

Trial Hearing
WITNESS: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/20

1 International Criminal Court
2 Trial Chamber III
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. Paul Gicheru - ICC-01/09-01/20
5 Presiding Judge Miatta Maria Samba
6 Trial Hearing - Courtroom 3
7 Thursday, 17 February 2022
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: [9:32:30] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE SAMBA: [9:32:59] Good morning again, everyone.
13 Madam Court Officer, can you announce the case, please.
14 THE COURT OFFICER: [9:33:10] Good morning, Madam President.
15 This is the situation in the Republic of Kenya, in the case of The Prosecutor versus
16 Paul Gicheru, case reference ICC-01/09-01/20.
17 And for the record, we are in open session.
18 PRESIDING JUDGE SAMBA: [9:33:26] Could the parties announce themselves,
19 beginning with the Prosecution, please.
20 MR STEYNBERG: [9:33:30] Good morning, your Honours. Good morning,
21 everyone. For the Prosecution this morning, myself, Anton Steynberg, senior trial
22 lawyer, and Mariana Gutierrez, acting associate trial lawyer, just for the first session.
23 Laura Warrlich will join us after the break.
24 PRESIDING JUDGE SAMBA: [9:33:46] Thank you very much, Mr Steynberg.
25 Mr Karnavas, please.

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1 MR KARNAVAS: [9:33:49] Good morning, Madam President, same composition as
2 yesterday.

3 PRESIDING JUDGE SAMBA: [9:33:53] Thank you very much, Mr Steynberg.

4 And for the record, I notice that Mr Gicheru is in court.

5 Madam Court Officer, do you have anything, any evidence or exhibit to put on
6 the record, please.

7 THE COURT OFFICER: [9:34:07] Thank you, Madam President. The document
8 that was annotated by the witness on Tuesday the 15th has been given the ERN
9 number KEN-REG-001-001 and is now accessible to all parties on eCourt.

10 PRESIDING JUDGE SAMBA: [9:34:29] Thank you very much.

11 We'll continue.

12 Mr Witness, good morning.

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

14 (The witness speaks English)

15 THE WITNESS: [9:34:35] Good morning.

16 PRESIDING JUDGE SAMBA: [9:34:36] Yes. We'll continue with your
17 cross-examination. Mr Karnavas will continue putting questions to you.

18 And I know, Mr Karnavas, you did a lot yesterday. May I ask again how much more
19 do you think, how long do you think you'll be on your legs, please.

20 MR KARNAVAS: [9:34:54] Well, I'm hoping to -- I'm hoping that we can conclude
21 with this witness entirely by the end of the day, but that depends on the witness. If
22 the witness is pesky as he was yesterday, then, you know, and feisty, then it may take
23 a little longer. But if he answers the questions smoothly, we'll go quicker.

24 PRESIDING JUDGE SAMBA: [9:35:22] All right. Thank you very much.

25 The witness will do his best to answer your questions.

1 Your witness, Mr Karnavas.

2 MR KARNAVAS: [9:35:30] Thank you.

3 QUESTIONED BY MR KARNAVAS: (Continuing)

4 Q. [9:35:35] Good morning, Witness.

5 A. [9:35:36] Good morning.

6 Q. [9:35:37] I want to pick up where we left off yesterday just to end the topic, and
7 this was concerning your representation that at some point you had sent an SMS
8 message to Mr Gicheru because of a relative being in the hospital and needing to pay
9 the medical bills; do you recall that?

10 PRESIDING JUDGE SAMBA: [9:36:02] Just a moment, Mr Karnavas.

11 Just for the record, I take note of counsel for the witness. I'm just looking on my file
12 list now. I take note of counsel for the witness, and just to assure the witness that
13 you are still highly protected so please feel free to answer the questions. Thank you.
14 Mr Karnavas, I'm sorry.

15 MR KARNAVAS: [9:36:23] No problem. Thank you, your Honour.

16 Q. [9:36:25] So do you recall that?

17 A. [9:36:28] Yes, I do.

18 Q. [9:36:29] And as I understand your -- your testimony, if I have it right, and it's
19 on the record, it's on page -- starting on 136 and onwards, you indicated at some point
20 because of a relative in need of medical attention and to pay the bills, you had
21 approached someone to assist you in getting Mr Gicheru's mobile number so you
22 could send him an SMS; is that correct?

23 And that would have been person number 4, that person number 4 gave you
24 the number to send the SMS?

25 A. [9:37:22] Yes.

1 Q. [9:37:22] Okay. So that's your testimony, right?

2 A. [9:37:28] That with the assistance of person number 4 I was able to send
3 the SMS.

4 Q. [9:37:34] Right. And we talked about the business cards and the availability of
5 the numbers elsewhere, but that's your testimony and that's fine. I want to bring
6 your attention to something else, and that is when you were being questioned on
7 13 July 2021 you wanted to establish that, that in fact you did have the SMS and that
8 you did in fact put out a message. And as I understand it, you wanted to convey
9 the fact that you never received an answer; is that right?

10 A. [9:38:23] Ask your question again.

11 Q. [9:38:26] Okay. This matter was brought up for the very first time, you've
12 indicated, to the investigators, to the OTP when they brought you here in July 2021.
13 That was the very first time that you ever mentioned sending an SMS to Mr Gicheru,
14 correct?

15 MR STEYNBERG: [9:38:46] I beg your pardon, your Honour. May we have
16 the reference to the part of the interview that my learned friend is referring to so we
17 can also follow?

18 MR KARNAVAS: [9:38:56] I will do that. I will note -- on this occasion I have no
19 problem, your Honour, but I will note that I would prefer getting the answer first at
20 times and I'll -- I'll say why, because the gentleman tends to pivot. He sees what's on
21 and then he pivots his answers and tailors his answers and that's why I first want to
22 commit him or recommit him. I will accredit and then I will confront. But in this
23 instance its tab 79 and --

24 A. [9:39:30] My -- my Honours, my Honour, I refuse that the counsel can lead my
25 answers to a point where I can self-incriminate myself by giving answers just the way

1 he wants by -- by the way he is asking his questions to me. I request again that any
2 question that he asks me that I have put in writing in a statement, that he refers me to
3 that statement first and then put the question so that I can give precise answers, that
4 I don't get myself into problems thereafter having answered otherwise. I have seen
5 this from when we start -- when he started to ask me questions, and not today, also
6 yesterday, the way he's leading his questions can make me commit myself to -- to -- to
7 the way I didn't mean to. Therefore, I'm asking that any question he's supposed to
8 ask, he ask me that I have put in writing in a statement, he refers first to that
9 statement so that I can give him a precise answer. It's my humble request,
10 my Honour.

11 PRESIDING JUDGE SAMBA: [9:40:53] Okay. Mr Witness, you see, when you
12 started testifying here, remember counsel for the Prosecution introduced certain
13 statements or documents to you that you agreed you had read, in fact immediately
14 before coming to this Court, and you even ticked off on them; not so?

15 THE WITNESS: [9:41:22] Yes, my Honour.

16 PRESIDING JUDGE SAMBA: [9:41:23] So those are some of the statements
17 he's -- counsel for the Defence is referring to. It's not that he wants to incriminate
18 you in any way. And in any event, he's Defence counsel. You cannot and
19 we cannot actually direct him as to, you know, how he wants to do his
20 cross-examination. I mean, legally speaking he'll do his best. When he needs to
21 refer you to documents, of course, he'll draw your attention. Okay? But -- and, you
22 know, if he asks questions that you do not remember -- excuse me, I told you before,
23 tell him that you do not remember. Tell the Court that you do not remember, you
24 know. Then they will guide you. Just calm down and answer your questions.
25 Okay.

1 THE WITNESS: [9:42:10] Thank you, your Honour.

2 MR STEYNBERG: [9:42:11] I'm sorry to interrupt you again. I'm sorry I provoked
3 this debate, your Honour, but my request was actually something different. My
4 request was not that the material necessarily be shown to the witness, but that my
5 learned friend can alert me and the Prosecution as to what he's referring to so we can
6 follow and check that he's in fact characterising the previous (Overlapping speakers).

7 PRESIDING JUDGE SAMBA: [9:42:31] Well, I appreciate it, but I was actually
8 addressing the witness's comments that he just made.

9 MR STEYNBERG: [9:42:36] I understand, your Honour. But I'm addressing my
10 learned friend's comments a moment ago when he said he didn't want to put this
11 material to the witness. That wasn't my request. That's all I'm saying. My request
12 is simply that he let me know what he's referring to, that I can also follow
13 the evidence.

14 PRESIDING JUDGE SAMBA: [9:42:50] Thank you. Well, that's between you.
15 Thank you very much.

16 MR KARNAVAS: [9:42:53] Thank you, Madam President.

17 Let's look at tab 78, which starts with 0160-0382.

18 PRESIDING JUDGE SAMBA: [9:43:07] That's binder volume 2.

19 MR KARNAVAS: [9:43:10] Volume 2, yes. Tab 78. The first page we'll see it's
20 13 July 2021. Mr Steynberg should be familiar with it because he was present during
21 that prep session. It's interviewer number 3. And if we go to page 4 on that
22 document, which is 0160-0386 - no tricks - if I can direct your attention to line 124 to
23 127. And I can pause here for the Prosecutor to acquaint himself with the document
24 to ...

25 Q. [9:44:06] Now, sir, let me just read this and then I'll pose a couple of questions.

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1 There are no tricks behind this.

2 "So, and just giving this scenario, which is ... which can be ... which can be even
3 checked if my uncle was in hospital ..."

4 PRESIDING JUDGE SAMBA: [9:44:29] Yes, please, Mr Witness.

5 THE WITNESS: [9:44:31] This also has names that can lead to -- to my identity. I
6 request that we go to private session.

7 MR KARNAVAS: [9:44:40] Your Honour, I'm not intending to make reference to
8 the names, but I have no -- no problem, but it's important to get this on the record in
9 front of the people in Kenya and around the world. He's come here, he's made
10 allegations. I'm well aware of his need for protection. But let's not turn this into
11 a trial where it's not public.

12 THE WITNESS: [9:45:11] My relative will identify me and the people close to him
13 and therefore lead to my identification back at home. That's why I'm requesting that
14 we go to the private session.

15 MR KARNAVAS: [9:45:21] Very well, your Honour. Let's go.

16 PRESIDING JUDGE SAMBA: [9:45:23] I think it's appropriate.

17 Madam Courtroom Officer, can we go to private session, please. Thank you.

18 (Private session at 9.45 a.m.)

19 THE COURT OFFICER: [9:45:37] We are in private session, Madam President.

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21 (Redacted)

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22 (Open session at 9.54 a.m.)

23 THE COURT OFFICER: [9:54:20] We're back in open session, Madam President.

24 PRESIDING JUDGE SAMBA: [9:54:23] Thank you very much, Mr Karnavas, your

25 witness.

1 MR KARNAVAS: [9:54:26] Thank you, your Honour.

2 Q. [9:54:27] Now, yesterday and today we mentioned the issue that you had many
3 phones, many SIM cards and whether you were supposed to have them. So I'm
4 going to go through some of the statements and you can either accept or deny
5 the propositions or whatever I put to you.

6 If we look at tab 85, 0135-0200, that's on 27 March 2014 and I'll direct everyone's
7 attention to 0135-0201.

8 When you find the document, sir, let us know.

9 A. [9:55:20] Yes, I have.

10 Q. [9:55:21] All right. So this is March. At this point, are you under the care of
11 the victims and witness section?

12 A. [9:55:32] Yes.

13 Q. [9:55:33] Okay. So part of their job is your well-being, keeping you safe and
14 secure?

15 A. [9:55:41] Yes.

16 Q. [9:55:42] Okay. And I take it that the OTP investigators were also working
17 hand in glove with the victims and witness section to make sure -- or unit -- to make
18 sure that that was the case, right?

19 A. [9:56:00] Yes.

20 Q. [9:56:01] And I take it from their long experience they have certain procedures
21 in place, right?

22 PRESIDING JUDGE SAMBA: [9:56:14] Whose long experience, Mr --

23 MR KARNAVAS: [9:56:17] The victims and witness unit, those -- the people that
24 work there. They have experience in -- in setting up protocols on how the people
25 that are under their care should behave.

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1 MR STEYNBERG: [9:56:31] Your Honour, how can this witness answer that
2 question?

3 MR KARNAVAS: [9:56:34] Well, he was part of it.

4 MR STEYNBERG: [9:56:36] He wasn't part of it.

5 MR KARNAVAS: [9:56:37] I'll move on, I'll move on.

6 THE WITNESS: [9:56:39] For your information, I am not -- I'm working for
7 (Overlapping speakers).

8 MR KARNAVAS: [9:56:43]

9 Q. [9:56:44] I never suggested that you were.

10 But they were-- but you had contact with them, did you not?

11 A. [09:56:48] Haven't contact.

12 Q. [09:56:48] Not at all? You never met any of them, anyone from -- from that unit
13 in the field?

14 A. [9:56:55] You are changing your question.

15 PRESIDING JUDGE SAMBA: [9:56:57] Mr Karnavas, please, you know, put your
16 questions slowly so that you can help the interpreters also and so that the witness can
17 understand your question.

18 MR KARNAVAS: [9:57:08]

19 Q. [9:57:08] So if we look at line 16:

20 "This is going to be a fairly obvious question perhaps I just want to ... for
21 completeness I just want to know. In our dealings with you, and on the first day of
22 the interview, we read through the different phone numbers that we had for you and
23 different phone numbers we knew you had [and] that you hadn't told us about.
24 Why [did] you [have] -- why [did] you had so many phone numbers? Can you
25 explain?"

1 Let me ask you this question. Was that a legitimate question for them to pose to you?

2 These are OTP investigators. Was that a legitimate question to pose to you, yes or

3 no?

4 A. [9:58:04] It was legitimate.

5 Q. [9:58:06] It was legitimate. Okay.

6 "Yes. For the time you are together we had been together in" -- location number, I

7 guess, number 5 -- number 6, okay.

8 "... we had been together in [location number 6] up to date, a long time ago, and I've

9 been in possession of so many numbers, a number of communication lines, and this is

10 because I communicate with ... I communicated with you on various lines and after

11 the meeting with you on those lines I left the lines completely for my security

12 purposes, knowing that communication in Kenya is a vital thing because you can be

13 followed easily using your communication ... using the communication data.

14 Therefore on various occasions I had to change my phone numbers for myself."

15 That's your answer?

16 A. [9:59:10] Yes.

17 Q. [9:59:10] Okay. So without notifying them you were changing numbers,

18 changing SIM cards, changing phones?

19 A. [9:59:18] Where I found that I will put myself into a security risk, I did change

20 the numbers, because matters of security does not start with the VWU or officers of

21 this court, matters of security starts with myself.

22 Q. [9:59:39] All right. "OK. Some of those numbers" -- this is on line 28: "Some

23 of those numbers that you had that we weren't aware of, did they include speaking

24 with other people you believe to have been witnesses of the ICC?"

25 This is your answer, line 30:

1 "Probably. I changed the numbers ... because I communicated with you. Others, I
2 changed those numbers after communicating with" -- this individual with
3 the member of the -- an investigator -- "and those ones that I communicated
4 with" -- person number --

5 PRESIDING JUDGE SAMBA: [10:00:27] Seventeen. Four and 17.

6 MR KARNAVAS: [10:00:29] Yes. Right.

7 Q. [10:00:32] Do you see that? Do you see your answer?

8 A. [10:00:35] Yes. Yes.

9 Q. [10:00:36] Now, were you supposed to be communicating with those
10 individuals?

11 A. [10:00:41] No, and that's why I changed the numbers.

12 Q. [10:00:44] You changed the numbers so you can communicate with them?

13 A. [10:00:51] When I communicated to them, I knew it could cause my security risk
14 because I don't know who else they will communicate to after I communicate to them.
15 And that's why I changed the numbers.

16 Q. [10:01:02] Okay. But hold on. You were instructed not to communicate with
17 them by your handlers, by the investigators, right?

18 A. [10:01:10] Yes.

19 Q. [10:01:11] Now, by changing SIMs and changing numbers you were also able to
20 communicate with them without your handlers knowing that you were
21 communicating with them. So it doesn't -- it didn't go just to your security, it also
22 was to prevent the investigators from knowing with whom you were communicating.

23 A. [10:01:38] My Honour, all these witnesses that I communicated to are people
24 that were well known to me, and even after the -- the -- when we were in
25 the protection programme, we were still communicating in the beginning to -- to

1 know, just to know how we were faring on. And I want to say that I did not want to
2 deny that we continued to communicate at different times with this -- with this -- with
3 these witnesses even -- even when we were in protection, in the protection
4 programme. That one I do not deny.

5 Q. [10:02:38] All right. Now if we could turn our attention to --

6 My apologies, your Honour. One second. I had the document, but I --

7 THE INTERPRETER: [10:02:48] Message from the English booth: Could counsel
8 please observe a pause between question and answer to enable interpretation.

9 Thank you. It's far too fast.

10 PRESIDING JUDGE SAMBA: [10:02:56] Mr Karnavas, I'm just getting a message
11 from the booth, the interpretation booth, that you allow the witness to answer
12 questions and pause a bit after the answer before we go on. Thank you.

13 MR KARNAVAS: [10:03:10] Thank you. Thank you, your Honour.

14 Tab 67, 0135-0509. Document is dated 2 July 2014. We're in a different location.

15 Location number 12. So we'll be talking about that location.

16 And if we could look at, it would be page 15, so it would be 0135-0524. You should
17 have the list over here, the handy list of the numbers of the locations and persons. If
18 you could look at location number 12, were you ever there during that period?

19 A. [10:04:20] Location number?

20 Q. [10:04:23] Twelve. And if not there, the country where location number 12
21 is -- is in?

22 A. [10:04:54] I have been to this location (Overlapping speakers).

23 Q. [10:05:00] Okay. So if we turn to line 537:

24 "OK? I always start off with the phone, communications and what people come into
25 the interview room [when]. It's just a standard practice, OK? This phone that you

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- 1 have here, who do you contact on this particular phone?"
- 2 Now let me stop right here. It sounds from the question --
- 3 PRESIDING JUDGE SAMBA: [10:05:37] Are you -- sorry, Mr Witness, are you at the
- 4 page that counsel is referring to?
- 5 THE WITNESS: [10:05:43] No, my Honour. I wanted to ask.
- 6 MR KARNAVAS: [10:05:47] Okay. I'll wait. I'll wait.
- 7 THE WITNESS: [10:05:49] Which tab?
- 8 PRESIDING JUDGE SAMBA: [10:05:50] It's tab -- it's tab 67 and you want page 15.
- 9 MR KARNAVAS: [10:05:55] Yes.
- 10 THE WITNESS: [10:06:28] I'm now there.
- 11 MR KARNAVAS: [10:06:30]
- 12 Q. [10:06:31] Okay. Good. Well, let me start off again. And if you could follow
- 13 along, I'm going to read from line 537:
- 14 "OK? I always start off with the phone, communications and what people come into
- 15 the interview room with. It's just a standard practice, OK? This phone that you
- 16 have here, who do you contact on this particular phone?"
- 17 Do you recall being asked that question?
- 18 A. [10:07:01] Yes.
- 19 Q. [10:07:01] Now, had that question been posed to you in previous occasions or
- 20 something similar to that? Whenever you would meet with them, did they ever ask
- 21 you about your phones?
- 22 A. [10:07:18] No.
- 23 Q. [10:07:19] Okay. And here you say that it belonged to your wife, right?
- 24 "Mostly it's my wife and a few friends" that you contact with that phone, right?
- 25 A. [10:07:36] That I contact my wife and --

1 Q. [10:07:41] And friends. Okay.

2 If we go further down: "A few people from where I stay here; I've given them
3 numbers that we've shared."

4 So people that you were -- when you say "where I stay here", you're meaning in
5 the locality?

6 A. [10:08:02] In the hotel.

7 Q. [10:08:03] In the hotel.

8 So you're staying in a hotel, you're using a private phone, you're calling, you know,
9 it's for your communication with your wife and communications with others,
10 including folks that are working or staying at the hotel?

11 A. [10:08:20] My -- it was -- it was the number that I arrived with in this location, so
12 I found a few -- a few people that we interacted in the hotel.

13 Q. [10:08:30] Okay.

14 A. [10:08:33] And as -- as normally we could, we could share. And especially
15 the people that I was introduced to helped me to locate where to get what I needed in
16 that because I was new in that locality. If I found someone who could show me
17 around, show me where I could buy stuff that I needed, then it was easier to
18 communicate to -- through phone and that is how ...

19 Q. [10:09:02] Okay. And I take it VWU was -- was fine with that? That was sort
20 of the -- that was something that was authorised for you to do, to share your number
21 with others as you were doing? Or were you not supposed to be doing that?

22 A. [10:09:22] From -- from beginning yesterday, I told you my private numbers,
23 I was -- there were -- there were no limitations to me. Apart from -- apart from
24 calling, I was not supposed to call people that were a security risk to me. And
25 the official telephone that I was -- that the telephone that I was using to communicate

1 to, to the VWU, for instance, telephones that I used to communicate to

2 the -- the investigators, for instance, those were the telephones I was -- that I -- I had
3 limitations of -- of using with others.

4 But telephones that were private telephones that I was using, only I was supposed to
5 make sure that I don't put myself into any security risk by communication.

6 Q. [10:10:41] Okay. So you were giving these numbers, though, to strangers, in
7 a sense. You didn't see that as a security risk?

8 A. [10:10:49] Yes, because none of the people that I was using the telephone -- that I
9 shared my telephone to knew what I was doing, where I came from, the location
10 where I came from and why I was there. It was not publicised. It was not
11 something that was in public, it was something that was in private with me. And,
12 therefore, the people I was interacting with close to me, if they ask -- if someone asks
13 you for a -- I cannot -- you cannot say that I cannot give you my, my telephone. That
14 will be even more -- people will start to get even more suspicious, so people that we
15 interacted with --

16 PRESIDING JUDGE SAMBA: [10:11:37] Mr Karnavas, can you switch off your mic
17 please.

18 THE WITNESS: [10:11:41] People that I interacted with in the hotel and became
19 friends and we interacted freely, then those ones I could share my telephone number
20 with them.

21 MR KARNAVAS: [10:12:00]

22 Q. [10:12:00] So that --

23 A. [10:12:02] And I have explained that, for instance, if I get someone who can
24 show me, by the time I was in that location, for instance, I could not speak
25 the language that is spoken in that -- in that location. Therefore, when I go -- when I

1 want to go to do my -- my -- my shopping, I will need someone to accompany me and
2 I will need -- I will need someone to interpret to me something that maybe I need.
3 Therefore, I needed someone who could assist me. An easy place to get someone to
4 do that is in the same place where you are staying. And whenever I needed help I
5 could easily make a call. That's how I shared the number with them.

6 Q. [10:12:55] All right. Let's move on.

7 You were then asked if they have the number, you said yes:

8 "How many phones do you currently have in [location number 12]?" You were asked
9 that question. We can see that on line 550, 551, your answer is, "1".

10 "You just have 1 phone, and this is it?"

11 Answer: "Yes."

12 "Can you [please] tell me the number of this phone?"

13 I would like to, you know, "If you let me confirm, please?"

14 Now, I take it that was the only phone that you had. You were being honest and
15 truthful with the investigators when you said that at that time at that location on that
16 day you only had one phone?

17 A. [10:13:52] When I was discussing with this -- at this -- at this time I was having
18 this phone, then that's when I arrived there.

19 Q. [10:14:03] I know you had this phone, but that's not my question. My question
20 is, on this day at this location when they ask you is it -- how many phones, you say "1".
21 Is the number of phones that you have only one or were there other phones in your
22 possession? It's a "yes", it's a "no", it's a "I don't remember"?

23 A. [10:14:28] I don't remember that.

24 Q. [10:14:29] Okay. So if you don't remember that means that you may have had
25 more than one phone at that time?

1 A. [10:14:42] At that time I had one phone.

2 Q. [10:14:45] Let me rephrase.

3 A. [10:14:47] To the best of my knowledge I remember. Because I've have given
4 an answer to this line that I had one phone (Overlapping speakers).

5 Q. [10:14:58] I understand. There's -- the line is there, but I'm asking from your
6 memory.

7 A. [10:14:58] Therefore, I had -- I had that phone with me at that time.

8 Q. [10:15:01] Okay. So your answer is maybe you had more, but because you see
9 one, your answer is it must be one?

10 A. [10:15:13] Yes.

11 Q. [10:15:13] Because if you had more than one then you would have been lying to
12 the investigators at the time?

13 A. [10:15:25] Yes.

14 Q. [10:15:26] Okay. If we could go to then page 17, and that would be 0135-0526.
15 Just minor stuff concerning your phone habits.

16 Line 605, you know, you say that: "Or to my wife ... [she's the one that] put her SIM
17 card in this one."

18 So when you say "this one", we're talking about the phone that you had your wife was
19 putting her SIM card in, right?

20 A. [10:16:09] Yes.

21 Q. [10:16:09] Okay. So that, if I understand you correctly, when you came to that
22 location you brought with you that particular phone?

23 A. [10:16:19] The phone that I was using, at times my wife would put her SIM card
24 in it.

25 Q. [10:16:27] Okay. I understand. I'm not worrying about at times.

1 This particular phone, you must have brought it from where your wife was staying
2 because you're saying at times she would put her SIM card in. So that's the phone,
3 right?

4 A. [10:16:43] Yes.

5 Q. [10:16:48] "I've also put the one that I was using in" -- this other location, in
6 location number 4 -- "to communicate with you?"

7 So you also put in a SIM card. So your wife would have a SIM card, you would have
8 a SIM card?

9 A. [10:17:06] Yes.

10 Q. [10:17:07] Now, did there come a time when you would take out the SIM cards
11 and put other SIM cards in, in that particular phone?

12 A. [10:17:17] Your question, please.

13 Q. [10:17:19] Did there come other times, were there times when you would take
14 out your SIM card, the one that you were using in location number 4, to put others
15 SIM cards so you could communicate with your friends or -- or your wife?

16 A. [10:17:37] If there are times I could use other SIM cards?

17 Q. [10:17:40] Were you using other SIM cards with that particular phone?

18 A. [10:17:44] I don't remember.

19 Q. [10:17:45] You don't remember. Okay.

20 So then you go on: "... yeah, you bought me a phone" -- because they ask you, "didn't
21 we buy you a phone ... to communicate with you?"

22 So, in other words, the investigators are saying this is not a phone that we -- that we
23 recognise. You're saying it's yours. They're asking, did we not buy you one? And
24 you say: "... yeah, you bought me a phone, but when I was at home, already my ...
25 also my wife, she had to insert her SIM card into it [and] then I didn't use it from

1 here."

2 So let me ask you this: The phone that you were provided by the OTP investigators,
3 were you also supposed to lend that or allow your wife to put her SIM card so she
4 could also use it?

5 A. [10:18:39] Remember, by that time I had gone home. That means I was not
6 having any intentions that I will go to this location by the -- by the time my wife used
7 the phone.

8 Q. [10:18:56] So this was a phone provided to you by the OTP investigators. You
9 had left the OTP as a witness. You kept the phone and you said: "Here, wifey.
10 Here you can put your SIM card and use it." Is that how it went, more or less?

11 A. [10:19:13] I am sorry. I am not the kind of man who hides phones from their
12 wives.

13 Q. [10:19:19] But this was a phone that was given to you by the OTP investigators
14 and now you're giving it to your wife so she could use it while you're using it as well;
15 is that correct?

16 A. [10:19:31] When I'm at risk my wife does too.

17 Q. [10:19:37] Now it goes on, they say, the interviewer:

18 "OK, just before I go into this ... further, I'm just going to have to remind
19 you -- remind you" -- I'm underscoring that word for you -- "remind you that it's not
20 [a] good practice to be swapping SIMs, because I can tell you every SIM card that's
21 been in this phone, OK? And if I can do that, then other people can also do that."
22 Were you not warned not to engage in that practice?

23 A. [10:20:22] I have just answered that I had gone home.

24 Q. [10:20:25] I'll take that answer. I'll take that answer. You don't have to repeat
25 it. We'll go on to the next.

1 Further down on line 621: "but it's a dangerous practice, OK, just to remind you that
2 it's bad practice, particularly, ... I ... well, can I ask ... on this phone now, what phone
3 is [this person] calling you ...?" This is another investigator. And you say "This one."
4 So further down, line 629:
5 "OK. So you were never provided a phone when you came into the country?"
6 And you say: "No, not yet."
7 "Or a SIM card."
8 "Not yet."
9 Line 633: "OK. Can I ask you, on this phone ... You said there were some local
10 people ..." And you say "Yes." And then we've pretty much covered that issue.
11 So is it true that at that point neither VWU or the investigators had provided you with
12 a phone?
13 A. [10:21:48] They had not.
14 Q. [10:21:49] Okay. So you were there all by yourself without a phone and that's
15 why, thank God, you had that phone from -- from your homeland when you came
16 there that you were able to buy a SIM and use it That's a question. So but for that
17 phone you would not be able to communicate, right?
18 A. [10:22:23] Yes.
19 Q. [10:22:24] If we go on to 0135-0527, that would be page 18, starting with 672:
20 "Excuse me. I also asked you who has access to this phone number, this" - and we
21 have three digits - "... and you told me there's a couple of people from the hotel here
22 that you've spoken [to]. Who are they? Are you able to tell me who they are, who
23 these people are that have ... number[s].
24 And then you say on the next page, 0135-0528: "I've called, I think, 2 other friends
25 from home."

1 Further down you say that you call somebody that works for you.

2 And then you say: "[I] think I'm in Nairobi -- They think [that] I'm in Nairobi.

3 When I'm calling the others, I put my phone into ... hide identity [so] I [can] call."

4 A. [10:23:40] Yes.

5 Q. [10:23:38] So that's what you were doing? When you were in different
6 locations you could put your phone in hide identity, and call them wherever you
7 were, to give the impression that perhaps you were still in -- in Kenya when in fact
8 you might be somewhere else?

9 A. [10:24:00] When I called someone that could pose a security risk to me, and in
10 that case I called people who were working for me in my -- in my -- in my yard
11 on -- on -- on that private -- on that private -- on a private call just to make sure that
12 I am secure when making calls.

13 Q. [10:24:24] Okay. Now if we could go to tab 41. I'm -- I know you've said this
14 but I want to be -- be clear on the record. This is a transcript from the Ruto and Sang
15 case when you testified. The date is 21/11/2014. And it regards on the same topic.
16 And it's page number 9.

17 PRESIDING JUDGE SAMBA: [10:25:11] Is it in volume 1? Did you say 41, tab 41?

18 MR KARNAVAS: [10:25:17] I said, yeah, tab 41, your Honour. And it's a transcript.

19 Q. [10:25:27] If you could find it, sir. And if you look up on the left corner you'll
20 see a number. Perhaps you might recognise yourself.

21 A. [10:26:38] Tab 41.

22 Q. [10:26:38] If you go to page 9 and you go to line 12: Question: "Sure. And
23 incidentally, sir, at that time how many phones did you have?

24 At that time?

25 Yes.

1 At that meeting I had that phone that I gave out."

2 Now further down:

3 "I don't recall" - this is on line 21 - "I don't recall, because I owned so many phones by
4 today and phone that I used for most of my communications is the phone that I gave
5 out."

6 "And do you at least recall how many SIM cards you owned? I don't."

7 So can that -- from this, from your testimony under oath, can we conclude that you
8 had so many phones that you -- you didn't remember how many you had over this
9 time -- during this period of time?

10 MR STEYNBERG: [10:27:55] Sorry, your Honour, which period of time is my
11 learned friend referring to?

12 MR KARNAVAS: [10:27:59] Well, the period of time, well the Ruto and Sang case
13 was talking at this stage his involvement in -- in contacting person number -- number
14 2.

15 Q. [10:28:22] Is it fair to say that during 2013, 2014, when you were working and
16 being handled by the OTP investigators, that you had so many phones and so many
17 SIM cards that you have no -- you're not able to tell us how many?

18 A. [10:28:48] Perhaps if you may tell me how I was working for them.

19 Q. [10:28:50] You were being handled.

20 A. [10:28:56] Thank you.

21 Q. [10:28:54] So my question is: Do you remember how many phones exactly you
22 had, were using, and how many SIM cards?

23 A. [10:29:06] I don't remember.

24 Q. [10:29:07] And would it be fair to say that you don't remember
25 the -- the numbers that you were using?

1 A. [10:29:16] I don't remember.

2 Q. [10:29:14] Okay. And then one last on -- this is tab 22. This is again in
3 the same case, different date, 26/11/2014.

4 And now it's Mr Steynberg who is asking the questions, so perhaps he doesn't need
5 his memory refreshed on the time that we're talking about. And he poses
6 the question to you on line 10, this is on page 106:

7 "You were confronted at a certain stage with an analysis report -- a cell phone analysis
8 report by my learned friend for the Ruto team."

9 PRESIDING JUDGE SAMBA: [10:30:06] Which page, please?

10 MR KARNAVAS: [10:30:08] 106, your Honour. And I'm reading from line 10.

11 PRESIDING JUDGE SAMBA: [10:30:18] Did you say (Microphone not activated).
12 Did you say tab 21?

13 MR KARNAVAS: [10:30:23] Twenty-two, your Honour. Twenty-two.

14 PRESIDING JUDGE SAMBA: [10:30:29] And page?

15 MR KARNAVAS: [10:30:32] Page 106, starting around line 10. Mr Steynberg is
16 asking a question.

17 PRESIDING JUDGE SAMBA: [10:30:42] Yes, please.

18 MR KARNAVAS:

19 Q. [10:30:45] And he's asking you about being confronted with a -- a cell phone
20 analysis report. Do you recall that?

21 A. [10:30:53] Yes.

22 Q. [10:30:51] And do you recall being confronted, actually, with that report, not just
23 the question of it, but actually seeing a report that they showed you?

24 A. [10:31:04] Yes.

25 Q. [10:31:01] And that, basically, that was the report -- it was an extraction report.

1 They wanted to find out what exactly was happening in that particular phone, to
2 extract all the information?

3 A. [10:31:16] Yes.

4 Q. [10:31:15] Okay. Because they wanted to know whoever was using that
5 phone - and I presume it was you, because it was your phone - they wanted to know
6 what activities you were up to, who you were communicating with and who was
7 communicating with you, right?

8 A. [10:31:36] They wanted to see the communication that I had done to the person
9 number --

10 Q. [10:31:42] All right.

11 A. [10:31:45] The person -- the person number -- it is number 2 you mentioned.
12 Number ... yes, person number 2.

13 Q. [10:31:51] But also in general what was going on with that particular phone,
14 who else you were communicating with. Or was it just strictly targeting person
15 number 2 and nobody else?

16 A. [10:32:06] To my understanding on that -- the need for that extraction that -- that
17 we have spoken about was to see the communication with person number 2.

18 Q. [10:32:14] All right. And then Mr Steynberg goes on at line 15:

19 "Before I get to [this] report -- to the report, you were also asked at a certain stage how
20 many SIM cards you had while you were in the protected location. You couldn't
21 recall how many, but can I ask you this: Was it one SIM card or more than one
22 SIM card."

23 And you answer: "More than one.

24 And did you just use one SIM card in one phone? Did you use more than one
25 SIM card in one phone? Did you switch SIM cards between phones, or how did it

1 work?"

2 So he's giving you a multiple choice question. You could pick either one of these.

3 And your answer is: "Every SIM card had a phone. I was advised not to mix SIM
4 cards which I was calling different people like OTP, my family. I was given different
5 phones for specific purposes." Right?

6 But isn't that a fact, sir, that you were mixing SIM cards at the time? Perhaps out of
7 necessity, but you were in fact mixing SIM cards, taking them in and taking them out,
8 and that's why you had been previously warned that that was a dangerous practice
9 for your own security purposes?

10 A. [10:34:02] Like I told you even before you came to this, that there were different
11 phones with different purposes and there were phones that I could -- I could use
12 freely even by changing the SIM card.

13 Q. [10:34:16] Okay. Now we're going to stick on the issue of phones.
14 I apologise for everybody, it's not a terribly sexy topic, but it's an important one. So
15 I'm going to be sort of going into a subsection of the phone topic about you and your
16 answering habits, or turning off habits of the phone. And if you may recall,
17 yesterday I posed a question or two about you turning off your phone and being
18 in -- unavailable to the investigators while you were working with them. Do you
19 recall that?

20 A. [10:35:03] Yes.

21 Q. [10:35:02] And it's a fact that you were at times turning off your phone, right?

22 A. [10:35:16] I could do so.

23 Q. [10:35:16] I know you can.

24 A. [10:35:20] Like that time you have just spoken about.

25 Q. [10:35:20] But did you do it?

1 A. [10:35:24] The time you have just spoken about, it were off.

2 Q. [10:35:25] Okay. And I also mentioned a couple of other things about VWU
3 finding -- you know, confronting you at times about that, about your phones. And
4 in fact in one instance, I may not have raised it but we're going to get to it, at one
5 instance they didn't trust you, they thought that you could not possibly have six
6 phones. Do you recall that?

7 A. [10:35:59] I don't.

8 Q. [10:35:56] Okay. We're going to get to that slowly.

9 So let's look at, first, tab 36 and it's 0107-0289. This is an investigative report. It was
10 filed on 14 May 2013. If you could find it, and when you find it please let us know.

11 A. [10:36:28] I have it.

12 Q. [10:36:29] Okay. And it does refer -- it is in reference to you, is it not?

13 A. [10:36:42] It is.

14 Q. [10:36:43] Okay. And so we begin on Monday: "On 14 May 2013 in this
15 morning" -- I don't know, can I say this in public, the number, P-3 ...

16 Mr Steynberg, are you going to get excited, or anybody else?

17 A. [10:37:08] I do, because that number could identify me. That's why it was
18 changed to the current number.

19 MR KARNAVAS: [10:37:15] Okay. All right.

20 PRESIDING JUDGE SAMBA: [10:37:16] Thank you very much, Mr Witness, yes.

21 MR KARNAVAS: Yes.

22 Q. [10:37:17] That this morning they received two SMS to the duty phone, 8:26, 8:43,
23 "informing that his usual line" - meaning your line - "was off and he is [un]reachable
24 now reachable on" -- that "he is reachable now reachable on a new number".

25 Do you recall that? Do you recall sending those two SMS messages on 14 May 2013?

1 A. [10:37:55] If I do?

2 Q. [10:37:54] Do you recall sending the messages saying: "I'm now reachable, but
3 I have a new number"?

4 A. [10:38:05] I don't remember.

5 Q. [10:38:06] Okay. I know you don't remember, but you would not be disputing
6 what is in this report, would you?

7 A. [10:38:16] I am not disputing.

8 Q. [10:38:17] Okay. All right. So then it says that you were called by a couple of
9 investigators and a meeting was arranged on that particular day at 13:10. Do you
10 recall being called for a meeting?

11 A. [10:38:36] I don't remember.

12 Q. [10:38:34] Okay. And then it says that you apologised for having your phone
13 switched off since the previous Friday, 10 May 2013, and that for not being in contact
14 with the team. "He said that he had been away from -- from his apartment since
15 7 p.m. on Saturday, 11 May 2013. [That he was] visiting" -- now this, I don't know
16 whether we can do this in public or not?

17 PRESIDING JUDGE SAMBA: [10:39:09] No, please, because he had asked
18 that -- yesterday that that be kept in private session.

19 MR KARNAVAS: [10:39:14] Yes. That's why I don't want to embarrass
20 the gentleman, so we go into private.

21 PRESIDING JUDGE SAMBA: [10:39:23] Can we go into private session, please,
22 court officer.

23 (Private session at 10.39 a.m.)

24 THE COURT OFFICER: [10:39:38] We're in private session, Madam President.

25 (Redacted)

Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/20

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/20

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/20

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21 (Open session at 10.50 a.m.)

22 THE COURT OFFICER: [10:50:44] We are back in open session, Madam President.

23 PRESIDING JUDGE SAMBA: [10:50:48] Thank you very much.

24 Mr Karnavas.

25 MR KARNAVAS: [10:50:50] Thank you.

1 Q. [10:50:51] Okay. Now we're looking at this report dated 8 and 9 July 2013.

2 And if we look at the third paragraph, this is on page -- page 1, which is 0116-0495,
3 the investigators informed --

4 PRESIDING JUDGE SAMBA: [10:51:14] Be mindful of the numbers there. Thank
5 you.

6 MR KARNAVAS: [10:51:19]

7 Q. [10:51:20] -- informed you that they have been trying to reach you since
8 Saturday 6, and Sunday 7 July 2013. So we're in a different period now. "But he
9 was unreachable." That you said that you were "unreachable probably because of
10 a poor network coverage." And in addition, you had gone to church and then
11 afterwards you had -- you went to take a sauna and that's why you turned off
12 the phones.

13 Do you recall that?

14 A. [10:52:02] I don't recall.

15 Q. [10:52:03] Okay. But during this period do you have any recollection as to
16 whether you were still having contacts with the investigators and whether you were
17 assisting them in whatever capacity? We're talking July 8 and 9, 2013.

18 A. [10:52:35] I don't remember.

19 Q. [10:52:36] Okay. If we can go on to next page. Here it's 9 July 2013. We have
20 two investigators met you. The objective of the meeting was for you to make
21 a phone call to -- can I say the number -- say this number? Number 2, person
22 number 2.

23 I apologise, I'm still trying to get a handle on these numbers.

24 As agreed the day before. However, before meeting -- before the meeting in location
25 number 6 field office, the location number 6 field office forwarded to the investigator

1 a SIM sent by you from a number from location number -- number 6 that same day
2 saying that you wanted to inform them that you were "followed by two apple at night
3 about 10.30 when I was [in the] supermarket and they attacked me though I was not
4 harmed they took 2000 from me and my 3 phones. Pls inform ..."

5 Do you see that part? It's on the second page. It's on 0116-0496. It should say
6 "Page 2 of 2".

7 So 9 July 2013. Do you recall sending such a message?

8 A. [10:54:36] Yes.

9 Q. [10:54:37] Okay. And maybe we can cut this a little bit short. There was an
10 incident. You went out at night, around 10 o'clock or so. You were coming back
11 from a -- a small shop. Right?

12 A. [10:54:54] Yes.

13 Q. [10:54:55] And the long and short of it was you were mugged?

14 A. [10:55:00] Yes.

15 Q. [10:54:59] You weren't harmed? You were not harmed?

16 A. [10:55:06] Yes.

17 Q. [10:55:05] They just told you "stand there". They told you to stand, and you
18 did, right? That's a question.

19 A. [10:55:19] No.

20 Q. [10:55:21] Okay. All right. It says here "they said (Redacted)" and in that
21 language means "stand there". Now this is you saying it, not me, and I don't know
22 that language. I don't know what language they were speaking of. But you say
23 they said to you "stand there".

24 A. [10:55:45] You are reading at what paragraph?

25 Q. [10:55:44] The second -- you look at the -- the second paragraph, which starts:

1 "When the investigators met (redacted)". It might be easier. I'm sorry, when they met
2 you at 12.30 p.m., you confirmed, "he confirmed that -- he confirmed what was said in
3 his SMS. He said that the night before, he was going [to] a supermarket called" - and
4 you give the name - "not far from his house. He saw three individuals who were
5 [working] in the same -- who were walking in the same direction as him and he was
6 behind them. When he reached their level and wanted to pass them, they said
7 (Redacted) to them - which in [this language] means 'stand there'. Then the three
8 individuals came to him. They started asking him several questions without giving
9 him the opportunity to answer: Who are you?"

10 Okay, do you recall that?

11 A. [10:56:48] Okay. I am -- I am --

12 Q. [10:56:49] Do you recall saying that?

13 A. [10:56:51] Sorry, let -- let me explain.

14 Q. [10:56:50] Well can you answer my question first and then give the explanation?

15 A. [10:56:57] And that's why I wanted to give the explanation before I give you that
16 answer. First of all concerning this one, that sebo means stand there, I think that one
17 is wrongly placed, because (Redacted) means -- means something else, not -- not
18 stand there. First of all, I think someone who was interpreting that did a mistake, it
19 is not "stand there" in (Redacted). I don't know now they say it in the (Redacted),
20 "stand there", but I know that this term (Redacted) (Redacted)
21 (Redacted).

22 Q. [10:57:31] Okay, sir, if I -- if I can interrupt --

23 A. [10:57:38] So -- sorry, number 2. Concerning your question which you asked if
24 I recall this incident. It is true that I recall the incident.

25 Q. [10:57:46] Okay. Well, thank you for the language lesson, but that wasn't

1 the gist of the story or my question.

2 My question was did this incident occur, yes or no?

3 A. [10:57:59] Yes.

4 Q. [10:57:59] Okay. And at that point in time you claim that they took three
5 phones from you, right?

6 A. [10:58:06] Yes.

7 Q. [10:58:04] Okay. And you then informed VWU that were, you know, assisting
8 you, of what happened, right?

9 A. [10:58:18] Yes.

10 Q. [10:58:16] And that they informed the OTP investigators, right? At some point
11 they -- they -- they informed them that you had been passed this -- this -- this on. Or
12 maybe you contacted them directly?

13 A. [10:58:36] Sorry, before I just continue answering "yes", "yes" to every question,
14 that we may first look whom did I send the SMS to.

15 Q. [10:58:47] Okay. Let's go -- let's go further down.

16 A. [10:58:48] No.

17 PRESIDING JUDGE SAMBA: [10:58:49] You have two minutes before we break,
18 Mr Karnavas.

19 MR KARNAVAS: [10:58:51] I understand.

20 THE WITNESS: [10:58:52] For the two minutes, please, can you tell me whom I sent
21 the SMS to, so that I answer, whether it was the VWU or it was the investigators?

22 MR KARNAVAS:

23 Q. [10:59:01] They're saying here that they received an SMS from you, and they
24 passed it on. And when the investigators met you, you confirmed what they learned
25 from the SMS.

1 So whether you sent an SMS or not, that's not at issue. What we're dealing with is
2 whether you represented that three phones were taken from you, and you said yes.
3 Now, "Later in the evening, (Redacted) reported to the investigators that
4 in the morning, VWU staff paid a surprise visit to [you] in [your] house after he
5 reported the loss of his phones and money. The VWU staff said that they found
6 [a laptop] and three phones in [your] house. The VWU staff asked [you] about
7 [the three] phones and he said that those phones were left [at] home, and [that] he did
8 not have them when he was attacked. It seems that the VWU staff doesn't trust
9 [you], they don't believe that he had 6 phones."

10 Now we're going to stop here because I see the clock. But when I -- we come back
11 I'm going to ask you about what you represented earlier, that you only had one phone,
12 and know we -- we have six. Now I understand the periods are different, but maybe
13 you have an explanation.

14 PRESIDING JUDGE SAMBA: [11:00:48] Well this is a convenient time to stop.

15 We'll return to court for 11.30.

16 Thank you.

17 THE COURT USHER: [11:00:57] All rise.

18 (Recess taken at 11.00 a.m.)

19 (Upon resuming in open session at 11.32 a.m.)

20 THE COURT USHER: [11:32:43] All rise.

21 Please be seated.

22 PRESIDING JUDGE SAMBA: [11:32:56] Good morning, again.

23 Mr Karnavas, the interpreters would want for you to really slow down the pace at
24 which you ask questions and allow the witness to answer before putting another
25 questions.

1 And I want to say that, you know, the pace of the testimony is really too slow, and
2 maybe if we can work on that a little bit, Mr Karnavas.

3 MR KARNAVAS: [11:33:30] I'm trying --

4 PRESIDING JUDGE SAMBA: [11:33:31] So that, you know, you put questions that
5 are really, really necessary, I should say.

6 I'd also want to remind the witness again that, as I said when we started off, you are
7 protected, but don't get into arguments with counsel. Answer the questions that are
8 put to you, and maybe avoid telling a lot of stories, especially things that you would
9 have said before. And if you could answer the questions accurately and, you know,
10 I think that that would help us with -- with time.

11 My intention, actually, is to finish the testimony of this witness today, if we may. So
12 what I intend to do is actually to shorten our lunch break. So when we go away for
13 lunch for 1 o'clock, if we could come back at 2 o'clock, so that we can take it between 2
14 and 4, and use the 30 minutes between 2 and 2.30. So we start off at 2 and maybe
15 leave at 4 o'clock.

16 So let's try and make much of the time that we have, Mr Karnavas, and I'll appreciate
17 that. Thank you very much.

18 MR STEYNBERG: [11:34:52] Your Honour, if I may, as regards the schedule, if I
19 might indicate that, at this stage, the Prosecution would probably request about
20 15 minutes for re-examination.

21 PRESIDING JUDGE SAMBA: [11:35:02] Well, let's see. Let Mr Karnavas finish
22 with the witness. Thank you very much, Mr Steynberg.

23 Yes, Mr Karnavas, to you, again. Your witness, please.

24 MR KARNAVAS: [11:35:11] Thank you. And I did streamline a little bit, and I'll
25 work over the lunch break to do the same. And, first, I want to apologise to the staff

1 for creating extra work during the break. I saw some members of the Registry staff
2 working, as opposed to relaxing, as a result of our mishaps here. And my apologies
3 to the -- to the hard-working language assistants here.

4 Q. [11:35:40] Okay. Now, turning to tab 37, April 27, 2015, we're still going to
5 stick with the issue of phones and your communications.

6 So if you could look at tab 37. The date is 27 April 2015. It's only one page. It's
7 0153-0021. If you have it.

8 Do you recall -- do you have it?

9 A. [11:36:20] Yes.

10 Q. [11:36:22] Okay. Now, it shows that on 31 July and on 5 August that one of
11 the investigators was trying to contact you -- or was in contact with you to make
12 arrangements for a meeting; do you recall that?

13 A. [11:36:40] I don't recall.

14 Q. [11:36:41] Okay. And it says that on the 31st, that you had advised that you
15 could meet with him at a later time. That's on the second paragraph. Do you see it?

16 A. [11:36:53] Yes.

17 Q. [11:36:54] And then on the 1st, he received a text message from you. "Where,
18 sir?" Where to meet, basically. And you were advised later in the day -- or you
19 advised later in the day.

20 And then on August 2, the next day, he receives a message that basically said, I guess,
21 that you were ill; is that right?

22 A. [11:37:32] Yes.

23 Q. [11:37:32] And then on the 4th, still trying to reach you, it says that he received,
24 the investigator received the following message from you: "Let it be Tuesday am not
25 feeling well."

1 And then it goes on. The following day, 5 April, he received the following text
2 message from you: "Still sick hope will [be] able to talk tomorrow".

3 And then we see that there were numerous attempts to contact you, but he was
4 unable to reach you. Do you recall that?

5 A. [11:38:14] I don't recall.

6 Q. [11:38:14] Okay. But you would accept what's in this investigative report, that,
7 during this period of time, they're trying to contact you, and you're coming with these
8 reasons. I'm not suggesting that you weren't sick, but for some reason they weren't
9 able to meet up with you, right?

10 A. [11:38:36] I'm not objecting the report.

11 Q. [11:38:39] Okay. Now, if we get to tab 38, tab 38 -- and it's 0153-0022. And
12 the date is -- well, it was filed on 26 April 2015.

13 This particular investigator, your Honour, has the habit of, years later, filing reports.

14 We may need to go into closed session for this one. It's a very quick one.

15 PRESIDING JUDGE SAMBA: [11:39:26] Can we go into closed session please,

16 Madam Court Officer. Thank you.

17 (Private session at 11.39 a.m.)

18 THE COURT OFFICER: [11:39:43] We're in private session, so no -- not closed
19 session. Private session. Thank you.

20 (Redacted)

21 (Redacted)

22 (Redacted)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

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Trial Hearing
WITNESS: KEN-OTP-P-0800

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Trial Hearing
WITNESS: KEN-OTP-P-0800

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Trial Hearing
WITNESS: KEN-OTP-P-0800

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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22 (Open session at 11.56 a.m.)

23 THE COURT OFFICER: [11:56:41] We're back in open session, Madam President.

24 PRESIDING JUDGE SAMBA: [11:56:44] Thank you very much, Madam

25 Court Officer.

Trial Hearing
WITNESS: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/20

1 Mr Karnavas.

2 MR KARNAVAS: [11:56:48] Thank you. Thank you, your Honour. I'm trying to
3 balance speed and moving, you know, along so we can finish today.

4 PRESIDING JUDGE SAMBA: [11:56:55] I appreciate that. Thank you very much,
5 Mr Karnavas.

6 MR KARNAVAS: [11:56:58]

7 Q. [11:56:59] Okay. So if we look at page 80, and this is from a transcript, and it's
8 dated 20/11/2014. And just -- just to hit this little point, if we look at line 6 and
9 7 -- do you have it?

10 A. [11:57:17] No. Tab?

11 PRESIDING JUDGE SAMBA: [11:57:20] Tab 7.

12 MR KARNAVAS:

13 Q. [11:57:21] Tab 7.

14 A. [11:57:22] Seven, yes.

15 Q. [11:57:23] Yeah. Do you have it?

16 PRESIDING JUDGE SAMBA: [11:57:23] Page 80.

17 MR KARNAVAS:

18 Q. [11:57:26] Page 80; eight, zero.

19 PRESIDING JUDGE SAMBA: [11:57:34] It's the last page.

20 MR KARNAVAS: [11:57:44]

21 Q. [11:57:44] Do you have it?

22 A. [11:57:45] My tab 7, last page is page 35.

23 Q. [11:57:51] Well, let me just read it. It's one line I want to read. Okay? And
24 then we see whether you can recall, because it says, "I was asked" -- this is you.

25 "I was asked to seek permission if there was need for communication with any other

1 witness." Okay.

2 Do you -- do you recall saying this in court under oath in the Ruto case?

3 A. [11:58:16] Yes.

4 Q. [11:58:16] Okay. And do you stand by that? Do you stand by that statement
5 that you made, that answer?

6 A. [11:58:27] Yes.

7 Q. [11:58:28] Okay. That's it. That's all I wanted. I wanted a confirmation that
8 you were not supposed to -- you had to seek permission. That's all.

9 Now, if we could go to tab 1. Tab 1. Another housekeeping matter. It's 0135-0103.
10 And it's on page 3 that I'm going to be, you know, referring to. Just a quick matter.
11 And while you're looking for it, yesterday I asked you whether you had any contact
12 with witness number 18 on the list while you were in situ in location number 6. And
13 I specifically, if you might recall, asked you if you had visited her while she had taken
14 ill. And you could not remember.

15 A. [11:59:36] Yes, I could not remember.

16 Q. [11:59:38] Now, if we look at line 98, starting with line 98, or somewhere there,
17 you seemed very loyal then. "Now, my mission there, because" -- I'm going to skip
18 the name -- "now knew [that number 18], and [number 18] had refused to receive
19 phone calls from me, from them, when I left [location number -- goodness -- location
20 number 18] ... when I left [location number 6]. I want to say, even before I went ...
21 before I got out of [location number 6] I went to hospital, to go and see [number 18,
22 person number 18] that I was ... where she was, and where she was in a coma. I did
23 tell [person number 18] that I was going back home. ... I told her ... I was tired, ...
24 I was going to leave, because I was invited by -- by [person number -- number
25 2] -- I believe it is, or -- no. Number -- "[number 4] to go, and I was now, there was

1 link [for] me going back home."

2 So, from where, can we establish, at least, that you did visit and speak with person
3 number 18 while you were in location number 6.

4 A. [12:01:31] Yes, I did confirm that we used to communicate with -- with -- with
5 her, too, when we were in the -- in the programme.

6 Q. [12:01:40] Right. There's a difference between communicating and meeting.
7 And my question was, yesterday --

8 A. [12:01:45] Yes, this incident, I remember now it happened.

9 Q. [12:01:48] Okay. So you did visit her. You had a one-on-one, a *tête-à-tête* with
10 her while she was recuperating, and you told her what -- what I just read, right?

11 A. [12:01:58] Exactly.

12 Q. [12:02:00] Okay. Thank you.

13 Now we'll move on to another topic. Again, I'll try to keep this punchy and short.

14 And this is in regards to person number 2. I'm going to refer to tab 32. Tab 32.

15 And it's 0111-0140. And by way of predicate, it refers to one of your answers from
16 yesterday, which is on page 120 and 121 of the transcript that we received last night,
17 and it had to do with communications with -- you know, your conversations with
18 person number 2.

19 So if we could look at tab 32, and we could -- if we could look at page 7, page 7, which
20 is 0111-0146. Do you have it?

21 A. [12:03:35] Yes. Page 7?

22 Q. [12:03:37] Yes.

23 A. [12:03:38] Which paragraph?

24 Q. [12:03:40] Well, it's 32. The very, very last. Incidentally, you see that these are
25 summaries of your conversations, right? This is not an answer -- question, answer,

1 question, answer. This a summary, the gist of -- of what you talked, and you
2 initialled and you signed, right?

3 A. [12:04:01] Yes.

4 Q. [12:04:03] All right. So if we look at paragraph 33: "Between this time and my
5 meeting with [person number 2] I received about 4 phone calls from him which I
6 received all in public so I did not record these calls. These 4 calls were received after
7 [person number 2] arrived at 9pm on" -- this particular date, I think I'm not supposed
8 to mention -- "and all these calls related to logistics of us meeting on the [next day].
9 Apart from the logistics of our meeting I did not discuss [any] details of [my] -- of any
10 offer. My phone did not capture the data of these calls."
11 "My phone" -- I'm going to repeat that. "My phone did not capture that data of these
12 calls and I see that the received calls log is empty. I do not know how this may have
13 occurred."

14 Those were your words, right?

15 A. [12:05:14] Yes, on this date.

16 Q. [12:05:15] Okay. And so, other than your representations, other than your
17 representations, we don't know exactly what really -- you know, what you all talked
18 about, what you and person number 2 talked about, during those four phone calls,
19 right? Because we don't have a record, so we don't -- other than what you're telling
20 us, we don't -- we can't verify it objectively, can we?

21 A. [12:05:45] There are no records.

22 Q. [12:05:46] Okay. Now, if we -- one more matter on this -- on this topic.
23 Tab 41. Tab 41, this is from a transcript dated 21/11/2014, and I'm going to be
24 referring to page 22. So tab 41, if you could find it.

25 A. [12:06:23] Yes.

- 1 Q. [12:06:24] Okay. And if you could go to page 22.
- 2 PRESIDING JUDGE SAMBA: [12:06:42] Did you say tab 41 and page 22?
- 3 MR KARNAVAS: [12:06:47] Yes, your Honour. It's a -- it should be, it should be
- 4 a transcript. If we can see at the top left corner that it refers --
- 5 PRESIDING JUDGE SAMBA: [12:06:57] I don't have a page 22 in my own bundle.
- 6 MR KARNAVAS: [12:07:01] Oh, that is unfortunate. Well, you could take my
- 7 word for it while I read it. Or I would hand you my copy, but then I wouldn't be
- 8 able to read.
- 9 PRESIDING JUDGE SAMBA: [12:07:12] Carry on Mr Karnavas. I'll listen.
- 10 MR KARNAVAS: [12:07:15]
- 11 Q. [12:07:15] This is -- you have it, right, sir?
- 12 A. [12:07:19] I don't.
- 13 Q. [12:07:20] You don't either. Well, my fault.
- 14 PRESIDING JUDGE SAMBA: [12:07:25] Mr Steynberg, do you have it? Do you
- 15 have page 22 in your tab 41?
- 16 MR STEYNBERG: [12:07:31] Your Honour, I have the page, but I'm not working
- 17 from the Defence's tab. I've still got my old Ruto and Sang file.
- 18 MR KARNAVAS: [12:07:39] If we have a moment, and ... anyway, it's my fault.
- 19 Totally my fault, your Honour. I'm to blame for that. Probably I messed up
- 20 the works.
- 21 MR STEYNBERG: [12:07:53] Your Honour, may I suggest that
- 22 the court officer - thank you - just call it up on the screen, and we can all see it.
- 23 PRESIDING JUDGE SAMBA: [12:08:00] Yes, please.
- 24 THE COURT OFFICER: [12:08:02] We can put the PDF onto the evidence channel, if
- 25 that would be of help.

- 1 PRESIDING JUDGE SAMBA: [12:08:07] Yes, please go ahead and do that.
- 2 THE COURT OFFICER: [12:08:31] It's on evidence channel 1.
- 3 MR KARNAVAS: [12:08:34] My apologies, again, your Honour.
- 4 Can I start?
- 5 PRESIDING JUDGE SAMBA: [12:08:44] Yes, please, Mr Karnavas.
- 6 MR KARNAVAS: [12:08:46] Okay.
- 7 Q. [12:08:46] Do you have it, sir? Can you see it?
- 8 PRESIDING JUDGE SAMBA: [12:08:51] Can you help him, Mr Court officer.
- 9 MR KARNAVAS: [12:08:55] And I'm going to start around -- line 8 starts
- 10 the question, but, really, the gist of the matter is around line 19. So if you could sort
- 11 of look at lines 8 to 19 very quickly, or 18, and then I'll -- I'll read from line 19:
- 12 "Where is the recording of the conversation where [person number 2] is telling you
- 13 [all of] this?" This is in regards to what you're saying above, that there's information
- 14 about new witnesses and what have you.
- 15 And your answer is: "There is no recording because I said at some stage I was not
- 16 sure of ... what time I was discussing this with -- with [person number 2], but I gave
- 17 that -- I had information that at our discussions sometimes we -- we had -- we had
- 18 discussed and he told me about what I informed -- everything that I got from [person
- 19 number 2] I informed -- [and] I felt was -- was of need for -- for -- for -- for record I
- 20 informed the investigators."
- 21 Do you recall saying that, sir?
- 22 A. [12:10:24] Yes.
- 23 Q. [12:10:26] Okay. That was it for that.
- 24 One other minor housekeeping matter, and then we'll hopefully pick it up a little bit
- 25 more.

1 I now want to refer to tab 66. Tab 66, 0135-0113. And we're going to be looking at
2 page number 2.

3 And for the record, this is a document, this is dated 26 March 2014. It's a -- it's an
4 interview with a gentleman. Are we still in private? We shouldn't be. We don't
5 have to be. Okay.

6 PRESIDING JUDGE SAMBA: [12:11:20] We're in public, open session.

7 MR KARNAVAS: [12:11:22] Okay, open session.

8 Q. [12:11:23] When you have it, sir, page number 2, let me know. And you can go
9 right down to line 62.

10 A. [12:11:36] Sorry, what?

11 Q. [12:11:39] Okay. The tab is 66; six, six.

12 PRESIDING JUDGE SAMBA: [12:11:44] It's in your second binder.

13 THE WITNESS: [12:11:46] Yes, I can see it in my second --

14 MR KARNAVAS: [12:11:50]

15 Q. [12:11:50] Okay. Great, great. Super.

16 Now, if you could look to line 62. "The number that [person number 4] was calling
17 you on, who else was calling you on that number?" And it goes on.

18 Your answer: "Not that one. Not the one you were calling me through. [I]
19 would -- it would be the one that my family was calling me through."

20 Question by the interviewer: "Okay. All right. Let me just Sorry to be a pain.

21 Ok, we have [661] -- 616, Kenyan number ending in 616. ... The 058 number, [the] 760.

22 [I] don't recall which one?"

23 Your answer: "... I do not recall.

24 "Okay."

25 "For sure, it's very hard for me to recall, for now ..."

1 "With all [the] numbers."

2 "The exact ... the exact number ... he [was] call[ing] me through."

3 So are you saying here, sir - here's the question - that you didn't know person number
4 2's number? You couldn't remember which number he was calling you from?

5 A. [12:13:16] But is it person number 2 that --

6 Q. [12:13:19] I mean person number 4. I'm sorry. I apologise. Person number 4.

7 A. [12:13:23] I could not recall what number exactly he called me through.

8 Q. [12:13:27] Okay. And, again, this is March 26, 2014.

9 Now we go to another document. It's -- which is in tab 67. Tab 67. And now this
10 is 2 July 2014. Tab 67, 0135-0509. If we go to page 25.

11 Again, it relates to person number 4. And you've told us that he was a very close
12 and dear friend of yours, and you communicated quite often with. If we can go to
13 now line 915:

14 "All right. When [person number 4] called you, what number did he call you from?"

15 Answer: "I don't recall that number now. You know, [number 4] has so many
16 numbers."

17 "And where is that [SMS] -- that SIM card, the SIM card for 0-7-0-5? Where is that
18 SIM card now?"

19 Your answer: "I left it at home ..."

20 "Okay."

21 Then you go on: "... because I felt that most people knew that number. If they -- if
22 they were to monitor, if anybody wanted to monitor that number, will not associate
23 my movement with that number. It will just be seen in a lot of ... plus, the phone
24 that ... most often, that number, I used in ... left it at home."

25 So, again, what you're telling the investigators is, at this stage, you don't recall which

1 number you were communicating with person number 4; is that right?

2 A. [12:15:43] Yes.

3 Q. [12:15:44] Okay. All right.

4 Let's move on to something more exciting, I guess. Another small, very small
5 housekeeping matter. And this in regards to what you testified on direct and what
6 you testified yesterday. No trick questions. So I'm just going to put to you what
7 you said on -- on direct and then what you said on cross yesterday and give you an
8 opportunity to maybe clarify the discrepancy. Okay?

9 So this is in regards to you returning back home, you know, leaving the field and
10 coming back the first time, and when you meet person number 4. Okay, we talked
11 about the big lie, but now we're onto the second version, which is you meeting
12 number 4, who then will take you to meet with Mr Gicheru. Okay?

13 A. [12:16:50] Yes.

14 Q. [12:16:51] All right. So on -- on direct examination -- and I'm looking at
15 page 78. And this is on -- this is 2/15/2022. After these meetings with person
16 number 2, did there come a time, stage where you left location number 6 and
17 returned to Kenya?

18 And then you go on --

19 PRESIDING JUDGE SAMBA: [12:17:21] Which tab are you looking at, Mr Karnavas,
20 please?

21 MR KARNAVAS: [12:17:25] I was looking -- I wasn't aware that I needed to have
22 a tab from the -- this is from the transcript, your Honour. My apologies.

23 PRESIDING JUDGE SAMBA: [12:17:33] Okay. Thank you.

24 MR KARNAVAS: [12:17:39] I'm on page 78, line 24.

25 Are we ready? Okay.

1 Q. [12:17:56] So it says here: "After [the] -- after these meetings with person
2 number 2, did there come a stage where you left location number 6 and returned to
3 Kenya?"

4 Do you recall being asked that question?

5 A. [12:18:13] Yes.

6 Q. [12:18:13] Okay. And then further down, around line number 14 -- I'm trying
7 to save time: "I made this decision myself when I left location ... number 6. I made
8 a decision ... to go back home."

9 Question: "All right. And after you return home, did there come a time when you
10 were again in contact with person -- with persons [contacted] to -- connected to
11 the witness bribery scheme?"

12 Answer: "Yes, my Honour. I knew back of my mind that it was in public domain
13 that I was -- [that] I was involved in issues to do with this Court. And my safety was
14 in jeopardy ..."

15 And then you go on: "Therefore, I tried my level best, now that I [have] information
16 of who was concerned in making sure that ... people -- when witnesses go back home
17 they live safely ..."

18 Do you recall saying that?

19 A. [12:19:20] Yes.

20 Q. [12:19:21] Okay. And then you go on, and to make it short, page 80, line 24.

21 THE INTERPRETER: [12:19:32] Counsel, please wait for it to be brought up on
22 the screen, and slow down.

23 PRESIDING JUDGE SAMBA: [12:19:37] Mr Karnavas, the interpreters want you to
24 slow down so that, you know, the transcript that you are reading from can be brought
25 up on the screen, please.

1 MR KARNAVAS: [12:19:49] Right. I apologise. I'm looking at the clock, and I'm
2 looking at what I need to go through.

3 PRESIDING JUDGE SAMBA: [12:19:56] And I really do appreciate that, but take
4 your time, in the best interest of your client, of course.

5 MR KARNAVAS: [12:20:02] Yes, yes.

6 Q. [12:20:08] So if we go to page 80, line 24, and it says: "And what transpired
7 next ... regards your wish to get in touch with Mr Gicheru?"

8 "Person number 4 is the one who introduced me to Mr Gicheru."

9 This is on the next page now.

10 "And please tell the Chamber how that came about."

11 "Person number 4 is a good friend of mine. I knew him when I was working in
12 the organisation."

13 So when you say "organisation", that's not the OTP. It's some other organisation,
14 right?

15 A. [12:20:50] I gave the number 2.

16 Q. [12:20:53] Okay. And then if we could just move to the next page, page 82,
17 line 5.

18 Question: "All right. I'd like to move on then ... -- well, you said that person
19 number 4 helped [you] -- put you in touch with Mr Gicheru, the accused. Tell
20 the Court, please, where. .. you met and what transpired."

21 Answer -- this is on line 9: "We met in (Redacted). And because I'm in ... private
22 session I can say the place." Okay.

23 "You can say it, yes." And it goes on.

24 So on direct examination, if I got you right, this what I'm reading, you met person
25 number 4 in (Redacted) when you came, right?

1 A. [12:21:49] No.

2 Q. [12:21:50] Well, this --

3 A. [12:21:51] The person -- the person I say I met him in (Redacted) is your client.

4 Q. [12:21:57] Okay. Well, that's not what is -- that's not what is over here, but I'll
5 leave it to the Court to make sense of then. If you're changing -- because right here it
6 appears to say that you met person number 4 in (Redacted).

7 MR STEYNBERG: [12:22:11] Your Honour, my reading is also not -- it doesn't say
8 that.

9 MR KARNAVAS: [12:22:15] Well, I'll leave it --

10 MR STEYNBERG: [12:22:16] It says person number 4 --

11 MR KARNAVAS: [12:22:17] I'll move on. I'll leave it at that. I'm not -- you know,
12 the Court can read the two, the two events and make sense of it.

13 Q. [12:22:28] All right. Now I'm going to move on to a rather hefty topic, and
14 that's the -- your second trip to (Redacted). And that's when you went to -- to sign
15 an affidavit. Do you recall that?

16 A. [12:22:45] Yes, I do.

17 Q. [12:22:46] Okay. And that was in regards to person number 2.

18 A. [12:22:52] Yes.

19 Q. [12:22:52] Okay. And that because -- and that affidavit was in regards to a case
20 that was -- that was -- he was involved in, right?

21 A. [12:23:05] Yes.

22 Q. [12:23:06] Okay. All right. Now, as I understand your testimony on direct
23 examination --

24 PRESIDING JUDGE SAMBA: [12:23:18] Just a moment, Mr Karnavas. I see
25 the witness raising his hand.

Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/20

1 Do you want to say anything, Mr Witness?

2 THE WITNESS: [12:23:27] Yes, my Honour. Person named number 2, concerning
3 these matters, is the only one who have been having these cases in the country, and
4 therefore, he can also get to know my identity because we are discussing in public.

5 MR KARNAVAS: [12:23:44] We can go in private session.

6 PRESIDING JUDGE SAMBA: [12:23:46] Madam Court Officer, can we please go into
7 private session. Thank you.

8 Thank you, Mr Witness.

9 (Private session at 12.24 p.m.)

10 THE COURT OFFICER: [12:24:02] We are in private session, Madam President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Private Session)

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(Private Session)

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(Private Session)

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WITNESS: KEN-OTP-P-0800

(Private Session)

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Trial Hearing
WITNESS: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/20

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6 (Open session at 12.56 p.m.)
7 THE COURT OFFICER: [12:56:01] We are back in open session, Madam President.
8 PRESIDING JUDGE SAMBA: [12:56:05] Thank you very much, Madam
9 Court Officer.
10 We'll break at this stage.
11 Mr Witness, you are still under oath.
12 Please, we'll meet again at 2 o'clock, as I said when we just came here again at 11.
13 Thank you very much.
14 THE COURT USHER: [12:56:19] All rise.
15 (Recess taken at 12.56 p.m.)
16 (Upon resuming in open session at 2.01 p.m.)
17 THE COURT USHER: [14:01:20] All rise.
18 Please be seated.
19 PRESIDING JUDGE SAMBA: [14:01:51] Well, good afternoon, again.
20 We'll continue with the cross-examination of P-800.
21 Mr Karnavas, your witness, please.
22 MR KARNAVAS: [14:02:01] Thank you. Thank you, your Honour.
23 Q. [14:02:03] So just to pick up where we left off, and I'm on the same document,
24 we won't stay here very long, that's tab number 3, and I'm on page 0135-0159, that
25 would be page number 4 of this particular document. And I just want to make

1 reference to, if we get to line 130, you're asked -- so far we've established that you've
2 indicated that you only signed one, one page and now you're being asked: "Do you
3 recall having to sign any other pages of any documents, whether they were blank, or
4 otherwise?"

5 So now they're giving you the option if you recall.

6 And then you say: "There were [...] many pages I was [...] asked to sign."

7 Would you agree that this is the first time that you're saying that you were signing
8 many pages? It's a "yes" or a "no".

9 A. [14:03:15] Your question, please.

10 Q. [14:03:17] My question is, for the first time -- well, they're suggesting to you, I
11 put, they're giving you the option, you know, because you indicated you only signed
12 kind one page, they obviously must know something else, so they're saying: Do you
13 recall having to sign any other pages, any other documents, whether they were blank
14 or otherwise? Because you've told us earlier that when we -- when I first -- the first
15 document, that you signed it, you glanced at it, it wasn't what you had written -- what
16 you had said. Now they're asking you did you sign any other documents, whether
17 they were blank, blank sheets of paper or otherwise. And then you say: "There
18 were ... there were many pages I was [...] asked to sign."

19 The interview: "Yes.

20 And I signed the pages. I don't recall whether they were with pages, [whether] they
21 were blank[s].

22 They were blank[s]?

23 Yes.

24 OK, so you had to sign, not just the last page, which [was] something on it." Which
25 is what you said initially. "That's what you're saying?"

1 Yes.

2 So you're saying the last page actually had writing on it, but you had to sign each
3 of ..."

4 And you say: "Yes. Yes."

5 So now your testimony here is, or your statement is that there were many blank
6 pages that you were signing, right?

7 A. [14:05:05] I remember the signing that had the written words was that last bit.

8 Q. [14:05:12] Okay. And then just to finish up on this, on the next page they just
9 say I'm going to -- "What I'm going to do" -- this is on line 406: "What I'm going to
10 do is I'm going to print this out tomorrow, and I'm going to get you to go through
11 [it] ..."

12 Now I wasn't there so I don't know what exactly was happening, but had they shown
13 you a document and they were saying: Okay, this document, I'm going to print it
14 out tomorrow and then we're going to go through it, or were you just talking about
15 your affidavit from the top of your head?

16 A. [14:05:51] The -- we were discussing about the affidavit and they said they will
17 print it (Overlapping speakers)

18 Q. Well, what --

19 A. [14:06:00] (Overlapping speakers) and bring it tomorrow.

20 Q. [14:06:01] Okay, but had they shown you an affidavit, if you recall?

21 A. [14:06:06] I don't recall.

22 Q. [14:06:06] Okay. Thank you.

23 Now we go to tab number 4. And to make things a little easier and to go faster, I'm
24 also going to be referring to tab 25 at some point so we may have to have it handy,
25 and that's 0116-0261. They go together. One being a transcript, the other one being

1 a copy of an affidavit. Very quickly. If we go on page 1 of this document -- do you
2 have it? Tab 4.

3 A. [14:06:50] Yes.

4 Q. [14:06:51] Okay. And if go to page 1, 0135-0214, it says that -- this is, at the very
5 end, number 30 -- line 39: "I got here" is my name a six-page -- "in my hands a
6 6-page affidavit." Okay?

7 And if we go to the next page, very first line 41, we have the KEN number, that's
8 probably all I'm going to get out of this one for now, which is 0116-0261 to 66. And
9 so -- and that's tab number 25. So this is what they were showing you.

10 Do you recall seeing this?

11 A. [14:07:49] Yes.

12 Q. [14:07:49] Okay. I'll move along to the next one.

13 Tab number 5. Tab number 5. And this is 0135-0220. And for the record, what we
14 saw previously was on 27 March and, again, we are still on 27 March.

15 Now, in this document -- you may need to have also handy tab 24, tab 24, 0130-0087.

16 So looking at tab number 5, if we could go to page 2. I'm going rather fast on this
17 but trying to save time.

18 If we go to page 2 and we go to line 68. Here is the -- here is the investigator:

19 "Could it have been -- could it have been that you signed a document with that
20 information on it? Do you recall that?

21 OK. [...] it could have ... When talking about this affidavit that includes paragraphs
22 22 to [23], supposedly dated 16 or 29 August, [of] that information [...]"

23 And you say: "Yes."

24 So could it have been that you signed a document with that information and you say,
25 yes, it could have been. So for the first time we have a slightly different account.

1 But do you see that you agreed that you could have signed a document with other
2 information, right?

3 A. [14:09:56] With the situation I was (Overlapping speakers)

4 Q. [14:10:02] Yeah, I'm just asking (Overlapping speakers)

5 A. [14:10:02] Actually, that's why I say I might have signed (Overlapping speakers)

6 Q. [14:10:07] Okay. All right.

7 Now this is the important part. If we go to the next page, if we go to the next page,
8 line 80. "What I'm going to ask you to do [...] is to put your signature on the first
9 page of that document. You're not signing anything this time. I'm not going to
10 lodge this with any court."

11 Okay. Now if we go down to line 89, the interviewer says:

12 The 27th -- and we'll see it in a moment. "Yes." You can -- "And can I get you to
13 place your initial on" each -- you know, "on every page?" I apologise for my reading,
14 I'm a little sleep deprived.

15 But here they're asking you to sign the first page and initial all the other pages. Do
16 you see that?

17 A. [14:11:11] Yes.

18 Q. [14:11:12] And they're telling you it's the 27th, because as we noted, it's
19 27 March 2014. Do you see that?

20 A. [14:11:19] Yes.

21 Q. [14:11:19] Okay. Now if we look at the document in tab 24, which is the same
22 document that we saw earlier, this is a document that was -- that has your signature
23 on the front page, right? Do you see it? Do you see it? This is on tab 24.

24 And for your Honour, you may wish to have tab 25 and tab 24 next to (Redacted)
25 (Redacted)

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- 14 PRESIDING JUDGE SAMBA: [14:13:11] Tab 24.
- 15 MR KARNAVAS: [14:13:12]
- 16 Q. [14:13:15] We're on tab 24. If you, you know, turn the page, do you see -- are
- 17 those your initials I should ask you first?
- 18 A. [14:13:21] Yes, my initials.
- 19 Q. [14:13:22] Okay. And if we go to the back, we don't see a signature?
- 20 A. [14:13:32] Yes.
- 21 Q. [14:13:32] We do not see a signature?
- 22 A. [14:13:34] Yes.
- 23 Q. [14:13:34] Okay. And this was a document on that day, 27 March 2014, that
- 24 you signed on the first page, you put the date and you initialled all the other days,
- 25 right -- or pages, just as you were instructed?

1 A. [14:13:55] Yes.

2 Q. [14:13:55] Okay. Now we're going to move to tab 6. I'm moving rather
3 quickly, but I think the point hopefully will be made.

4 If we move to tab 6 and here again you're going to need to have tab 23 handy. On
5 tab 6, it's 0145-0604, and we see that this a proofing note -- well, these are proofing
6 notes dated 10 to 14 November 2014.

7 Can you confirm that you met with the Prosecution during those days to review your
8 evidence that you were going to give in the Ruto and Sang case?

9 A. [14:14:59] Yes, I did.

10 Q. [14:15:00] Okay. And was this one of the documents that you had seen while
11 you were preparing to come here today? If you recall. If you don't recall, no
12 worries.

13 A. [14:15:17] I made a tick to all documents I checked.

14 Q. [14:15:21] Okay. All right. Okay. Now if we could go to page 14 on this
15 document which would be the next page -- well, I have the shortened version. It's
16 paragraph 121. Paragraph 121. And above it there's a title: "Unsigned version of
17 affidavit in (Redacted) case and letter and affidavit referred to therein:" And it has
18 the KEN number, okay? Do you see that?

19 We're in private session, right?

20 PRESIDING JUDGE SAMBA: [14:15:58] No.

21 MR KARNAVAS: [14:16:00] Oh, my goodness. I thought we were.

22 PRESIDING JUDGE SAMBA: [14:16:02] No, we're not.

23 MR KARNAVAS: [14:16:03] Apologies.

24 PRESIDING JUDGE SAMBA: [14:16:08] Madam Court Officer, can we go into
25 private session, please.

1 MR KARNAVAS: [14:16:10] Well, I won't be mentioning anything more now that

2 I -- after that. I can -- I can -- I can carry on.

3 PRESIDING JUDGE SAMBA: [14:16:20] Hold on, Madam Court Officer, that's okay.

4 We are still in open session then.

5 MR KARNAVAS: [14:16:25] Thank you, thank you. And my apologies, I was

6 under the misimpression that ...

7 Q. [14:16:31] Okay, paragraph 21, if you look at the last three lines, okay?

8 PRESIDING JUDGE SAMBA: [14:16:36] This is paragraph 21?

9 MR KARNAVAS: [14:16:38] 121. One-two-one.

10 Q. [14:16:43] "Later, the witness was told he had to go to Nairobi to sign papers for"

11 person number -- 4 person number 4 case.

12 PRESIDING JUDGE SAMBA: [14:16:56] Number 2.

13 MR KARNAVAS: [14:16:58]

14 Q. [14:16:58] Number 2. He confirms again -- he confirms again that he signed

15 blank pages and doesn't know that they subsequently wrote -- he doesn't know what

16 they subsequently wrote. He never saw the affidavit that was prepared. Never

17 saw the affidavit that was prepared.

18 We go to the next page. Go to the next page. And we have a title, we don't need to

19 read.

20 We go to -- we go to paragraph 122. "The witness confirms that [that's] his signature

21 on page 6."

22 Then we go to 123. The meeting took place at -- now the names are switched on

23 number, on number 12, I believe, they're switched -- where there was -- where at first

24 was asked -- asked him how he came to record person number 4 -- number 2 who was

25 there and how. The witness told him that the investigators recorded them as said

1 previously.

2 Now we go to paragraph 124: "The witness confirms that when he went to sign
3 the withdrawal affidavit he signed the bottom of each page of the already prepared
4 document. When he went to" place number 4 "he signed a number of pre-prepared
5 blank signature pages that contained no paragraphs or text ..."

6 So that's what you confirmed then.

7 And what was shown to you, it appears, is tab 23 at that time, which is 0145-0554, and
8 if we look at the last page, page 6, we see a signature. Is that your signature, sir?

9 A. [14:19:27] On tab?

10 Q. [14:19:28] Yeah, on tab -- on tab 23.

11 Or do I have it wrong?

12 A. [14:19:57] Yes, this is my signature.

13 Q. [14:19:58] Okay. All right.

14 Now if we get to -- go to tab number 7, we go to tab number 7, and this is from
15 a transcript and it's in 20/11/2014. And if we go to page 22 of that transcript and if
16 we look at line 5, do you have it, sir?

17 A. [14:20:43] Yes.

18 Q. [14:20:43] Okay. If we look at -- why don't you go to page 22 and it says, line 5:
19 "Having looked at the affidavit, when I met ... the investigators I found out that most
20 parents of [the] affidavit is untrue.

21 At the time you signed the affidavit, did you read it?

22 No, your Honour. I was only asked to sign."

23 Further down on line 20:

24 "Who did you meet when you got there?"

25 Person number 13, I believe.

1 Tell me -- "Tell us what happened at that office?

2 At that office, when I arrived, I was introduced to [number 13] by person number 7
3 and we had discuss[ed] with" person number -- number 7 in the previous case, that is,
4 and "had a discussion with [number 13] about what had happened between me and
5 person number 22. And later on he asked me to sign the back page of ...
6 [the] affidavit and I did sign."

7 Later on, line 4:

8 "The back page of that affidavit was like -- it was written something to do with
9 consultants company where [they were] ..." Do you see that?

10 A. [14:22:22] Yes.

11 Q. [14:22:22] And then -- and it appears that that's what is normally found on
12 affidavits, right?

13 A. [14:22:31] I guess so.

14 Q. [14:22:32] Okay. And then on number 10: "Your Honour, apart from what
15 I've described, the other parts were blank."

16 So you signed -- so now you're saying you signed a -- the last page of an affidavit that
17 had all the bells and whistles of an affidavit, but all the rest of it was blank, the rest of
18 the pages were blank.

19 A. [14:23:02] Where I saw the writings was the last bit.

20 Q. [14:23:06] Okay. And then on line 13:

21 And when is the first time -- "And when is the first time that you saw this affidavit in
22 complete form?

23 The signed affidavit, your Honour in complete form, plus my signature, I saw it just
24 recently when I was preparing -- just last week when I was preparing to appear in this
25 Court."

1 And just for the record, the testimony here is on 20 November 2014 and I bring to
2 the Court's attention his earlier answers as to when he first signed it and perused it
3 and saw that it wasn't what he had said.

4 Then further down, line 24:

5 It was -- "... it's a back page ... of the affidavit."

6 Question: "And why did you ... sign a blank affidavit?"

7 And then you said: "... I did not want to look as if I was not loyal to person number
8 7 ..."

9 Now let's move to -- you said that, right?

10 A. [14:24:24] Yes.

11 Q. [14:24:25] Okay. Now let's look at 13 July -- 13 July 2021. So now we're -- this
12 is what I -- what I have characterised as the proof -- the first proofing session in this
13 case.

14 If we look at this document and it's tab number 9, 0160-0468. If you could find it.
15 Do you have it?

16 A. [14:24:57] Page?

17 Q. [14:24:58] Page -- page 10. And that would be 0160-0478. Do you have it?

18 A. [14:25:18] Yes.

19 Q. [14:25:18] And I just want to draw everyone's attention to 358, line 358.

20 Because it gives a reference, a KEN number, and that will assist us to see what exactly
21 is being shown to the gentleman at the time.

22 And it's, it's titled "The unsigned version of affidavit in" person number -- number 2.

23 Okay. So -- but we have this.

24 Now let's go on to page 11.

25 "Yes, this is ... what I signed in Nairobi." "Yes, this is ... what I signed in Nairobi."

1 He's asked if he recognises the document. This is the document.

2 PRESIDING JUDGE SAMBA: [14:26:10] Mr Witness, that's line 380 on page 11.

3 MR KARNAVAS: [14:26:15] Apologies.

4 Q. [14:26:20] It's on line 380. It's shown to you and you say: "Yes, this is ... what I
5 signed in Nairobi."

6 So do you recall being shown during -- this was last summer now, you were shown
7 this unsigned affidavit -- or it was titled "unsigned affidavit" and you said, "Yes, this
8 is what I signed in Nairobi." Do you recall saying that?

9 A. [14:26:48] Yes.

10 Q. [14:26:48] Okay. And you said -- further on you say: "This is the document I
11 went to sign [...] in Nairobi. When I ... when I was ... [when] I was ... this is
12 the one -- this is the one I said we got 10,000 transport to go to Nairobi to go and
13 sign."

14 Line 390: "[...] I was called by [person number 4] and told that we" -- we
15 the plural -- "we needed to go Nairobi, I had to go to Nairobi ... go and sign an
16 affidavit. So, that case, he said that he was going to facilitate the transport. I had to
17 get ready ... to go with him."

18 Line 394: "He was called to go and when we were on the sta -- on the sta ... at the
19 bus station to go and pick up [unintelligible] at (Redacted) for transcript, facilitated to
20 Nairobi and ... we arrive to Nairobi, I think it was in the evening" - I think it was in
21 the evening - "of the 26th because this one [is] signed on the 27th, the next morning."

22 Now the 27th is what was -- what's on the document dated in 2014 by the gentleman
23 who indicated to us that he signed it in the presence of the investigators, but he's
24 looking at that.

25 "It's my first time to go to that firm" - line 403 - "I was taken to a room which was

1 underground. I was actually ... I was actually worried that now maybe this is
2 the end of me because I was taken underground."

3 Do you recall saying that?

4 A. [14:28:57] I recall.

5 Q. [14:28:59] Okay. And that's what you testified under oath a couple of days ago
6 as well, right?

7 A. [14:29:08] Yes.

8 Q. [14:29:08] All right. And that's when you went and you waited for about
9 15 minutes, as I understand your testimony, before somebody came, right?

10 A. [14:29:20] Yes.

11 Q. [14:29:20] And that person happened to be person number 13. The one -- one
12 of the names on the firm.

13 A. [14:29:41] Yes.

14 Q. [14:29:45] Okay. And then on -- on line 425 on page 12 of the same document:
15 "Did you meet Mr Gicheru concerning this?

16 When I met Mr Gicheru, he spoke of ... of ... a different affidavit generally, he did not
17 tell me specifically which one and then which one."

18 So that's what we have here.

19 Now we go to tab number 8. Tab number 8. And that's 0160-0400. And just
20 a couple of minor points. It's page 21, 21, 0160-0421, line 747: "OK, but was
21 Mr Gicheru" -- I'll wait for you to find it.

22 A. [14:30:46] Yes, I have it.

23 Q. [14:30:47] Okay. So if you go to 747, 747:

24 "OK, but was Mr Gicheru present for the one in Nairobi? You said he was present

25 for the one in Eldoret." I'm trying -- "I'm not trying to trick you, it's just to see if you

1 can remember."

2 Answer: "Yes.

3 So, so just for some clarity, so [this] one ... there's one in Eldoret, as I understand, [and
4 it] was an affidavit you signed [for] withdraw ..." and then the other affidavit it goes
5 on about person number 2. And then you say: "I met him in Nairobi too, the same
6 day." Meaning you met Gicheru in Nairobi the same day.

7 Do you see that? That's on line 754.

8 A. [14:31:43] Yes.

9 Q. [14:31:44] Then you're asked:

10 "For the affidavit for [number 2]?

11 No, in Nairobi."

12 Further down, 759 line 759:

13 "That is ... that is [an] affidavit for [number 2, person number 2]. Now, the one;..
14 when ... the ... it is the same thing. When I went to Nairobi, after signing
15 the affidavit" - after signing the affidavit - "I met him."

16 Now let's go to the final tab, tab number 10, so I tried to condense this one hour or so
17 to I think a manageable time. And hopefully some clarity.

18 If we go to tab number 10 and if we -- this is 0160-0489 on page 5, which would be
19 0160-0494.

20 So --

21 A. [14:33:01] We are talking about tab 10?

22 Q. [14:33:04] Tab -- yes, tab 10. If you could look at tab 10. And I'm going to
23 probably start with -- at line 163 you are asked: "Further instructions was ... was
24 when we returned back to go and see Mr Gicheru for the signing of the other
25 affidavits."

1 But then further down, line 167: "[No], the other affidavits, [they] were already
2 prepared, were they?"

3 Yes, they were already prepared."

4 Then further down, 171: I did not even see when -- I did not see -- "... I did not even
5 see when they were ... they were not dictated the way this one was done. I found it
6 when I went to ... to the lawyer I think, [it is number 13.] To his ... to his office in
7 Nairobi. I ... remember the location by now but when I went to his office, I went
8 underground where I was alone because there [was] many people on ... on
9 the waiting [room].

10 This is where you told us that you went down in the basement ..."

11 Next page, line 182: "... on the basement where there were a lot of files and I was
12 given a chair and I waited there for some time before he came and gave me the letter
13 to sign and telling me that he was asked by Mr Gicheru to prepare this letter, I mean,
14 to prepare this affidavit ..."

15 Do you recall saying that in July 2021?

16 A. [14:35:02] Yes.

17 Q. [14:35:03] And further down you say in 198, that it was -- you gave the name
18 that it was number 13. You're being asked was it number 13. You say, "By the way,
19 I don't even know -- I don't know them in person."

20 Further down, 201: "I don't know [number 11], I don't know [13]. I just ... saved
21 the name of the company. I remember [number 13] and I don't know whether it was
22 [13] or [11] whom I ... who I met, but it actually ... he was introduced to be the [*chef*] of
23 the company.

24 Who introduced you?

25 The secretaries ..." No lawyer, no young lady lawyer. "the secretaries ... there were

1 ladies there and were working on ... the front desk."

2 Is that how you recall it?

3 A. [14:36:06] Yes.

4 Q. [14:36:07] Okay. "... and they told me to wait ... for the boss to come. That
5 [this is where] I was taken to the underground ..." So you were supposed to wait for
6 the boss in the underground. The ladies took you there, the secretaries, right?

7 A. [14:36:26] It's my personal description that they are the secretaries because they
8 were there.

9 Q. [14:36:30] Okay. Well that was your choice of words, not mine. All right.
10 Now -- and you were told for the boss -- if we look at line 225, you had to wait for
11 the boss to come.

12 And then later on on line 234:

13 "This gentleman arrived and he brought the affidavit prepared." He brought
14 the affidavit prepared. "he asked me to sign the affidavit. It's everything that I've
15 discussing with Mr Gicheru and ... and everything that Mr Gicheru had told him ...
16 and he ... He prepared everything ready as a lawyer ... I just signed.

17 OK. It seems as though there were 2 affidavits. Is that right?"

18 And then you say:

19 "If you may expound [on] that.

20 OK. All right. Well, there's one that is referred to [person number 2] ..." Okay?

21 So that's the one he wants to talk about.

22 Now if we go to the next page, page number 8. Okay. Line 252:

23 "I did not read it. By the way, I was in fear because I was under [...] the basement
24 and I was not assured what was going on and whether it was really to sign these
25 things. So when they came to me, I just wanted to sign them ... and leave because [it

1 was, in a way -- it was] a very convenient place to be."

2 I guess you wanted to say it was not a very convenient place be.

3 But at this point, according to your statement, person number 4 has come with you

4 and person number 4 is also in the office; is that correct?

5 A. [14:38:31] No.

6 Q. [14:38:32] You didn't say that?

7 A. [14:38:32] No.

8 Q. [14:38:33] Okay. Is person number 4 still in (Redacted) -- I mean still in (Redacted) ?

9 Is he someplace else? Where is person number 4?

10 A. [14:38:48] In (Redacted).

11 Q. [14:38:51] Okay. So let me make sure I got it right. Earlier when we read that

12 the two of you went to (Redacted), now you're saying that's not true, it was only you

13 that went.

14 A. [14:39:06] When we read that you didn't ask me about it, because you used

15 the words that I -- that I used in plural without -- without --

16 Q. [14:39:17] Okay. Let me -- to save some time, let's look at page number 7,

17 line 225. Page number 7, line 225:

18 "... they told us" - now that's plural - "they told us, 'Yes, now, you have to wait ... for

19 the boss, he's coming. We'll show you where to meet' and then he took me down

20 there and my friend [number 4] was left upstairs."

21 Were those your words, sir?

22 A. [14:39:54] Which line?

23 Q. [14:39:55] Lines 225, 226, 227. It's on page 7, sir. It's on page 7. There's no

24 need to be searching for anything. I'm giving you the needle, not the haystack.

25 A. [14:40:21] Line number 225.

1 Q. [14:40:22] I'll read it again:

2 "Then they told us, 'Yes, now, you have to wait for the ... for the boss, he's coming.

3 We'll show you where to meet' and then he took me down there and my friend

4 [number 4] was left upstairs." Do you see that?

5 A. [14:40:43] Yes, I see it.

6 Q. [14:40:45] Okay. Did you say that?

7 A. [14:40:48] Yes.

8 Q. [14:40:48] Okay. Did you mean that when you said it?

9 A. [14:40:51] Yes.

10 Q. [14:40:51] So it wasn't a slip of the tongue?

11 A. [14:40:55] I have not explained anything.

12 Q. [14:40:57] Okay. It wasn't something that just spontaneously came out of your

13 mouth and you couldn't control it and it was somehow captured on paper. It was

14 something that you deliberately, consciously, knowingly said when you were being

15 interviewed by the Prosecution?

16 A. [14:41:12] I said all this.

17 Q. [14:41:13] Okay. Thank you. Now if we move on a little bit.

18 And I'm going to try to keep this very short. I'm almost there, your Honour, with

19 this and then one more topic and ...

20 Then you say that -- you're being asked about Mr Gicheru, page number 8. Well, I

21 want to -- "... when I left -- when I left is when we went back to see Mr Gicheru and

22 we had lunch together." That's line -- line 264, 265.

23 So when you left, (Redacted) upstairs, you're underground.

24 PRESIDING JUDGE SAMBA: [14:42:04] You're in open session.

25 MR KARNAVAS: [14:42:05]

1 Q. [14:42:05] You sign. You sign. You both leave and then you go to lunch, and
2 that's when you meet Mr Gicheru. That's what you said, right?

3 A. [14:42:17] Yes.

4 Q. [14:42:18] Okay. So in other words, in this version at least Mr Gicheru is
5 not -- you haven't told us anywhere, I haven't found it here, in 2021, that Mr Gicheru
6 was at the office waiting. Rather, you met him after the signing ceremony, right?

7 A. [14:42:41] I have not discussed about it here.

8 Q. [14:42:42] All right. Well, I'm saying -- I'm just -- I'm just discussing what you
9 discussed. Okay.

10 And later, if we go to the next page, page 9, line 300:

11 "OK. So, as well as the ... typed affidavit, did you sign anything else?

12 I don't know. I can't remember very well but I remember -- I remember going to
13 a cybercafe to ... with [person number 4] and it's like ... I wrote an email. There's an
14 email I must have wrote ... somewhere in Nairobi on [that] day."

15 So. And then further down you say: "At the instructions of Mr Gicheru." And
16 then further down, line 318:

17 "I remember it's like after we left from ... from the lunch with him, on our way, it's like
18 we stopped to go to a cybercafe ... to write that ..." This is line 318 to 319.

19 And then you're asked: "Did he go with you to a cybercafe on [that occasion] or just
20 on this -- on other occasions or just on this -- this one occasion that you can recall?

21 No, only one. Only one."

22 And then page 10, line 330: "... in fact he remained in the car and we left with
23 [person number 4] to go ... because it was somewhere upstairs." So the cybercafe
24 must have been somewhere upstairs.

25 And then you're asked if you signed any blank pages, "Do you recall saying that?"

1 So now they're reminding you, "By the way, hey, you've told us before that you
2 signed some blank pages, what's going on?" And so you say: "Yeah, they just
3 put" -- you say you put, "You just put your signature to ... a blank page, empty page.

4 Yes.

5 Several pages. Is that correct?"

6 So they're kind of helping your memory along, jogging it, making sure that you -- you
7 get it right. And you say, "Yes. That's correct." Do you see that, sir?

8 A. [14:45:17] Yes, I see it.

9 MR KARNAVAS: [14:45:20] We'll stop right here, your Honour, on this topic. And
10 I hope I've made my points clear and I appreciate the Court's indulgence.

11 PRESIDING JUDGE SAMBA: That's fine.

12 MR KARNAVAS: [14:45:31] Now I want to go to another topic. Hopefully it won't
13 be as painfully long. I'll try to keep it snappy. This too is a sort of like a difficult
14 one.

15 Q. [14:45:52] You were questioned on direct examination and you told us that there
16 came a time when you received notice from an individual, I think it was person
17 number 16, who told you, who told you that he was being prepped by 10 lawyers
18 before he was about to testify in the Ruto and Sang case. Do you recall that?

19 A. [14:46:25] Yes, I do.

20 Q. [14:46:26] Okay. And you were walked through it by Mr Steynberg - very
21 professionally, I might add - and so if you look at page 109 of the transcript on
22 the first day of the trial --

23 (Counsel confer)

24 MR KARNAVAS: [14:46:54] So it's 02/15/2022, from Tuesday. Page 109. Am I
25 getting it right? Okay. And ... okay.

1 Q. [14:47:16] And so, anyway, you're asked about this and you're asked: "And how
2 did [this] transpire?" This is on line 19: "How did [this] transpire? Was it in
3 person -- was it an in-person meeting, was it a letter, a phone call, what happened?"
4 So he's giving you multiple choice, in person, letter, phone call, A, B, C, which? And
5 you say, "In person." Do you recall saying that?

6 A. [14:48:00] Yes.

7 Q. [14:48:00] And so when you had this meeting with person number 16 about him
8 being approached or him being, we would call it woodshedded, he was being -- he was
9 being prepped by 10 lawyers, this was a *tête-à-tête*, that you were in person when he
10 told you this.

11 A. [14:48:23] Repeat your question, please.

12 Q. [14:48:25] When you -- in your testimony under oath you said that this was an
13 in-person meeting that you had with person number 16 when he revealed that he was
14 going to, or was -- had been prepared by 16 -- by -- by 10 lawyers?

15 A. [14:48:42] Yes, he informed me about it.

16 Q. [14:48:45] I know he informed you about it. But here you say in person. So
17 do you stand by what you said under oath on Tuesday?

18 A. [14:48:57] He inform -- he spoke to me one-to-one, not by writing, not by email.

19 Q. [14:49:04] Okay. One-to-one. Okay, so it wasn't by phone call?

20 A. [14:49:07] No.

21 Q. [14:49:07] Okay. All right. That's what I wanted. Okay. And now for
22 the record, on 16/09/2014, that individual was testifying here.

23 It's tab 80, your Honour, and I'm just going to -- this is just for reference
24 that -- because in order to give some context to the dates.

25 We see on line 9, on page 1, that it's Tuesday, 16 September 2014.

1 If we look at the upper -- if we look at the next page, page -- well, page 63, we see on
2 that particular -- on that same day we see the witness who is now person 16 is
3 about -- is testifying. That's all I wanted for that.

4 And then page -- tab 81, tab 81 we see that on Monday, 22 September 2014 is
5 when -- and if we go to page 26 we see that is when he's wished good luck. In other
6 words, that is the last day of his testimony.

7 So now, for context purposes, we have the first and the last date. The last date being
8 22 September, the first one being his testimony commencing on the 16th.

9 And with that background, with that -- having set the stage on that, let's look at tab 73.

10 Tab 73. And it's 0144-0260. And it's dated 21 September 2014. And if anyone
11 were to consult a -- a calendar, they would note that 21 September 2014 is a Sunday.

12 And the Court can take judicial notice by looking it up on Google.

13 Do you recall being flown in, sir, to The Hague back on 21 September, or prior to that,
14 one or two days before that, 2014? Do you recall that?

15 A. [14:52:06] Yes.

16 Q. [14:52:07] And you were flown in in connection to this person-to-person
17 conversation that you had with person number 16?

18 A. [14:52:20] I was?

19 Q. [14:52:22] You were flown in because of that conversation that you had with
20 person number 16?

21 A. [14:52:29] I am not sure about that.

22 Q. [14:52:31] Okay. Okay. Well let me help you out here.

23 You passed on that information to the victims and witness section, right? As soon as
24 you learned about it, at some point, you said, "Hey, by the way" --

25 A. [14:52:47] Yes, I --

- 1 Q. [14:52:48] -- "person number 16 told me this and this".
- 2 They then contacted the Prosecution, right? They then, being, you know, the Victims
- 3 and Witness Unit, they contacted the investigators, who then contacted you, right?
- 4 More or less that's how it went.
- 5 A. [14:53:12] I don't want to make any guess.
- 6 Q. [14:53:13] Okay. Well, how was it that the investigators knew of this
- 7 conversation. Who told them?
- 8 A. [14:53:24] I did.
- 9 Q. [14:53:24] Did you do that directly or did you do it through VWU?
- 10 A. [14:53:29] Directly.
- 11 Q. [14:53:29] Directly. So you directly called them?
- 12 A. [14:53:34] I was with them.
- 13 Q. [14:53:39] I don't want to put any words in your mouth. And give it a thought.
- 14 If you don't recall, say "I don't recall."
- 15 A. [14:53:44] No, I was with them, because we had -- I was -- I told them as we
- 16 were discussing -- as we were talking.
- 17 Q. [14:53:51] Okay. And where might you have been when you were just having
- 18 this conversation with the investigators? Were you in country or were you in
- 19 The Hague?
- 20 A. [14:54:02] In the country.
- 21 Q. [14:54:04] Okay. So that's where you had this -- you also had a *tête-à-tête*,
- 22 a person-to-person conversation with the OTP investigators?
- 23 A. [14:54:14] Yes.
- 24 Q. [14:54:14] Okay. Are you sure about that?
- 25 A. [14:54:25] If the -- if it is conversation I had with them the first time when I

1 informed them about my -- my -- about that and I -- and I said I was not happy about
2 what was happening, that is in the country.

3 Q. [14:54:45] Sir, I'm not asking you about any grievances you might have had with
4 the OTP or the VWU. I'm talking about this specific instance where you are told by
5 a witnesses who've about to be testifying, okay, in September --

6 A. [14:55:07] I was --

7 Q. [14:55:08] -- 2014, okay. Now you told us you had this meeting
8 person-to-person with person number 16, and now you're telling us, unless you're
9 mistaken and you want to retract it, that while you were in situ in your own country
10 you had another *tête-à-tête* conversation with the OTP investigators about what
11 number 16 had revealed to you. Is that your testimony?

12 A. [14:55:33] Yes, I was in the country.

13 Q. [14:55:34] And you -- and that's when you informed the OTP investigators,
14 when you were in country?

15 A. [14:55:40] Yes, I informed the -- the investigators in the country. In fact, we
16 were seated in my room where I was.

17 Q. [14:55:50] Okay.

18 THE INTERPRETER: [14:55:51] Message from the English booth: could counsel
19 please slow down. It's far too fast.

20 MR KARNAVAS: And as a result of that --

21 PRESIDING JUDGE SAMBA: [14:55:57] Mr Karnavas, I'm sorry, I have to interrupt
22 you again. The interpreters want you to go a bit slower, please. They say you're
23 way too fast.

24 MR KARNAVAS: [14:56:08] They haven't seen anything.

25 Q. [14:56:17] Okay. I'm going to take a deep breath here, and relax.

1 All right. I just want to make sure I got it clear. It was after this meeting that they
2 then fly you to The Hague?

3 A. [14:56:28] Yes.

4 Q. [14:56:28] And then it's at The Hague when you have this conversation more
5 in-depth about what person number 16 had told you?

6 A. [14:56:38] Yes.

7 Q. [14:56:38] Okay. Now I would need the better part of the rest of the day to go
8 through all of this. But I'm going to put it to you and maybe -- and give you an
9 opportunity to either retract or do something, but I have here several documents and
10 I'll read them in the record in any event, but these documents reveal the following,
11 and I'm going to give you an opportunity to comment on this: That you informed
12 them, you informed the -- the investigators, the ICC investigators through VWU that
13 person number 16 has called you, has called you and passed on this information.
14 And based on that, they've flown you to The Hague.
15 Now, when you come to The Hague, lo and behold you left your phone behind. But
16 hey, you know, these investigators are tenacious, good on them, so they fly the phone.
17 They have somebody go pick up the phone and they bring it to The Hague. Then
18 there's this whole issue about not having a -- a charger. There's this whole
19 discussion in your presence until you finally say, "Well, hey, I got a charger, it's in
20 my -- my bag. My wife packed it."
21 But then lo and behold they can't get into the phone because it turns out that the SIM
22 card, you know, they don't have the PIN. And they are even telling you stop
23 playing with that because you're going to block it.
24 And then after a whole day, and it's a Sunday, we know it's a Sunday because I just
25 Googled it, but also you remind the investigators that you had gone to church that

1 day and you were probably the only black person because you didn't see anybody
2 else at church and you were -- you were kind of, you know, dumbstruck that nobody
3 around The Hague go to, you know, go to church on Sunday, at least not -- not young
4 people. It's all in here. You don't have to take my word, I'm going to read in
5 the record so the Court knows exactly where to go. I'm trying to save time, you see.
6 So now, at the end of all of this, at the end of all of this, they essentially give up. At
7 the end of the day they say, "Hey, this is a total catastrophe. We're not going to get
8 into this phone." Because what did they want you to do? They wanted you to call
9 person number 16 and see whether he would reveal that information to you with
10 them tape-recording it. Do you recall that now?

11 A. [14:59:35] I didn't -- I don't remember the intentions, if those were the intentions.
12 But I remember the incident where I -- because of the numerous telephones I heard
13 and I -- I did not have a record of the SIM cards of the -- of the telephone with me.
14 At the time I came here and I -- it is true I did not have the -- the PIN code of
15 the telephone.

16 Q. [15:00:01] And you did not have the number for number 16, you did not have
17 the number for number 4. Remember, they were asking you whether even
18 you -- whether you would even call Mr Gicheru, and you backed off, you said, "Oh,
19 I can't call him. No, no, that would be too risky." Do you recall any of that?

20 A. [15:00:26] I recall that day when I have just explained.

21 Q. [15:00:30] All right. Now one of the reasons they wanted to get into your
22 phone and they had it flown in, aside from you telling them that you had received
23 a telephone call from person number 16, was so they could check it, they could check
24 and see the number and see whether in fact this conversation had occurred.
25 And here's my dilemma, now help me out here, you come to court and you say it was

1 an in-person meeting, and then we have all of these documents that show that you tell
2 them it's this telephone conversation, they're flying in a phone, and it would appear
3 that the entire situation was a charade. I'm not saying it was a charade, maybe it was,
4 maybe it wasn't. Maybe you're mistaken, but under oath you're very clear it was
5 a face to face, and these documents and the evidence show otherwise.

6 Now could you be mistaken?

7 A. [15:01:47] Your Honour, what we are discussing about took -- took place long
8 time ago. And the information I am very sure about is that I was informed by this
9 person number 16 concerning the -- the availability of 10 lawyers because he was
10 appearing on video -- on video -- on video in the country. And I remember I -- I
11 discussing with the -- with the investigators and informing them about
12 the information that was in my possession.

13 PRESIDING JUDGE SAMBA: [15:02:28] All right. Mr Witness, what the lawyer
14 wants to know, this information you are talking about, about person number 16 being
15 counselled by 10 lawyers, how did you get that information? Was it like you said
16 just now, was it a face-to-face interaction with person number 16? Did he tell you all
17 this information looking at you like I'm doing now, in your face? Were you together
18 when he gave you that information? That is the question he's asking.

19 THE WITNESS: [15:03:13] I remember he gave me the information face to face.

20 PRESIDING JUDGE SAMBA: [15:03:17] Thank you.

21 MR KARNAVAS: [15:03:18] Okay. Well, your Honour, I'm just going to read in
22 the record. Normally I would go --

23 (Counsel confer)

24 PRESIDING JUDGE SAMBA: [15:03:40] Mr Karnavas, before you start, can I just
25 remind you to be switching off your microphone whenever the witness is talking,

1 please.

2 MR KARNAVAS: [15:03:49] Yes, yes. Okay.

3 Normally, your Honour, I would go through all of these. And I know it's tedious, I
4 know it takes a lot of time and maybe we try to save time. We try to be very
5 prepared for you, because this is a very convoluted story. But I got the gist of it and
6 so I'm just going to read the numbers in, and then hopefully in our final submission
7 we'll try to piece it together. But I just want to be on record that we are very, very
8 mindful of the Court's time and we don't come here unprepared, we don't come here
9 unprepared.

10 PRESIDING JUDGE SAMBA: [15:04:28] Well I don't expect otherwise, Mr Karnavas.
11 And really do -- as I say, whatever you do, do it in the best interest of your client.
12 Nobody's pushing you.

13 MR KARNAVAS: [15:04:40] Okay. So for the record it's tab 73. Tab 18. Tab 71.
14 Tab 74. Tab 83. Tab 84. And -- and that's it and these are ...

15 Q. [15:05:22] And as I understand it, I'm being instructed to -- to remind you
16 that -- or to ask you whether all the -- all the documents that you ticked off you
17 actually read. Remember the very first day there was that chart and you ticked off
18 the documents that were sent to you. You actually read those documents; is that
19 correct?

20 A. [15:05:46] Yes.

21 Q. [15:05:46] Okay. And all the documents that I'm referring to here, as I am
22 informed by higher powers, they're all included.

23 So I'm going to go to the last, the very last topic and hopefully we can end shortly,
24 so ...

25 I want to go back to the issue -- I know we talked a little bit about it, but I want to go

1 back to this issue of this last proofing session that you had - I call it proofing
2 session - back in July 2021 from 12 to 14.
3 We've done the actual breakdown and it appears that, as I said, 30 per cent of the time.
4 And we have even the KEN numbers that show -- of the transcript that show how
5 much time was spent to you discussing that one incident where it was revealed
6 during the proofing session in the Ruto case, and that was your meeting with person
7 number 2, having that unauthorised meeting which was tape-recorded in parts or
8 what have you. Okay?

9 Can I ask you, do you know why it was necessary for the OTP to question you over
10 three hours over a three-day period on that incident? And if you don't know, just
11 say "I don't know."

12 A. [15:07:45] I don't.

13 Q. [15:07:46] Okay. Now I just want to read some things to you, a couple of things,
14 and -- because I think it's important for the Court to also understand how this session
15 went about. This is 12 July 2021. It's tab 54. And I just want to touch on one -- one
16 matter. I'm sure the Prosecution has a good explanation.

17 Do you want to -- do you have it? I don't want you to feel like I'm tricking you.

18 Okay, I'm looking at page 6 and that would be 0160-0286. So this is page 6, line 194:

19 "What I would like to do, and we would like to do is to remind you of your obligation
20 to speak the truth. This is a formal process. We are representatives of
21 the International Criminal Court".

22 Now mind you, present during this period when this is being read is none other than
23 Mr Steynberg, although he is not the speaker.

24 It goes on, starting with line 201:

25 "In mine and in our experience over the years - yeah? - the people have a variety of

1 reasons for not telling the whole truth or the part truth or in sometimes an absolute
2 untruth for a whole variety of reasons. Yeah? What we want to do today and other
3 the coming days as we go through this, is that everything that you tell us is voluntary
4 but everything that you tell us is an absolute 100% true. Do you understand?
5 I understand."

6 Now remember we began our sort of feisty exchange yesterday with me asking you if
7 you're an honest person, and here it is, 12 July 2001, and they're still asking you to be
8 truthful with them.

9 Did you get the sense, at least from that exchange, that they did not think that you
10 were a truthful person or at least had not been truthful with them at all times?

11 A. [15:10:49] That is not the case, because everyone who appears before them,
12 I believe, is given the same warnings.

13 Q. [15:11:02] Okay. All right.

14 So we go on, line 207:

15 "The reason ... I am reinforcing this and I think it would be fair to say - yeah? - it has
16 been a few [things] -- a few highs and lows I think in our dealings with you and
17 I don't -- don't mean any disrespect. Because of that, it's kind of ebb and flow a little
18 bit like the tide going in and the tide going out. Yeah?"

19 And you say, "Yeah."

20 Line 212: "And ... but what we want to do is just put all that behind us."

21 Now, mind you, sir, you've already testified in the William -- in the -- in the Ruto and
22 Sang case. And correct me if I'm wrong, from that period to this period, July, you
23 had no investigative role with them, or have you, and we're unaware of it?

24 A. [15:12:12] No.

25 Q. [15:12:12] Okay. So in other words you hadn't given any other statements from

1 the time that you gave testimony in Ruto and Sang. You didn't have any more
2 interviews with the -- and interactions with the OTP concerning any investigative
3 matters, right?

4 A. [15:12:30] No.

5 Q. [15:12:31] Okay. But here they are and they're saying, okay, if they want to put
6 things behind, all right.

7 "The reason why I am reinforcing this and I think it would be fair to say
8 [that] - yeah? - it has been a few highs and lows" okay, put it behind us.

9 "... but what we want to do is put it all behind ... Yeah? As I said, there is a whole
10 variety of reasons why people do think or act the way they do. Most of the time, it's
11 self-preservation. Yeah? We think [it is] fear ..." and so on.

12 And then we go further down to 223, line 223:

13 "If you've told us something before - yeah? - that is not correct, say so now during
14 [the] process ... Because ... it's a balancing act -- it's a balancing act. Yeah? And for
15 somebody to be credible, they have to be consistent in what they say or if they've said
16 something that is not correct or is untrue, we can put that behind us -- we can -- if
17 they can give us a good explanation why it was done at the time and then -- and then
18 the balance goes back. Do you understand what I mean?"

19 Did you understand what they meant?

20 A. [15:14:09] Yes.

21 Q. [15:14:14] I can go on, but I put it to you, sir, that this was not some interview,
22 this was a proofing session where they were trying to give you opportunities and
23 show you documents in order for you to tailor, to tailor your memory and tailor your
24 evidence and to iron out all the inconsistencies that they had discovered in
25 preparation for this particular case. What do you think?

1 PRESIDING JUDGE SAMBA: [15:14:41] Well, Mr Karnavas, you said you, you know,
2 that is how you describe this. And the Prosecutor has said that it was -- you know, it
3 was an interview. I think it's really between yourself and the Prosecutor. I mean
4 the witness was just answering questions put to him, from what I see in the transcript
5 before me, as in tab 54.

6 MR KARNAVAS: [15:15:06] Very well, your Honour. I leave it to your discretion.
7 You know, we're going to argue this point, obviously, but I find it rather strange that
8 all of a sudden they need to give this opportunity to this individual for no good
9 reason, when they haven't done any use of this person for so many years, to give him
10 an opportunity to correct his record by showing him documents and cajoling him in
11 some ways as to what the right answers might be. That's the point that I'm trying to
12 make, that's the point I will argue, and that's why I think, in part, this person, along
13 with for other reasons that we have shown, is not to be believed. And I rest -- I
14 conclude my direct -- my cross-examination at this point.

15 PRESIDING JUDGE SAMBA: [15:15:50] Thank you very much, Mr Karnavas.

16 Mr Steynberg, re-examination, please, if any. You did indicate you want 15 minutes.

17 MR STEYNBERG: [15:16:00] I did, your Honour. I have reconsidered that and I
18 think I may be able to curtail it.

19 But just on that last point, your Honour, my learned friend has presented argument,
20 and I know this is not the time for that, but the Prosecution obviously has obligations
21 under Article 54(1)(a) to test evidence, and we submit this is what we were doing, we
22 were testing the evidence to make sure that -- that we were satisfied with the versions
23 before we called this witness. And it was not about coaching, it was about doing our
24 duty under the Statute.

25 Your Honour, I had -- I had proposed to lead this witness again through the timelines

1 and the sequence of events. And the reason for that was that when my learned
2 friend was cross-examining, particularly about the phones and phone calls, he was
3 jumping backwards and forwards from events that took place in 2013, 2014 and
4 comparing the two as if they were, in my submission, simultaneous events. But
5 having gone through the material again, I'm satisfied that the record is clear and
6 speaks for itself and I don't need to actually lead the witness through that.

7 So that being said, I have no further questions in re-examination.

8 PRESIDING JUDGE SAMBA: [15:17:13] Thank you very much, Mr Steynberg.

9 And I thank, I thank you all. I thank you very much, Mr Karnavas, Mr Steynberg,
10 and your teams, of course.

11 And I want to take this opportunity as a Chamber to thank you, Mr Witness, for
12 availing yourself for this testimony here all these three days, in chief and in cross
13 indeed. I thank you for all you've said here and for helping us so that we'll see
14 the truth and actually dispense justice in respect of this particular matter.

15 I wish you well, in your future endeavours at least, when you leave here.

16 (The witness is excused)

17 PRESIDING JUDGE SAMBA: [15:17:58] With regard to the procedure, gentlemen,
18 on how to formally submit evidence after the testimony of a witness, the Chamber
19 reminds the parties of its instructions laid out in -- in its directions on the conduct of
20 proceedings, and that's decision 189, paragraph 19.

21 We've come to the end of this particular session with this particular witness. Our
22 next witness, based on information received from the Prosecution, will be before this
23 Court on Monday, 21 February, and we expect to see and talk to witness number
24 P-0341, who will start testifying before this Court on that same day.

25 MR STEYNBERG: [15:18:51] Thank you, your Honour. I confirm that that remains

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- 1 the case. The witness, to the best of my knowledge, is present and available.
- 2 PRESIDING JUDGE SAMBA: [15:19:00] Thank you very much, Mr Steynberg.
- 3 So having said that, I must say thank you, and I believe we could close today's session
- 4 at this point and we'll meet here on Monday. I wish you all well. Thank you very
- 5 much.
- 6 THE COURT USHER: [15:19:18] All rise.
- 7 (The hearing ends in open session at 3.19 p.m.)