this witness?

18 MR HOOPER: (Microphone not activated) I'm keeping to what I thought I would
19 be able to achieve. A few minutes.

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 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)

21 Q. Right. Those are all my questions of you, Mr Witness. And thank you very
22 much for assisting me.

23 Having said that, may I make it quite plain, because I may not have done as plainly as
24 I should have earlier, that this Defence does not accept your account of how -- of the
25 role played by (Redacted) and (Redacted) in composing that interview, of

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1 (Redacted) 2013, to make that quite plain. I think it has been plain but I make it as
2 plain as I can. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: It was very plain as regards (Redacted) before,
4 but now you've also extended it to (Redacted)

5 MR HOOPER: Yes, I omitted. I'm sorry, that was not a --

6 PRESIDING JUDGE EBOE-OSUJI: Yes, all right.

7 Witness, we will -- you remain bound by the subpoena, but we will excuse you for the
8 day and we expect you back on Monday at the same time.

9 So the court officer may take you out of the room for now. In the meantime, do not
10 discuss your testimony with anybody until you've been discharged. Do you
11 understand?

12 THE WITNESS: I understand, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 Mr Kigen-Katwa, one second.

15 THE COURT OFFICER (via video link): Mr President, should the counsel of the
16 witness remain in the room?

17 PRESIDING JUDGE EBOE-OSUJI: Yes, he might as well remain.

18 (The witness exits the video-link room)

19 THE COURT OFFICER (via video link): Mr President, the witness has left the room.

20 PRESIDING JUDGE EBOE-OSUJI: And thank you very much also for rejoining us.

21 Mr Kigen-Katwa, how much time would you say you need with this witness?

22 MR KIGEN-KATWA: I am fairly sure that I should be done with him in one session,
23 Mr President, one-and-a-half hours.

24 PRESIDING JUDGE EBOE-OSUJI: On Monday morning we will require you to tell
25 us exactly why you want to cross-examine the witness and what areas before the

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1 witness takes the stand. We would like to have that information.

2 And the Prosecution, also on Monday morning, before Mr Kigen-Katwa begins we

3 want to know exactly what you want to do with the testimony of this witness. We

4 want to make sure that we're using -- the process is geared for what it was designed

5 to do, the reason is the cross-examination you've done, we saw the nature of it, and

6 we also have seen the nature of the cross-examination for the Defence, so we want to

7 know what we want to do -- what you want us to do with the testimony of this

8 witness at the end of the day. We want to hear that on Monday.

9 MR GARCIA: Certainly, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 In the meantime -- yes, Mr Kigen-Katwa?

12 MR KIGEN-KATWA: Mr President, if it is -- if the Chamber would prefer, I can

13 indicate the areas of which I want to cross-examine this witness.

14 PRESIDING JUDGE EBOE-OSUJI: You want to do that right now?

15 MR KIGEN-KATWA: I could do it right away.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, go ahead please.

17 MR KIGEN-KATWA: Mr President, reference to my client are found at paragraph

18 51. I'll start with paragraph 46 and 47 where he said to have been in a meeting

19 with -- in Ruto's house, and that's the first issue I would like to deal with because it

20 would suggest a network.

21 The second one is reference to Mr Sang at paragraph 51 where he's said to have

22 announced issues related to ballot boxes and the administration policemen. And

23 Mr President will recall this is almost the third witness who has made reference to

24 Mr Sang commenting on the ballot papers and administration policemen, and so it is

25 an issue which we would really likely to address. As recent as the last -- the

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1 immediate last witness, 604, mentioned this issue.

2 The last issue, Mr President, is at paragraph 89, and since the witness is not here, he
3 very specifically says that Mr -- the Kass FM station was playing music on 1 January,
4 which is consistent with our case and we would like to survey first of all whether he
5 was listening to it and what we can make out of that.

6 The last general area I would want to deal with, Mr President, would be the issues
7 related to Article 70, but I'm in your hands, your Honours, if you -- I have a few
8 questions to ask on that area. I appreciate that my colleague, Mr Hooper, has told
9 one question on that area. I have a couple of questions, but I'm in your hands on
10 that aspect of the case.

11 (Trial Chamber confers)

12 PRESIDING JUDGE EBOE-OSUJI: The Court will rise and we will reconvene on
13 Monday.

14 THE COURT USHER: All rise.

15 *(The hearing ends in private session at 4.02 p.m.) Reclassified as open session

16 RECLASSIFICATION REPORT

17 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
18 2013, the version of the transcript with its redactions becomes Public.