

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 Opening Statements and Trial Hearing - Courtroom 3
7 Tuesday, 15 February 2022
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: [9:32:40] All rise.
10 The International Criminal Court is now in session.
11 PRESIDING JUDGE SAMBA: Please be seated. Good morning.
12 THE COURT USHER: [09:32:54] Please be seated.
13 PRESIDING JUDGE SAMBA: [9:33:15] Good morning again.
14 I would like to welcome everyone in the courtroom.
15 Would the court officer please call out the case.
16 THE COURT OFFICER: [9:33:27] Good morning, Madam President.
17 This is the situation in the Republic of Kenya, in the case of the Prosecutor versus
18 Paul Gicheru, case reference ICC-01/09-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE SAMBA: [9:33:46] Thank you very much.
21 Counsel, can you introduce yourselves please, starting with the Prosecution.
22 MR STEWART: [9:33:52] Good morning, your Honour. And good morning to all.
23 Your Honour, the Prosecutor Karim Khan QC, having recused himself completely
24 from the Kenya situation, it's my honour as Deputy Prosecutor to appear before to
25 introduce the Prosecution team.

1 For the record, my name is James Stewart. I appear with senior trial lawyer
2 Anton Steynberg, lead counsel for the Prosecution; trial lawyer Alice Zago; associate
3 trial lawyer Inbal Djalovski; and assistant legal officer Mariana Gutierrez.
4 Your Honour, in addition, associate trial lawyer Laura Warrlich, who could not be
5 present in court now due to COVID-19 restrictions will be introduced after the break,
6 and our case manager Grace Goh is working remotely. Thank you.

7 PRESIDING JUDGE SAMBA: [9:34:47] Thank you very much, Mr Prosecutor.
8 The Defence team, please.

9 MR KARNAVAS: [9:34:50] Good morning, your Honour. Michael Karnavas for
10 Mr Gicheru, lead counsel. With me is Suzana Tomanović, associate counsel;
11 Noah Al-Malt, legal assistant; and Daria Mascetti, our case manager. Thank you.

12 PRESIDING JUDGE SAMBA: [9:35:06] Thank you very much, Mr Karnavas.

13 And for the record, I take note that Mr Paul Gicheru is in court.

14 Good morning, Mr Gicheru.

15 Now, for the members of the public, let me quickly introduce myself. My name is
16 Miatta Maria Samba and I am the Judge in this case.

17 As you are aware, we are here today for the opening of the trial of Mr Paul Gicheru.

18 I'll open with a few preliminary remarks, and then the charges will be read. We then
19 intend to hear opening statements from or by the Prosecution.

20 As an introduction, I wish to provide some short background information to this case.

21 On 31 March 2010, Pre-Trial Chamber II granted a request by the Prosecutor
22 authorising an investigation into the situation in the Republic of Kenya.

23 The proceedings before this Court is the third active case arising out of that situation.

24 The Prosecution alleges that witnesses related to the proceedings of another case
25 emanating from the Kenya situation, in the case the Prosecutor against William

1 Samoei Ruto and Joshua Arap Sang, have been influenced pursuant to Article 70 of
2 the Rome Statute.

3 On 15 July 2021, Pre-Trial Chamber A issued its decision on the confirmation of
4 charges in this case. Therein, it confirmed several instances of alleged interference of
5 witnesses. These are the charges brought before this Chamber.

6 In decision 185, the Chamber set a deadline of 21 January 2022 for the filing of any
7 motions requiring resolution prior to the commencement of trial. The Chamber
8 notes Rule 134(2) of the Rules of Procedure and Evidence. The Chamber will now
9 ask the parties whether - save any pending requests with the Chamber - they have
10 any remaining objections or observations concerning the conduct of proceedings
11 which may have arisen since the confirmation hearings. Now be mindful that, in
12 accordance -- be mindful, in accordance with Rule 134(2), no such objection or
13 observation may be raised during the trial proceedings without the leave of the Court.
14 I now ask the Prosecution.

15 MR STEYNBERG: [9:38:14] may it please the Court, your Honours. There are no
16 objections from the Prosecution.

17 There is one pending request that the Prosecution noted in its trial brief, and that was
18 a request for the Chamber to consider legal recharacterisation of the charges to
19 the extent of the legal contributions of certain of the alleged intermediaries of the
20 common plan, which the Pre-Trial Chamber found did not rise to the level of essential
21 contributions.

22 This is a matter I will address in my opening address, so I'll say nothing further on
23 that at this point. But the matter is already on -- in our -- in our trial brief.

24 PRESIDING JUDGE SAMBA: [9:38:56] Thank you very much.

25 Mr Karnavas, please.

1 MR KARNAVAS: [9:39:00] No objections, your Honour. We're ready for trial.

2 PRESIDING JUDGE SAMBA: [9:39:05] Thank you very much, Mr Karnavas.

3 So in accordance with Article 64(8)(a) of the Rome Statute, the charges will now be
4 read to the accused, following which Mr Gicheru will be afforded an opportunity to
5 make an admission of guilt or to plead not guilty. This is the public redacted version
6 of the charges, in which very limited information is redacted. The Chamber notes
7 that Mr Gicheru and his Defence team have access to the unredacted version of
8 the charges.

9 Madam Court Officer, could you please read the confirmed charges.

10 THE COURT OFFICER: [9:39:55] Thank you, Madam President.

11 The confirmed charges against Paul Gicheru are:

12 1) pursuant to Article 25(3)(a) (jointly with another person or as an individual),
13 25(3)(b) (soliciting or inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set
14 out in Article 70(1)(c) of the Statute with respect to P-0397 by (i) offering to pay him
15 a bribe of 5 million Kenyan shillings in cash instalments; (ii) and/or threatening him;
16 and/or (iii) by actually paying him a total of 1 million Kenyan shillings; in order to
17 influence him to withdraw as a Prosecution witness and cease cooperation with
18 the ICC, to sign an affidavit to that effect, and/or to locate, contact and/or corruptly
19 influence P-0516 on behalf of the common plan members, committed during
20 the period April 2013 to January 2014 at a redacted location in Kenya.

21 2) pursuant to Article 25(3)(a) (jointly with another person or as an individual),
22 25(3)(b) (soliciting or inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set
23 out in Article 70(1)(c) of the Statute with respect to P-0516 by offering him a bribe of
24 800,000 Kenyan shillings in instalments and actually paying him a total of 500,000
25 Kenyan shillings to withdraw as a Prosecution witness and to sign an affidavit

1 withdrawing his prior statement to the Prosecution, committed during the period of
2 April to May 2013 at a redacted location in Kenya.

3 3) pursuant to Article 25(3)(a) (jointly with another person) or 25(3)(b) (soliciting or
4 inducing), or 25(3)(c) or 25(3)(d) of the Statute, for the offence set out in Article 70(1)(c)
5 of the Statute with respect to P-0613 by offering to pay her a bribe, the amount of
6 which would be subject to negotiation, to influence her to withdraw as a Prosecution
7 witness, committed during the period April to September 2013 at a redacted location
8 in Kenya.

9 4) pursuant to Article 25(3)(a) (jointly with another person or as an individual),
10 25(3)(b) (soliciting or inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set
11 out in Article 70(1)(c) of the Statute with respect to P-0800 by offering to pay him
12 a bribe of between 1,500,000 and 2,500,000 Kenyan shillings in order to influence him
13 to withdraw as a Prosecution witness, to sign an affidavit to this effect and to locate
14 and corruptly influence other Prosecution witnesses, including P-0495 and P-0613,
15 committed during the period May 2013 to March 2014 at a redacted location in Kenya.

16 5) pursuant to Article 25(3)(a) (jointly with another person), 25(3)(b) (soliciting or
17 inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set out in Article 70(1)(c)
18 of the Statute with respect to P-0495 by offering to pay him a bribe of between
19 1,500,000 and 2,500,000 Kenyan shillings and employment, to withdraw as
20 a Prosecution witness in the Ruto and Sang case and corruptly influence other
21 Prosecution witnesses, committed during September 2013 and at a redacted location
22 in Kenya.

23 6) pursuant to Article 25(3)(a) (jointly with another person), 25(3)(b) (soliciting or
24 inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set out in Article 70(1)(c)
25 of the Statute with respect to P-0536 by offering her a bribe of between 1,400,000 and

1 1,600,000 Kenyan shillings in exchange for her withdrawal as a Prosecution witness,
2 committed during the period May to September 2013 and at a redacted location in
3 Kenya.

4 7) pursuant to Article 25(3)(a) (jointly with another person or as an individual),
5 25(3)(b) (soliciting or inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set
6 out in Article 70(1)(c) of the Statute with respect to P-0341 by (i) offering to pay him
7 a bribe of 5 million Kenyan shillings and other financial benefits; (ii) actually paying
8 him between 1 million and 2 million Kenyan shillings; and (iii) intimidating him, in
9 order to influence him to refuse to become a Prosecution witness if asked to do so, to
10 cease to attend - redacted - to sign pre-prepared or dictated affidavits recording his
11 withdraw from the ICC process, and/or to locate, contact and/or corruptly influencing
12 other Prosecution witnesses, committed during the period 24 April 2013 to
13 mid-April 2014 at a redacted location in Kenya.

14 8) pursuant to Article 25(3)(a) (jointly with another person or as an individual),
15 25(3)(b) (soliciting or inducing), 25(3)(c) or 25(3)(d) of the Statute, for the offence set
16 out in Article 70(1)(c) of the Statute with respect to P-0274 by (i) promising him at
17 least 2 million Kenyan shillings; (ii) intimidating and threatening him multiple times,
18 including at gunpoint; and (iii) paying him 30,000 Kenyan shillings to induce him to
19 withdraw - redacted - to record a false video stating that the ICC attempted to coach
20 him to give evidence against Mr Ruto, to sign a blank piece of paper, and to locate,
21 contact and/or corruptly influence other Prosecution witnesses, committed during
22 the period April to May 2012 to 2014 at a redacted location in Kenya.

23 PRESIDING JUDGE SAMBA: [9:47:29] Thank you very much, Madam
24 Court Officer.

25 Now can Defence counsel, Mr Karnavas, can you please confirm that you have

1 explained the nature of the charges to your client, Mr Gicheru, and his right to make
2 an admission of guilt or plead not guilty to the charges.

3 MR KARNAVAS: [9:47:51] Good morning again, your Honour.

4 Yes, we have fully explained all of his rights and he intends to go forward with
5 the trial because he maintains his innocence. Thank you.

6 PRESIDING JUDGE SAMBA: [9:48:03] Thank you very much, Mr Karnavas.

7 Mr Gicheru, can you rise, please.

8 Now do you understand the nature of the charges read out to you today?

9 MR GICHERU: [9:48:14] Yes, I do, Madam President.

10 PRESIDING JUDGE SAMBA: [9:48:23] Do you make an admission of guilt with
11 respect to any of the charges?

12 MR GICHERU: [9:48:29] Not at all. Madam President, for the record, I plead not
13 guilty. Not guilty.

14 PRESIDING JUDGE SAMBA: [9:48:38] With respect of all the charges?

15 MR GICHERU: [9:48:40] Yes.

16 PRESIDING JUDGE SAMBA: [9:48:46] Thank you very much.

17 MR GICHERU: [9:48:47] Thank you, Madam President.

18 PRESIDING JUDGE SAMBA: [09:48:46] You may be seated.

19 We will now turn to the opening statements. The Prosecution will commence its
20 opening statement today, and have been allotted one hour.

21 The Prosecution, you may now make your opening statements, please. Thank you
22 very much.

23 MR STEWART: [9:49:08] Your Honour, the International Criminal Court was
24 established to end impunity for those responsible for the most serious crimes of
25 concern to the international community. It was established to seek justice for

1 the victims of such crimes, it was established to seek the truth.

2 But in order to establish the truth, victims and witnesses must be able to testify freely
3 and honestly. And when their evidence is perverted through corruption or
4 intimidation, the truth is obscured and justice is denied.

5 The Prosecution brings this case against Paul Gicheru to protect the integrity of
6 the Court's proceedings from offences against the administration of justice, to punish
7 those responsible and deter future offenders. We seek to preserve and strengthen
8 public confidence in the Court and the expectations of those who look to the Court to
9 establish the truth and deliver justice. Those who would seek to undermine
10 the Court's ability to provide redress for the victims of mass atrocities cannot be
11 allowed to prevail. They must be held accountable.

12 Your Honour, the investigation and Prosecution of William Samoei Ruto and
13 Joshua Arap Sang was beset from the outset with witness interference and
14 intimidation problems, which continued up to and throughout the trial. In
15 dismissing the charges against those two accused, the judges, in both the majority and
16 minority opinions of the Trial Chamber, condemned the levels of witness interference,
17 which had made it impossible for the Chamber to ascertain the truth.

18 The most egregious and damaging instance of such witness interference - with
19 the accused Paul Gicheru allegedly at its centre - commenced in early 2013 and
20 continued throughout the trial. This interference caused the Office of the Prosecutor
21 to start an investigation, in parallel with the Ruto and Sang trial, into numerous
22 reports of witness tampering. That investigation allowed the Prosecution to uncover
23 and document the commission of the offences that form the basis of the case that is
24 now before this Chamber.

25 The evidence gathered in the investigation will show that the accused managed and

1 coordinated a scheme to identify, locate, and corruptly influence actual and potential
2 Prosecution witnesses. This was done through a combination of bribery and
3 intimidation. The actions of the accused and his associates led directly to
4 the withdrawal and recanting of no less than four vital Prosecution witnesses in
5 the Ruto and Sang case. The efforts of the accused and his associates to influence
6 corruptly a further two witnesses were only thwarted because the witnesses they
7 targeted reported this to the Prosecution.

8 While the Prosecution does not allege that the accused was himself directly involved
9 in the disappearance and presumed death of another Prosecution witness, or in
10 the murder of a prospective Defence witness and a former Prosecution intermediary,
11 Meshack Yebei, both of these individuals, as the narrative of the case will show, were
12 caught up in the witness tampering scheme.

13 The accused and his associates may not have been the only persons responsible for
14 witness intimidation and tampering in the Ruto and Sang case. However,
15 the evidence will establish beyond a reasonable doubt that they were responsible for
16 the offences charged in this case.

17 This trial, therefore, represents an important step towards holding those responsible
18 for witness interference in the Kenya cases accountable for their actions and achieving
19 some measure of retribution on behalf of the victims who were denied justice.

20 The Prosecution notes that two further suspects, for whom arrest warrants have been
21 issued for the same offences, remain at large and we call upon the Kenyan authorities
22 to take all necessary steps to surrender these two suspects to the Court without
23 further delay.

24 Your Honour, I yield the floor now to senior trial lawyer Anton Steynberg and
25 the Prosecution team, who will outline in detail the case that the Prosecution will

1 present to establish the guilt of Paul Gicheru.

2 MR STEYNBERG: [9:54:33] Good morning again, Madam President. May it please
3 the Court.

4 The Prosecution will now outline how it intends to prove the charges that have been
5 confirmed against the accused. I will present a general overview of the Prosecution
6 case and how it will prove each of the eight confirmed charges. My colleague
7 Ms Zago will then outline the evidence that will be presented on the accused's
8 individual criminal responsibility.

9 The Prosecution does not propose to address in detail the offences charged, which are
10 fully explained in the Document Containing the Charges and have just been read out
11 by the court officer, although I will briefly summarise these for the benefit of
12 the watching public. Nor do I propose to repeat the legal arguments that are
13 advanced in the Prosecution's Trial Brief. Rather, we will focus on the evidence that
14 will be presented and how this will demonstrate beyond a reasonable doubt that
15 the accused committed the charged offences and his criminal responsibility.

16 As confirmed by the Pre-Trial Chamber, the accused is charged with eight counts of
17 corruptly influencing Prosecution witnesses in the Ruto and Sang case, in
18 contravention of Article 70(1)(c) of the Rome Statute.

19 This was done through a wide-ranging and concerted scheme of witness interference
20 over the course of almost two and a half years.

21 The accused bears criminal responsibility under several possible modes of liability:
22 Direct, indirect, and accessory.

23 In this opening address, the Prosecution will focus on the accused's criminal liability
24 by way of his direct and personal perpetration of acts of corrupt influence, as well as
25 his essential contributions to a common plan to do so.

1 The common plan, confirmed by the Pre-Trial Chamber, encompassed
2 the identification, location and contacting of Prosecution witnesses and potential
3 Prosecution witnesses in the Ruto and Sang case, offering and paying them financial
4 benefits and threatening or intimidating them, all to induce them to withdraw as
5 Prosecution witnesses in that case, to refuse to cooperate or to cease cooperation with
6 the ICC, and to recant the evidence which they had provided to the Prosecution.
7 The common plan group comprised of a number of persons who undertook specific
8 roles. Some, including the accused, fulfilled the role of managers, who organised
9 the activities of other common plan members, arranged financing and negotiated
10 bribe amounts with witnesses who were corruptly influenced. Intermediaries were
11 responsible for locating and contacting witnesses and persuading them to meet with
12 the common plan managers to be bribed or intimidated.
13 And still others - while not confirmed as members of the common plan - were
14 associated with it and made contributions to the commission of at least one offence
15 charged.
16 And as I noted earlier, your Honour, the Prosecution notes in this regard and it has
17 provided submissions in its Trial Brief that the Pre-Trial Chamber, with respect,
18 mischaracterised the contributions of certain of these associates and invited
19 the Trial Chamber to exercise its power to legally recharacterise these contributions as
20 essential and to give the Defence notice of this possibility, pursuant to
21 Regulation 55(2).
22 In fairness to the Defence, the earlier this notice is given the better it would be for
23 them.
24 I will now briefly touch upon some of the main types of evidence that the Prosecution
25 will present in support of these eight counts. I will also provide some snippets of

1 this evidence demonstrating how offences were committed and the role played by
2 the accused in their commission.

3 I'm conscious, your Honour, that we are in public session, and I have applied
4 the necessary redactions to these extracts. I will also not read out the ERNs which
5 are reflected on the extracts, and I can provide a copy of this presentation to
6 the Chamber and parties immediately afterwards.

7 Starting with count 1.

8 Since Witness 397 is unavailable to testify, the Chamber has granted the Prosecution's
9 request to submit into the record his prior recorded testimony.

10 This evidence demonstrates how he was corruptly influenced and recruited by
11 common plan intermediaries Yebei and Bett.

12 He explains as follows: "Yebei and Bett 'act like brokers; they identify witnesses and
13 tell that group, and then they facilitate by giving up -- by giving" - I beg your
14 pardon - "by giving of money, and they also receive their own remuneration."

15 The evidence further demonstrates how he was taken to meet managers Gicheru, the
16 accused, and Simatwo and relates the events as follows:

17 Starting at line 82, and I quote:

18 "And he told me" -- he being the accused: "And he told me that they'd received
19 a report that I was a witness. And he told me that if that was the case, they asked for
20 my support ... for me to withdraw from the case."

21 And he quotes: "Honourable Ruto really requests that you try to bring in any
22 witnesses that you know and then we'll give them something."

23 From line 105: "So I asked him what do they offer if I withdraw from the Court,
24 from the case.

25 And he asked me, 'Why don't you yourself speak?'"

1 And I told him I wanted 10 million Kenyan shillings.

2 Then we locked horns over it and he sweet-talked me and so forth until we arrived at
3 5 million.

4 He promised me that he would pay me in instalments.

5 That month, they paid me a million, they gave me 600,000 first, and then later on he
6 gave me 400,000. So, that was one million."

7 And throughout that quote, the "he" being referred to is the accused.

8 P-397 further details how he was instructed, in turn, to recruit Witness P-516 to be
9 bribed, to which I will return under count 2.

10 The Prosecution will present the following corroboration for the prior recorded
11 testimony of P-397, starting with bank records.

12 The bank records will confirm that the witness deposited two large sums of money
13 into his bank accounts on dates corresponding with the dates on which he says he
14 received payments from the accused.

15 Firstly, on 27 April 2013, he deposited an amount of 500,000 Kenyan shillings, having
16 explained that he spent the other 100,000.

17 And three days later, on 30 April, he deposited a further 400,000 Kenyan shillings,
18 bringing his bank balance to just shy of 900,000 Kenyan shillings. Prior to these
19 deposits, the balance on this account was 297 shillings.

20 Phone records will confirm these two deposits, as they reflect text messages from
21 the bank confirming these two deposits.

22 Phone records will also corroborate his contact with the accused, whose phone
23 number was recorded in the witness's contact list.

24 The number reflected in the contact list corresponds with numbers that may be found
25 on the accused's business cards and letterheads.

1 We will also produce a letter of withdrawal sent to the Prosecution by the lawyer to
2 whom he, the witness, was referred by the accused.

3 We will prove recorded calls between the witness and the accused and also with
4 common plan intermediary Yebei, the contents of which, we say, are inconsistent with
5 innocence.

6 And we will present the testimony of other witnesses, including P-516, P-613 and
7 P-341, who will provide corroboration for the version of P-397.

8 P-516 will confirm that P-397 took him to meet the accused, who paid him.

9 P-613 will confirm receiving reports from another common play intermediary P-579
10 that he, that is 397, was paid 500,000 Kenyan shillings by the accused.

11 And P-341 will provide the following evidence:

12 "I also saw P-397 and P-516 at Gicheru's office many times. I spoke with both of
13 them and they had told me that they both received money but they both had told me
14 that if they did not receive all their money they will return to the ICC."

15 I move on to count 2.

16 The Prosecution will present the evidence of P-516, who will testify that P-397 took
17 him to meet Gicheru, as I mentioned a moment ago.

18 He says the following, from line 285:

19 "Yeah, so what happened when I met up with P-397 was that he phoned and then I
20 had a meeting with him at a hotel. We met and he told me that the next day, we
21 were supposed to go and meet a person called Paul Gicheru."

22 The interviewer asks: "OK, and for what purpose?"

23 He replies: "He told me that Gicheru was giving out money."

24 The interviewer asks: "OK, and why was Gicheru giving out money?"

25 The response: "P-397 said it was money for witnesses."

1 When P-516 met with the accused, the latter offered and subsequently paid him
2 money.

3 The evidence reflects as follows: "Tell us about that discussion about money."

4 The witness says: "Yeah, I spoke to him" - him being the accused - "We agreed."

5 "Give me 800,000. But he didn't give me everything. He gave me 500."

6 Moving on to the corroboration for the evidence of P-516.

7 The Prosecution will also present the following corroboration, starting with the prior
8 recorded testimony of P-397. And I quote from line 593. I beg your pardon, 594:

9 "So, I heard Gicheru telling Meshack," - Meshack Yebei - "'You'll go and look for him.'

10 Meshack told him, 'No. I think he sometimes speaks to 397. Perhaps ...' Then, later

11 on, Meshack told me, 'You do this. Go and talk to him.' I just went to P-516 to find

12 out if he really was a witness or whether it was propaganda."

13 I'm carrying on from line 600: "I found out that he really was a witness. So, I

14 brought him in. I told Gicheru to talk to this person. I went out and they talked."

15 From line 814: "Afterwards, he told me, when we met, he told me that he'd been

16 promised that on a certain day he could go and collect money, and I think he really

17 did go and collect it later on."

18 The interviewer asks: "OK. Did he tell you how much it was?"

19 And he responds: "I think P-516 got around ... 500,000 or 800,000 shillings."

20 I've already mentioned the evidence of P-341, that he saw both of the witnesses at

21 Gicheru's offices.

22 And I've also mentioned the report from common plan intermediary P-579 to P-613,

23 confirming that Gicheru paid a number of witnesses, including both P-397 and P-516.

24 I move on then to count 3.

25 In this count the Prosecution will present the evidence of P-613.

1 She will testify that she was approached by Yebei and at least six other common plan
2 intermediaries and associates on separate occasions. This included approaches by
3 common plan intermediary P-579, which he describes as follows:

4 "P-579 told me to tell them how much I want. P-579 was told was told to come to
5 Kampala with a phone so we could meet and I could talk to those people over
6 the phone.

7 [He] was given instructions" -- sorry: "P-579 was given instructions from Gicheru to
8 go to Kampala with a phone. P-579 told me that this group are fearing me and that
9 is why they are doing this with the phone because they are not trusting me and think
10 I will report it to 'those people' who I knew to mean the ICC."

11 She was also approached by a former Prosecution witness and common plan associate
12 P-495. She describes this as follows:

13 "P-495 told me that Gicheru has been given all the authority.

14 P-495 told me when you are given money they have offered protection because they
15 don't want you going back to the ICC. I asked P-495 so is" -- it says "is to Gicheru", I
16 think it means -- should mean -- should read "is it Gicheru": "... so [is it] Gicheru
17 who is going to finish this thing with us and P-495 replied yes they want to meet with
18 us tomorrow."

19 Moving on to corroboration.

20 The Prosecution will present recorded conversations with both common plan
21 intermediaries P-540 and P-579.

22 I start with the latter, who told her the following:

23 [P-579]: No, these people have a network," and there's unintelligible words, and he
24 carries on, "they have a chain of command.

25 [P-613]: Oh, a chain command.

1 [P-579]: Now, I have been shown how it works. If they want to call you, then this
2 one will call the other, and then the next until it gets to you, just like that."

3 From line 106: "... for people like you who are far away, then you will have to come to
4 Nairobi.

5 [P-613]: Eh, eh, to be given cash?

6 [P-579]: You will need to talk first and discuss until you agree."

7 And then again from line 112:

8 [P-579]: You will be given clean cash.

9 [P-613]: And you will be told never to put it in a bank account." Which he confirms.

10 Then there is a recorded conversation with a former witness and common plan

11 associate P-495, who speaks about how he told the accused that he will go and come

12 with "that lady", referring to P-613, after which he would take his share.

13 P-613 asks him: "Who is in charge?"

14 And from line 122: "He is in Eldoret. He is the one who is giving it out."

15 [P-613]: Is Gicheru the one giving it out?

16 [P-495]: Yes.

17 [P-613]: Who is he with?

18 [P-495]: I don't know I was not told the next one.

19 [P-613]: Is he with the one who was CDF chairman or Simatwo?

20 [P-495]: There is one who is superior, and I wasn't told who that is. I was told it is
21 not necessary to know that much. You will be sorted out here."

22 I move on to count 4.

23 The Prosecution will call the evidence of P-800, who will in fact testify immediately

24 after the next break. The witness will testify that he was approached by common

25 plan intermediaries P-540 and P-579. He describes the approach from P-540 as

1 follows:

2 "P-540 then told me that the Big Man offered 1.5 million Kenyan shillings and
3 additional expenses to join The Big Man's team and withdraw his assistance to
4 the ICC against the Big Man."

5 Paragraph 29:

6 "P-540 then asked me to accept the same offer of 1.5 million Kenyan shillings which
7 had been approved by the Big Man on condition that I withdraw myself as an ICC
8 witness."

9 And I digress to state that the witness also clarified that he and P-540 used to refer to
10 William Ruto as "the Big Man".

11 He carries on at paragraph 45, saying the following.

12 "P-540 told me that the money to pay me and the others was coming from Ruto and
13 the money would be coming via Eldoret Lawyer Gicheru. P-540 told me that
14 Gicheru, Simatwo who I think is in charge of Amaco insurance (which I think is
15 owned by Ruto) and ex-ambassador Stephen Tarus are all working for Ruto trying to
16 locate Kenyan witnesses. P-540 told me he is working for Gicheru who is trying to
17 locate witnesses within Kenya and nearby countries".

18 I note for the record that it says "tring". I think the y is missing. It should be
19 "trying".

20 The witness will also testify that P-579 subsequently took him to meet the accused.

21 "P-579 introduced me to the people who were sending him to get me, this is
22 the person named Gicheru. He's a lawyer, and he's the one who was, who was
23 actually sending P-579 to get me."

24 From line 67: "... this is where he also pledged to give me an offer to get 2 million
25 [Kenyan] shillings. ... I was given the opportunity to make sure that I get back those

1 people that I have introduced to the ICC."

2 I won't say more than that in public session.

3 Turning to corroboration.

4 The Prosecution will provide the following corroboration: Recorded conversations
5 with both P-540 and P-495.

6 Common plan intermediary P-540 speaks about the fact that many Prosecution
7 witnesses were leaving and stresses the importance of Ruto's case ending -- that it
8 should end quickly in the middle.

9 He also confirms that the accused is the one giving out the money, stating, in part, as
10 follows:

11 "Gicheru is handling those things; he's liaising with Simatwo and Ruto. He's
12 handling those things. You know, my friend, many people are going back, my
13 friend. Now, it's that side of Ruto that shouldn't go to the media, to the public."

14 We will also submit P-800's withdrawal affidavit and a supporting affidavit in
15 Barasa's High Court challenge to his ICC arrest warrant as proof that he had been
16 corrupted by the common plan group.

17 I turn then to count 5.

18 The Prosecution alleges that P-495 accepted a bribe from the accused and thereafter
19 himself attempted to recruit P-613.

20 He subsequently withdrew as a Prosecution witness, and was summonsed to testify
21 in the Ruto and Sang case, where he recanted his prior testimony and claimed to have
22 been coached by P-613 to give false evidence against Mr Ruto.

23 Although P-495 is still uncooperative, there is ample other evidence to establish that
24 he was corruptly influenced by the accused and his associates.

25 Starting with the evidence of P-800, who will describe that P-495 was brought to

1 a meeting with the accused in Nakuru at which he, P-495, was promised 1.5 million
2 Kenyan shillings and was also given the task of recruiting P-613.

3 I refer, your Honour, to KEN-OTP-0135-0103 at 0106. I'll repeat that slowly:

4 KEN-OTP-0135-0103 at 0106, which I'll not display in public session.

5 P-800 will also describe conversations he had with P-495 after the latter was
6 summonsed to testify via video link from Nairobi.

7 From line 431:

8 "So, P-495 was very open and he told me that: 'Don't worry, arrangements are done,

9 people meet these guys, 10 of them led by Gicheru, and you are -- you are able to be

10 told what you are going to say, so it's not a big deal going to video link, as long as you

11 follow what the ... I mean, the advice of the lawyer -- of the lawyers."

12 And from line 454:

13 "But actually P-495 told me that they had decided to put all the blame on P-613. ...

14 all the blames, according to 495 on who recruited the witnesses, who told them what

15 they're going to say to investigators of the Office of the Prosecutor ... All that was said

16 to be cooked up by P-613 and imposed on them, so that they could go and become

17 witnesses. So, according to P-495 they had decided that they are going to blame

18 those people that ... that were known and actually who had refused to go back and

19 actually P-613, he mentioned P-613 as one of those."

20 Then there's the evidence of P-613 herself.

21 She describes a conversation with P-495, who told her that he had been promised 2.5

22 million Kenyan shillings, as well as a job.

23 I read from paragraph 76:

24 "P-495 stated along with the money he was also offered a job. ... P-495 told 'them'

25 I don't want to take any money until P-613 is there (at the meeting with the lawyers).

1 P-495 told 'them' he has accepted their offer."

2 She was also told that the accused was the one giving out the money.

3 "I asked who was in charge and P-495 told me that 'these people' are two, meaning

4 the people we are to meet. P-495 told me Gicheru is the one that gives out

5 the money but he did not mention the name of the other person because he told me he

6 does not know the name of the second person."

7 As regards corroboration, the evidence of both these witnesses is corroborated by

8 recorded conversations with P-495.

9 I have already referred to the recorded conversation between P-613 and -- under

10 count 3.

11 But P-495 also confirmed to P-800 in a recorded conversation that he had met with

12 P-613. I won't say any more in public session.

13 Moving on to count 6, again mindful we're in public session.

14 The Prosecution will present witness evidence, corroborated by recorded

15 conversations, that common plan intermediary P-540 offered a Prosecution witness

16 a bribe of 1.4 million Kenyan shillings if the witness withdrew and returned to Kenya

17 to meet with the accused, who P-495 described as follows:

18 "... he's Kikuyu, he's erm. Do you know Gicheru? ... He's the one doing that job.

19 And he's the one who finalises things with all those people who are coming to this

20 side; the people who are returning." End quote.

21 Count 7.

22 In this count the Prosecution will lead the evidence of P-341. He will testify that he

23 was taken by a common plan associate to meet with the accused:

24 "That same day I met with the common plan associate in Eldoret and he took me

25 directly to Veecam House, which was the office of lawyer Paul Gicheru. ... I then

1 attended his office on about the 3rd floor ...

2 During the meeting Gicheru, another common plan manager and the common plan
3 associate asked me questions about whether I was an ICC witness, and it appeared
4 they did not know if I was a witness or not. I told them I was a victim and not
5 a witness. They all discussed with me that I should not go to the ICC meetings any
6 further and should not become a witness if I am asked by the ICC. They all
7 appeared concerned that while many people were withdrawing from the ICC, there
8 were a lot of new ICC witnesses coming forward which appeared to be a problem for
9 them."

10 In paragraph 49, in the same meeting:

11 "The common plan associate told me if I agreed not to go to any more ICC meetings
12 they will help me and I would be given a car, another farm, a plot in town, my
13 children will be supported in their schooling and those leaving school would get jobs
14 in government and I would also receive 5 million Kenyan shillings. The common
15 plan associate asked if I would agree to this and I said 'yes'. I agreed as I was very
16 intimidated and they had gone to a lot of effort to approach me."

17 In paragraph 50:

18 "During the meeting the common plan associate, the common plan manager and
19 Gicheru were all telling me that I should approach many witnesses inside and outside
20 the country and convince them to withdraw from the case as they knew I know many
21 witnesses."

22 The witness will also testify about the payments he received from the accused.

23 The first payment of 500,000 rand was paid on the -- I beg your pardon, 500,000
24 Kenyan shillings was paid on 2 May 2013. Thereafter, several further payments
25 totalling approximately 2 million Kenyan shillings in all.

1 From paragraph 63:

2 "Gicheru then opened a drawer attached to his desk and handed me 500,000 Kenyan
3 shillings in 1,000 Kenyan shillings denominations held together with an elastic band."

4 A bit further on:

5 "Gicheru told me not to deposit the money in the bank and told me that I would have
6 to return later to sign an affidavit. Gicheru had previously told me the ICC can
7 inspect the records at the bank if I deposited the money."

8 Notwithstanding this warning, the witness did in fact deposit a significant portion of
9 the money he received from the accused in his bank account, which the ICC did
10 indeed trace.

11 Over a period of approximately a year, the witness deposited a sum of 1 million
12 Kenyan shillings into his bank account, as is reflected by the bank records that he
13 provided to the Court.

14 There are also phone records.

15 The witness will testify that: "Gicheru told me not to call the office and Gicheru
16 entered his number in my phone." And he gives the number, which I have redacted:
17 "which Gicheru saved on my phone as 'Paulo'." And indeed there is a contact Paulo
18 on the accused's contact list under the same number that appears on 397's phone
19 records, as well as the business cards and letterheads of the accused.

20 Furthermore, the evidence of P-274 will corroborate the corruption of P-341 by
21 the accused. P-274 received the following contemporaneous report from the witness:

22 "P-341 told me that he had met a lawyer called Paul Gicheru who gave him some
23 money so that he would stop providing information against the IC" -- sorry, "so that
24 he would stop providing information to the ICC against William Ruto and he would
25 be left in peace.

1 He told me that he had already received 500,000 Kenyan shillings from Gicheru. His
2 clothes were more expensive and he paid for lunch so I could see that he had more
3 money than usual."

4 Finally I turn to count 8.

5 On this count the Prosecution will call the evidence of P-274, who I have just
6 mentioned, who will testify that he was taken to meet the accused where
7 the following transpired, quote:

8 "Gicheru said that they, (meaning he and others), preferred to pay these people so
9 that they would stop assisting the ICC. He said that they needed to reach everyone
10 involved in this case, indirect or direct. He said the big man, *mkubwa*, wanted no
11 stone left unturned. I assumed by the 'big man' he meant Ruto since the case was
12 about him and he would be the one who wanted the case to stop.

13 Gicheru said that he was offering me the same amount as P-341 so that I could
14 withdraw and stop dealing with the ICC. He told me he would give me 500,000
15 Kenyan shillings first and another 500,000 Kenyan shillings later. He also told me
16 that I would now be safe.

17 He also wanted me to give him details of other people I knew who are witnesses or
18 victims in the ICC case."

19 As regards corroboration, P-341 confirms that the accused was looking to recruit
20 P-274:

21 "During the meeting they" - including the accused - "told me to locate my friend P-274
22 to meet with Gicheru and sign an affidavit to withdraw from the ICC."

23 Your Honours, besides the direct evidence on the eight counts, the Prosecution will
24 also call another witness, P-743, who will confirm that he too was paid by the accused
25 to withdraw from the Ruto and Sang case, following the same *modus operandi*.

1 And apart from the individual proof of the commission of each counts, there is
2 the cumulative effect of the evidence, your Honours, which demonstrates a consistent
3 pattern of behaviour by the accused and his associates for a consistent purpose: to
4 locate, contact, and bribe or intimidate Prosecution witnesses to withdraw and recant
5 their evidence.

6 The Prosecution will also tender a number of other documents, including phone
7 records and transcripts of an interview with the accused, in which he made certain
8 admissions. In fact, that has already been admitted.

9 The Prosecution will argue that this evidence establishes, individually and
10 cumulatively, the commission of each of the eight counts charged beyond a
11 reasonable doubt.

12 May it please the Court, your Honour, I yield the floor now to my colleague,
13 Ms Zago.

14 PRESIDING JUDGE SAMBA: [10:29:55] Thank you, Mr Steynberg.

15 MS ZAGO: [10:30:18] Your Honour, the evidence the Prosecution will present show
16 that while the Ruto and Sang case was proceeding to trial in 2012, back in Kenya
17 the accused, together with others, carried out a plan designed to fatally compromise
18 the Prosecution's evidence in the trial, by preventing witnesses from testifying or
19 coercing them to recant their evidence on the stand. In so doing, the accused
20 interfered with the course of justice and committed the offences charged.

21 In the next 10 minutes I will set out the key evidence the Prosecution says establishes
22 the individual criminal responsibility of the accused as a direct co-perpetrator.

23 However, as submitted by the Prosecution in the Document Containing the Charges
24 and subsequently in the Prosecution Trial Brief, and as briefly mentioned by
25 Mr Steynberg before, the accused's conduct can also be legally characterised under

1 different modes of liability.

2 But let me turn now to the accused's culpability as a direct co-perpetrator.

3 Your Honour, you will hear and read evidence in this trial about the common plan

4 the accused devised with the assistance and participation of others. The same

5 witnesses who were contacted and targeted by the accused and these other

6 individuals will testify when and how the plan was set in motion and how it operated

7 to achieve the set objectives. These witnesses will identify the individuals who

8 corrupted them and describe their respective roles and responsibilities in

9 the execution of the plan, which as Mr Steynberg mentioned before, included

10 managers, intermediaries, and other types of associates.

11 As I said, I will focus today on the accused, on how he participated in this plan, what

12 role he had, and what contributions he made to its implementation.

13 Testimonial evidence will show that he was essential in directing and coordinating

14 the activities of the members of the plan. You will hear and read first from

15 the witnesses targeted.

16 Their evidence previous, on its own, the accused's criminal responsibility in this case.

17 However, witness evidence will not be the only evidence you will hear, your Honour.

18 You will see bank statements showing large deposits of money on witnesses' bank

19 accounts right after having been bribed. You will also see phone data records, as

20 well as audio recorded conversations between witnesses and members of

21 the common plan, including the accused, showing witnesses were been approached

22 and unduly influenced.

23 In all, the evidence will show that Mr Gicheru played the key role of a manager.

24 From his office in Eldoret, the accused's leveraged his influence as a prominent

25 member of the community and of the legal profession. He decided which witnesses

1 should be targeted and how much money or other benefits these witnesses should be
2 offered in exchange for ceasing all cooperation with the Court.

3 In this respect a witness will say that the accused told him that he has received
4 the task of locating ICC witnesses and giving them money and had received that task
5 from Mr Ruto.

6 Testimonial evidence will also show that the accused ensured that the necessary
7 funds were made available to pay witnesses in exchange for their withdrawal or
8 recantation.

9 The accused assigned tasks to other members of the common plan, such as locating
10 and contacting witnesses inside and outside Kenya, offering them money or other
11 benefits, and bringing them to meet Mr Gicheru in his office or elsewhere in
12 the vicinity.

13 Other testimonial and documentary evidence will show that the accused directed and
14 arranged for witnesses to sign legal papers to cease cooperation with the Court.

15 Similar evidence will also show that the accused met with witnesses himself,
16 negotiating and paying them money.

17 A witness will testify that the accused paid him no less than 1 million Kenya shillings,
18 almost 12,000 US dollars at the time when, according to public records, the annual
19 income per capita in Kenya was approximately 1,000 US dollars.

20 The same witness will say that the accused told him, on repeated occasions, not to get
21 involved with the ICC, refuse to testify and refuse to give any information to the ICC
22 regarding Mr Ruto.

23 Witnesses will say that when they met Gicheru and other members of the common
24 play they felt pressured into complying with their demands.

25 In one of such meetings a witness will say he could not reject the money paid to him

1 by the accused because doing so would mean he was disagreeing and this would
2 immediately place him, the witness, and his family in danger.

3 You will also read from another witness, who is not available to testify, that
4 Mr Gicheru accused him of being still cooperating with the ICC and of wanting to
5 have Ruto arrested by the ICC. At that meeting Mr Gicheru had to be calmed down
6 by one of his associates and the witness left feeling fearful for his life.

7 All testimonial and documentary evidence the Prosecution will present show that
8 the accused's contributions to the common plan were essential and that, without them,
9 the offences he is charged with would not have occurred or would have occurred in
10 a significantly different manner.

11 This evidence, your Honour, will show that the accused's actions were deliberate and
12 designed to pervert the course of justice in the Ruto and Sang case. It will show that
13 the accused meant to engage in his conduct.

14 As an experienced member of the Kenya bar, there can be no doubt that the accused
15 was aware that the common plan had a criminal component, or that
16 the implementation of this plan was virtually certain to result in the commission of
17 the offences.

18 In this respect a witness will say that Mr Gicheru told him he knew ICC people were
19 investigating him, and he knew he could go to prison.

20 Similarly, other testimonial evidence will show that a witness was told not to deposit
21 the money he received from the accused in the bank because, and I quote: "These ICC
22 people have devices to follow up with banks and they will see [the money]." End of
23 quote.

24 Further evidence will show that the accused was also aware that his role in
25 implementation of the plan was essential, and that he knew that due to the essential

1 nature of his contribution he could have frustrated the implementation of this plan.
2 He could have impeded it, he could have reported it and, above all, he could have
3 simply declined to engage in it.

4 In sum, your Honour, the evidence the Prosecution will present in this trial will show
5 that the accused, together with others, worked in unison to identify and locate
6 witnesses, to contact them to offer and provide financial and other benefits, all in
7 order to induce them to withdraw as witnesses, to recant their evidence or cease and
8 refuse to cooperate with the Court in the Ruto and Sang case.

9 Your Honour, with this conduct, the accused engaged in the commission of
10 the offences charged and he did so with the required intent and knowledge.

11 Your Honour, the evidence in this case will show beyond any reasonable doubt that
12 Mr Gicheru is criminally responsible for all of the Article 70 offences against
13 the administration of justice for which he was committed to trial.

14 Thank you, your Honour. This concludes the Prosecution's opening remarks.

15 PRESIDING JUDGE SAMBA: [10:40:37] Thank you very much.

16 Well, thanks to the Prosecution team.

17 So we have now reached the end of the opening statements by the Prosecution. We
18 will resume the next session at 11.30 with the beginning of the presentation of
19 evidence by the Prosecution and the questioning of the first witness.

20 MR STEWART: [10:41:09] Your Honour. Your Honour. I apologise.

21 Your Honour, I understand that the Defence is not going to make an opening
22 statement at this time. With your permission, I ask to be allowed to withdraw my
23 presence and, of course, to leave the case with Mr Steynberg.

24 PRESIDING JUDGE SAMBA: [10:41:26] Surely. You may do so. Thank you very
25 much, yes.

- 1 MR STEWART: [10:41:29] Thank you.
- 2 THE COURT USHER: [10:41:34] All rise.
- 3 (Recess taken at 10.41 a.m.)
- 4 (Upon resuming in open session at 11.33 a.m.)
- 5 THE COURT USHER: [11:33:04] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE SAMBA: [11:33:31] So good morning again, everyone. We are
- 8 back in session.
- 9 I see there has been some changes in the composition of the Prosecution team.
- 10 Mr Steynberg, could you kindly introduce the new person.
- 11 MR STEYNBERG: [11:33:55] Indeed, Madam President, I'm grateful.
- 12 So joining me after the break are Laura Warrlich, associate trial lawyer; and case
- 13 manager Jessica Lacey, in the back.
- 14 PRESIDING JUDGE SAMBA: [11:34:12] Thank you very much.
- 15 The -- could I ask that Rule 74 counsel introduce herself for the record.
- 16 MS TERZIEVA: [11:34:27] (Microphone not activated)
- 17 THE INTERPRETER: [11:34:31] Microphone, please, counsel.
- 18 MS TERZIEVA: [11:34:34] Thank you very much. My apologies.
- 19 Good morning, your Honour. Good morning to everyone in the courtroom. My
- 20 name is Vessela Terzieva. I am a member of the Sofia Bar Association and a member
- 21 admitted to the list of counsel since 2016. I am also a duty counsel and have been
- 22 appointed to the case by the Registry on 31 January 2022.
- 23 Thank you very much.
- 24 PRESIDING JUDGE SAMBA: [11:35:00] Thank you very much.
- 25 Mr Karnavas, your team is the same?

1 MR KARNAVAS: [11:35:03] Yes.

2 PRESIDING JUDGE SAMBA: [11:35:09] Thank you.

3 The Prosecution is now ready to call P-800 as its first witness.

4 But before we start discussing the matters related to this witness's testimony,
5 the Chamber has to render a short oral decision.

6 In its decision on the Prosecution's Rule 68(3) requests, the Chamber deferred its
7 ruling on three items related to P-800. For the record, this is paragraph 24 of
8 decision 223. The reason for this is that the Chamber considered that these items fall
9 into the category of materials which the Defence wanted to challenge under
10 Article 69(7) of the Rome Statute.

11 Since the Chamber ruled on the Defence's Article 69(7) request in a decision issued
12 yesterday, that is filing 284, the Chamber will now render its decision on the three
13 items in question.

14 In yesterday's decision, the Chamber rejected the Defence's request to declare certain
15 audio recordings made by witnesses inadmissible. In light of this fact, the Chamber
16 now also grants the request by the Prosecution in respect of audio file
17 KEN-OTP-0109-0017 and the two associated transcripts, KEN-OTP-0109-0013 and
18 KEN-OTP-019 -- 0109 - excuse me - 0015. This covers, of course, just the general
19 authorisation to introduce the items via Rule 68(3).

20 The remaining conditions, such as the witness's approval to the introduction, will
21 have to be fulfilled when the witness starts testifying.

22 This concludes the oral decision.

23 And before commencing, the Chamber notes briefly that protective measures are
24 confirmed to this witness by virtue of decision 276 and that the VWU recommends no
25 further protective measures.

1 We will now discuss the issue of Rule 74 assurances.

2 Will the court officer please move into private session.

3 (Private session at 11.38 a.m.)

4 THE COURT OFFICER: [11:38:20] We are in private session, Madam President.

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14 (Open session at 11.45 a.m.)
15 THE COURT OFFICER: [11:45:37] We are in open session, Madam President.
16 PRESIDING JUDGE SAMBA: [11:45:42] Thank you very much.
17 The Chamber will now render its decision on the requested assurances in accordance
18 with Rule 74 of the Rules of Procedure and Evidence.
19 Mindful of the factors specified in Rule 74(5) of the Rules, the Chamber has decided to
20 provide assurances pursuant to Rule 74 of the Rules in order to enable the witness to
21 testify without fear of the consequence of self-incrimination.
22 This concludes the ruling of the Chamber.
23 Please bring the witness into court.
24 (The witness enters the courtroom)
25 THE INTERPRETER: [11:47:34] Message from the English booth: Could

1 the witness please be requested to remove his mask for the purposes of interpretation.

2 Thank you.

3 PRESIDING JUDGE SAMBA: [11:47:55] Thank you very much.

4 Mr Witness, good morning.

5 WITNESS: KEN-OTP-P-0800

6 (The witness speaks English)

7 THE WITNESS: [11:48:21] Good morning.

8 PRESIDING JUDGE SAMBA: [11:48:22] You are going to testify before the

9 International Criminal Court. So on behalf of the Chamber, I would like to welcome
10 you to the courtroom.

11 Mr Witness, I will now read the solemn undertaking to tell the truth that every
12 witness who testifies before this Court must agree to.

13 But may I ask, do you have any document before you?

14 THE WITNESS: [11:48:56] Yes, I have a solemn undertaking.

15 PRESIDING JUDGE SAMBA: [11:48:59] Undertaking. Thank you very much.

16 Could you read out that document and take your solemn undertaking for the Court.

17 THE WITNESS: [11:49:10] I solemnly declare that I will speak the truth, the whole
18 truth and nothing but the truth.

19 PRESIDING JUDGE SAMBA: [11:49:19] Thank you very much, Mr Witness.

20 Now, do you understand and do you agree to what you just read?

21 THE WITNESS: [11:49:28] I agree, my Honour.

22 PRESIDING JUDGE SAMBA: [11:49:31] Good. Thank you very much. We will
23 continue.

24 Mr Witness, let me now explain to you the protective measures that the Chamber has
25 put in place for your testimony. The following measures are put in place to protect

1 you:

2 We have voice and face distortion, which has been put in place for during your
3 testimony. This means that no one outside the courtroom can see your face or hear
4 your real voice during your testimony. There will also be the use of a pseudonym,
5 and in accordance with that, we will all refer to you only as "Mr Witness" to make
6 sure that the public does not know your name.

7 When you answer to questions that will not give away who you are, we will do so in
8 open session, which means that the public can hear what is being said in
9 the courtroom.

10 When you are asked to describe anything that relates specifically to you, or you are
11 asked to mention facts that might reveal your identity, we will do this in private
12 session. In private session there is no broadcast, and no one outside the courtroom
13 can hear your answer.

14 If ever anything gets said during public session which should have been said in
15 private session, we will do our best to protect this information.

16 Your testimony will be broadcast on a daily basis, so we can remove any such
17 remarks from the public broadcast.

18 The Prosecution has also prepared a list so that you are safely make reference to
19 information which might identify you. The Prosecution will explain this to you
20 when it begins its questioning.

21 Mr Witness, you have also been assigned a lawyer to provide you with legal advice
22 about possible self-incrimination. The Chamber gives you the assurance that your
23 testimony will not be used against you in any subsequent proceedings before this
24 Court. This applies as long as you do not commit any offence or misconduct when
25 testifying, such as by intentionally giving testimony which is false or lying to

1 the Chamber.

2 If any question is asked that could lead to your self-incrimination, we will hear your
3 answer in private session and keep this answer confidential.

4 Mr Witness, do you understand?

5 THE WITNESS: [11:52:59] Yes, your Honour. I understand.

6 PRESIDING JUDGE SAMBA: [11:53:02] And lastly, I also have a few practical
7 matters you should have in mind when giving your testimony. Everything we say
8 here in the courtroom is written down and interpreted. It is, therefore, important to
9 speak clearly and at a slow pace. Please speak into the microphones, and only start
10 speaking when the person asking you the question has finished. To allow for
11 the interpretation, everyone has to wait a few seconds before starting to speak.
12 If you have any questions yourself, raise your hand so we can know that you wish to
13 say something.

14 Have you understood all of that, Mr Witness?

15 THE WITNESS: [11:53:58] Yes, your Honour.

16 PRESIDING JUDGE SAMBA: [11:54:00] Thank you very much.

17 We will then start your testimony.

18 Mr Steynberg, your witness.

19 MR STEYNBERG: [11:54:11] I'm very grateful, your Honour.

20 QUESTIONED BY MR STEYNBERG:

21 Q. [11:54:19] Mr Witness, can I please confirm that you have before you
22 the protected information list. It should be on the table in front of you.

23 A. [11:54:29] Yes, your Honour, I have it.

24 Q. [11:54:31] And can I also confirm that you have a list of materials that were dealt
25 with during the witness preparation session. You should see the yellow highlights

1 on the first page.

2 A. [11:54:46] Yes, your Honour.

3 Q. [11:54:47] All right. If you'll bear with me, please. All right.

4 If I can ask you to please, Mr Witness, bearing in mind we're in open session, to turn

5 to the last page of the protected information list. It's page 5, and it's entitled

6 "CV/Personal Information".

7 Please let me know when you have it.

8 A. [11:55:25] I have it.

9 Q. [11:55:27] And can you take a moment to have a look through the contents of

10 this page. And when you are done, if you can confirm that this information was

11 discussed with you in the witness preparation session over the last week, and

12 whether you confirm this information under oath today.

13 A. [11:56:14] I do confirm.

14 Q. [11:56:16] Thank you very much, Mr Witness.

15 By way of introduction, Mr Witness, is it correct that you were a Prosecution witness

16 in the Ruto and Sang case?

17 A. [11:56:27] Yes, my Honour.

18 Q. [11:56:29] And is it also correct that you provided witness statements in that

19 case to Prosecution investigators concerning post-election violence and, in particular,

20 various planning meetings allegedly attended by Mr William Samoei Ruto?

21 A. [11:56:49] Yes, my Honour.

22 Q. [11:56:52] And besides the statements you made in the main case about

23 the post-election violence, did you provide any other witness statements to

24 the Prosecution?

25 A. [11:57:09] Repeat your question.

1 Q. [11:57:10] Besides the witness statements you made that concerned the subject of
2 the post-election violence, did you make any other witness statements concerning
3 other subjects?

4 A. [11:57:23] Yes, my Honour.

5 Q. [11:57:25] And -- sorry. Briefly, for the record, what -- what did those concern?
6 What was the subject matter of the other statements?

7 A. [11:57:35] It was about witness bribery.

8 Q. [11:57:40] Witness bribery. Thank you.

9 And finally, do you confirm that you testified before Trial Chamber V in the Ruto and
10 Sang case?

11 A. [11:57:53] Yes, my Honour.

12 Q. [11:57:58] Mr Witness, I can inform you that the Chamber has ruled that in order
13 to make these proceedings more efficient, the Prosecution may submit into evidence
14 your previously recorded evidence, including the witness statements I've just referred
15 to. Do you understand?

16 A. [11:58:20] Yes, my Honour.

17 Q. [11:58:22] However, this is contingent, this is dependent on the fact that you do
18 not object to the handing in of these statements. Do you understand?

19 A. [11:58:29] Yes, I understand.

20 Q. [11:58:31] This means that I can only ask -- that I can ask you -- or I can focus my
21 questions on only those issues that I consider most relevant to lead your evidence in
22 open court. And I do not have to ask you questions on all the details of all your
23 statements. Do you understand?

24 A. [11:58:51] Yes, my Honour.

25 Q. [11:58:52] However, the Defence lawyer and possibly the Judge may question

1 you on any of the information you provided and any other relevant subjects, even if I
2 don't ask you. Is that clear?

3 A. [11:59:08] Yes, it's clear.

4 Q. [11:59:09] All right. I'd like to ask you to confirm whether you've had an
5 opportunity to review all of your prior recorded statements over the course of
6 the past week.

7 A. [11:59:24] I confirm.

8 Q. [11:59:25] And besides these statements that you provided the Prosecution, did
9 you also have an opportunity to review the evidence you provided before
10 Trial Chamber V in the Ruto and Sang case?

11 A. [11:59:38] Yes, my Honour.

12 Q. [11:59:41] All right. I'd like you to have a look at the list of documents in front
13 of you. Do you recognise this document?

14 A. [11:59:58] Yes, I do.

15 MR STEYNBERG: [12:00:01] Your Honour, for the record, this should be in the front
16 of the first binder that the court officer has placed on your desk. Binder number 1.
17 And it should be immediately recognisable by the yellow highlights on the left-hand
18 column.

19 PRESIDING JUDGE SAMBA: [12:00:23] (Microphone not activated)

20 MR STEYNBERG: [12:00:25] Thank you.

21 Q. [12:00:27] What is this document, Mr Witness?

22 A. [12:00:36] I have two documents before my desk.

23 Q. [12:00:39] Sorry. I'm referring to the -- to the last mentioned document,
24 the -- the list of documents with the yellow highlights in the left-hand column.

25 A. [12:00:50] This is a document which contains the description of the statements I

1 gave to this Court.

2 Q. [12:01:02] Okay. And do you see in the most right-hand column, there are
3 a series of ticks in the box on the right-hand side? Can you see that?

4 A. [12:01:14] Yes, I do.

5 Q. [12:01:15] And can you tell the Court who put the ticks there.

6 A. [12:01:19] I did.

7 Q. [12:01:21] And what do these ticks signify?

8 A. [12:01:32] The ticks signify that I have read the documents.

9 Q. [12:01:42] Can I ask you to turn to page 6 of the document. You will see
10 the highlights in the left-hand column turn to green, and particularly, item 102.
11 And let me know when you have that, please.

12 A. [12:02:09] I have it.

13 Q. [12:02:10] In the second last column, there is a signature or some initials there.
14 Can you identify that, please.

15 A. [12:02:18] Yes.

16 Q. [12:02:20] Whose is -- sorry. Whose signature is that?

17 A. [12:02:23] It's my signature.

18 Q. [12:02:24] All right.

19 MR STEYNBERG: [12:02:28] Your Honour, I can confirm that the witness signed and
20 ticked this document during the course of the witness preparation session and
21 provided it to us. He was actually asked to sign the document at the end, but
22 because the session was conducted remotely, we only got it afterwards. And I see he
23 hasn't signed it at the end, but his signature does appear at item 102. I hope that will
24 suffice.

25 Q. [12:02:56] Keeping on the page that I just directed your attention to, there are

1 also some ticks in the second from right-hand column, and in particular items 96, 100,
2 104 and 106. Do you see those ticks?

3 A. [12:03:17] Yes, I do.

4 Q. [12:03:18] And these are in the column that is entitled "ERN of AV recording (if
5 applicable)". What do those ticks signify?

6 A. [12:03:31] These ticks signify that I did listen to the recordings.

7 Q. [12:03:40] And were you able to identify the recordings that you listened to?

8 A. [12:03:47] I did, my Honour.

9 Q. [12:03:48] And what were those recordings of?

10 A. [12:03:52] The recordings that are recorded during my conversation --

11 Q. [12:04:00] Remembering, we're in open session. So if you're going to mention a
12 name, please do so with reference to the number on the protected information list.

13 A. [12:04:12] Yes, my Honour. It's my recordings with the people that I recorded
14 during my conversation with them.

15 Q. [12:04:19] And do you see the names of any of these people on the list, starting
16 at page 3, under the title "Persons", and going over to page 4?

17 A. [12:04:43] I did record my conversation with person number 2, person number 4,
18 person number 16.

19 Q. [12:05:15] Thank you. Are you finished?

20 A. [12:05:37] Yes, my Honour.

21 Q. [12:05:40] All right. And were you also asked to compare these recordings
22 with the transcripts in the corresponding columns of the items I've mentioned, and all
23 the other items where you've ticked the audio visual recordings?

24 A. [12:06:02] Yes, my Honour.

25 Q. [12:06:03] And what did you find?

1 A. [12:06:08] That the recordings were well translated in words.

2 Q. [12:06:16] All right. Be careful with the -- with the word "translation". I'm
3 referring now to the transcript in -- in the original languages, so Swahili or Kalenjin or
4 whatever the case may be. Did they correspond, or did you notice any problems
5 there?

6 A. [12:06:42] They corresponded.

7 Q. [12:06:45] Thank you, Mr Witness.

8 All right. I think you already confirmed this, but can I just draw your attention to
9 the items that are highlighted in purple. And these run from item 84 to item 91.
10 These are the transcripts of your evidence in the Ruto and Sang case. You also
11 confirm that you read those?

12 A. [12:07:28] Yes, I do.

13 Q. [12:07:30] Now, Mr Witness, I'm going to ask you, do you have any objection if
14 these listed statements, in particular the ones that are highlighted in yellow and in
15 purple, which are your prior statements in evidence and related annexes and
16 documents, do you any objection if these are handed in to evidence in this case?

17 A. [12:07:55] I have no objection, my Honour.

18 Q. [12:07:58] Thank you very much, Mr Witness. I'll come back to the green
19 highlighted items, the audio visual items in a moment.

20 Now, can I also ask you to have a look at the penultimate, the second to last item on
21 this list. In fact, it's the last item on this list. It's item 139. It's the witness
22 preparation clarification log from the Ruto and Sang case. Can you confirm that you
23 had an opportunity to again review that document?

24 A. [12:08:42] Yes, my Honour, I did.

25 Q. [12:08:46] And can you confirm that those were clarifications that you made

1 during the course of your witness preparation in that case with the Prosecution?

2 A. [12:08:58] Yes, my Honour.

3 Q. [12:09:04] And did you also make certain further clarifications during the course
4 of the witness preparation in this case?

5 A. [12:09:14] Yes, my Honour.

6 Q. [12:09:17] All right.

7 If the Court will bear with me, please.

8 Your Honour, I'm -- I'm wanting to show the witness a copy of the witness

9 clarifications in this case, but the document is not a short one. It's about six pages. I

10 wonder if whether it might be more efficient if I ask the witness to read this over

11 the lunch break, and then he can confirm after the break whether he agrees with these

12 clarifications. I think it is necessary because these were recorded by the Prosecution,

13 and the witness has not yet had an opportunity to review them because it was done

14 after the Witness clarification session.

15 PRESIDING JUDGE SAMBA: [12:10:17] Yes. It would be good for the witness to

16 read and understand and agree to whatever is stated therein.

17 MR STEYNBERG: [12:10:23] Yes.

18 PRESIDING JUDGE SAMBA: [12:10:26] So we'll do that after the lunch break.

19 MR STEYNBERG: [12:10:30] Thank you, your Honour. Thank you.

20 Q. [12:10:32] Now, Mr Witness, subject to the clarifications that you've already

21 confirmed in the Ruto and Sang case and the clarifications that you will have the

22 opportunity to read during the witness preparation in this case, do you confirm

23 the -- that the material that has been handed in, your prior recorded statements and

24 your evidence, was true and accurate to the best of your knowledge and recollection,

25 remembering that you are under oath today?

1 A. [12:11:05] I do.

2 MR STEYNBERG: [12:11:06] Thank you, your Honour.

3 Your Honour, the Prosecution will formally tender for admission into the case
4 the documents listed in this signed document -- well, in fact, I think I should probably
5 refer to the list of materials which I have provided to the Chamber and to counsel.
6 Therein I have indicated, the Prosecution has indicated those materials which
7 the Prosecution seeks to have formally admitted in the record of the case, which
8 include the prior recorded testimony, the statements of the witness, but also his prior
9 recorded testimony in the Ruto and Sang case.

10 In this regard, however, your Honour, I should draw the Chamber's attention to
11 the fact that the Prosecution did not formally request the admission of the prior
12 recorded testimony in the Ruto and Sang case in its Rule 68(3) application. In fact, it
13 stated in that application that the evidence of the witnesses in the Ruto and Sang case
14 was largely irrelevant.

15 While that might be correct in the case of Witness 613 and the other witness who was
16 the subject of that application is actually not correct in respect of this witness, who did
17 give significant and substantial testimony on the issues relevant to this case and
18 the Article 70 investigation in that matter.

19 Now, the record of the testimony of all the relevant witnesses in that case has already
20 been transferred into the record of this case, but, of course, that doesn't mean that it's
21 formally submitted into evidence.

22 So, with the leave of the Court, and subject to any comments my learned friend might
23 have, the Prosecution moves to also submit the prior recorded testimony of this
24 witness in the Ruto and Sang case.

25 If it pleases the Court, I can at an appropriate time give more -- I can -- I can give

1 some more -- more detail as to the relevant portions of that prior recorded testimony.

2 I can already tell the Chamber that, in so far as the direct examination of the witnesses,

3 the relevant portions are transcript 19 of the record in this case, at pages 38 to 85, and

4 transcript 27, pages 2 to 36. That's the direct evidence. There may well also be

5 relevant portions under cross-examination, but I'm afraid I don't have those

6 relevant -- those references to hand at the moment, but I can get them.

7 Your Honour, if -- if that is acceptable to the Court, I do believe that the Prosecution

8 will be in a position to wrap up the direct evidence of this witness well within

9 the four and a half hours, and possibly even before the end of the day. I have

10 already given my learned friends notice of the fact that it's possible that we might -- I

11 might wrap up early. So if they are prepared to commence their cross-examination,

12 they will be able to do so straight afterwards.

13 PRESIDING JUDGE SAMBA: [12:14:25] Thank you.

14 May I ask, Mr Karnavas, do you have any take on that?

15 MR KARNAVAS: [12:14:29] I do. No objections. The entire transcript can come

16 in, all of his testimony, direct and cross.

17 PRESIDING JUDGE SAMBA: [12:14:38] Thank you very much, Mr Karnavas, for

18 your understanding.

19 Yes, Mr Prosecutor.

20 MR STEYNBERG: [12:14:43] I confirm that the entire evidence then, direct and cross,

21 the Prosecution requests that that be admitted under Rule 68.

22 Very well. Formalities then attended to, let me move on.

23 Q. [12:15:05] Now, you've mentioned that you have given statements regarding

24 witness bribery. And the evidence already now admitted into the record details

25 the fact that you were approached on more than one occasion with bribe offers.

1 I would like you to please describe to the Chamber in your own word, remembering
2 to refer to the protected information list whenever you're referring to a location or
3 a person that might identify you, how and by whom you were first approached to
4 withdraw as a Prosecution witness.

5 A. [12:15:58] My Honour, my very first approach was done by person number 2.

6 Q. [12:16:39] And how was this approach made? Was it in person, remotely, by
7 mail? How was it made?

8 A. [12:16:54] It was done by -- by telephone and in person.

9 Q. [12:17:02] All right. Was the first approach in person or by telephone?

10 A. [12:17:06] In person.

11 Q. [12:17:08] The first approach was in person? The first time you were contacted
12 by person number 2?

13 A. [12:17:19] I was contacted by -- by telephone, and thereafter we met.

14 Q. [12:17:29] Thereafter you met in person?

15 A. [12:17:31] Thereafter we met in person.

16 Q. [12:17:33] All right. And again referring to the protected information list,
17 where were you at the time that you were approached by telephone by person
18 number 2?

19 A. [12:17:57] I was in place indicated location number 6.

20 Q. [12:18:09] Thank you. Now, I'm not going to -- well -- sorry. Let me move on
21 to my next question.

22 Did you tell anyone about this approach?

23 A. [12:18:25] Yes, my Honour. I did report to the investigators of the -- of this
24 Court.

25 Q. [12:18:36] All right. And what did they ask you to do as a result of your report

1 to them of the bribery approach?

2 A. [12:18:49] I was asked to make sure that I record every conversation that I have
3 with this person.

4 Q. [12:19:04] And what was your reaction to that request?

5 A. [12:19:09] I accepted, my Honour.

6 Q. [12:19:15] And when you accepted, was any pressure put on you to accept, or
7 was this something you did voluntarily?

8 A. [12:19:26] I did voluntarily, my Honour.

9 Q. [12:19:29] Why did you agree to do this?

10 A. [12:19:37] Because I did not accept to see the case that was very important for
11 the victims of post-election violence fall like that, because of bribery and intimidations
12 to the witnesses.

13 Q. [12:20:00] Okay. Now, I'm not going to take you through the details of that
14 offer and through the subsequent contacts you had with person number 2 by
15 telephone since these are recorded in detail both in your prior statements, as well as
16 in your evidence in the Ruto and Sang case. And you've also identified and
17 described the contents of the recordings that you made with this witness.
18 But perhaps this would be an opportune time to deal with the admission of these
19 documents. And perhaps I can just ask you again to look at the list of material that
20 was shown to you, the list that's ticked by you, starting with the yellow highlights on
21 the left, and turning again to -- well, to page -- unfortunately, I haven't given
22 pages here, have I? So item number 92 --

23 THE INTERPRETER: [12:21:21] Message from --

24 MR STEYNBERG: [12:21:25] (Overlapping speakers) item number 113, all
25 highlighted in green.

1 THE INTERPRETER: [12:21:29] Message from the English booth: For the purposes
2 of interpretation, could counsel please provide all references clearly so that they may
3 be brought up on the screen for the interpreters. Thank you.

4 MR STEYNBERG:

5 Q. [12:21:41] (Overlapping speakers) Audio files, transcripts and related
6 translations. And signify that by your ticks of the relevant item -- items. Is that
7 correct?

8 A. [12:22:04] That is correct, my Honour.

9 MR STEYNBERG: [12:22:07] Your Honour, the Prosecution then will tender into
10 evidence, submit into evidence all of these items.

11 If I understand your Honour's directions correctly, it's not necessary to specify this
12 now, but we will send an email after the conclusion of the witness's evidence
13 detailing all of these items. They are also mentioned in the list that I've provided. I
14 presume that I've understood correctly the procedure.

15 PRESIDING JUDGE SAMBA: [12:22:35] Yes, that's correct. So that at the end of his
16 testimony, we could give them evidence numbers and names. We could mark them.
17 Thank you.

18 MR STEYNBERG: [12:22:44] Very well. Thank you. Thank you, your Honour.
19 This is my first time with a submission regime, so I'm also learning as we go.
20 Very well. Let me move on then.

21 Q. [12:22:54] So after the series of phone calls with person number 2 that you
22 recorded and that we've just referred to, you've already told the Court that you met in
23 person. Was this also at location number 6?

24 A. [12:23:26] Yes, my Honour.

25 Q. [12:23:28] And just to set the scene, can you -- can you tell the Court how it came

1 about that you met person number 2 in person at this location.

2 A. [12:23:53] We did -- I did -- we did communicate on telephone with person
3 number -- number 2 and agreed that he was going to come in person to location
4 number 6 in order to have a meeting with me and possible other witnesses who were
5 in the same location in order to agree on how we were going to recant all our
6 testimonies that were before this Court.

7 Q. [12:24:47] Okay. Now just for the -- just for the public record, perhaps you can
8 also just mention to the Court, when the witness first contacted you, you say he
9 offered you a bribe. What was the bribe and for what purpose? What did you have
10 to do in return for this bribe?

11 A. [12:25:14] If I agreed on the offer that he was giving as a bribe, I will agree to
12 recant all the testimonies that I gave before this Court and not to appear in this Court
13 to give my testimony at any occasion that I was needed to appear.

14 Q. [12:25:48] All right. And just for the avoidance of doubt, the Prosecution
15 investigators were aware of everything that you were discussing with the -- with
16 person number 2; is that correct?

17 A. [12:26:04] Yes, my Honour, I did record every conversation between me and
18 person number 2 and handed it to the investigators of this Court.

19 Q. [12:26:16] All right. Now, when you eventually met with -- with person
20 number 2, and I -- I hope the -- well, it's on -- it's on record, so perhaps I can just lead
21 the witness as to the date, if there's no objection from my learned friend.

22 Your statements date the -- the -- these meetings with the -- person number 2 in
23 location number 6 on (Redacted) , would you agree with that?

24 A. [12:26:57] If you may repeat the date, please.

25 Q. [12:27:00] (Redacted)

1 A. [12:27:05] Yes, my Honour.

2 Q. [12:27:07] And where did you first meet person number 2? Where specifically
3 in location number 6? And if I can ask you again to refer to the locations on the PIL.

4 A. [12:27:31] On the first --

5 Q. [12:27:34] On the first occasion.

6 A. [12:27:36] On the first occasion, we met at place number 15.

7 Q. [12:27:41] And that was on (Redacted) ; is that correct?

8 A. [12:27:48] Yes, my Honour.

9 Q. [12:27:49] And in your own words - again just for the record, this was already
10 dealt with in your statements and in your prior evidence, but for the public
11 record - what was discussed at that first meeting with person number 2?

12 A. [12:28:09] On this date I tried my level best, because I was doing the recording,
13 to make sure person number 2 gives me information concerning who sent him, how
14 much he was going to offer and how we were -- I was -- what was my role that I was
15 supposed to do, he intended me to do, and how I will eventually get chance to go
16 back home.

17 Q. [12:28:51] When you say "go back home", you mean to return to Kenya?

18 A. [12:28:55] Yes, my Honour.

19 Q. [12:28:56] All right. Without giving away the location, then, location number 6,
20 can we assume, is outside of Kenya?

21 A. [12:29:05] Yes, my Honour.

22 Q. [12:29:06] And location number 15 as well?

23 A. [12:29:10] Yes, my Honour.

24 Q. [12:29:13] Why did you meet with person number 2 on the (Redacted) ? How
25 did that come about?

1 A. [12:29:27] I met with person number 2 on location number 15 on this date
2 because he insisted that he wanted me -- he wanted to see me on -- at
3 that -- when -- when he arrived so that I could help him to get a place to spend a night
4 and actually help him to locate a place to -- to -- and to get his food.

5 My Honour, I did accept to meet this person at place number 15.

6 Q. [12:30:17] And what was the mode of transport that this person, person number
7 2, used to get to location 15?

8 A. [12:30:27] He used --

9 Q. [12:30:31] Was it -- well, perhaps just say, was it private transport or public
10 transport?

11 A. [12:30:36] Public transport, my Honour.

12 Q. [12:30:39] All right. And to your knowledge, was person number 2 familiar
13 with -- with location 6 and location 15?

14 A. [12:30:51] Out of my discussion with him, I made my conclusion that he was not
15 very much conversant with the -- with the location, in terms of getting places to sleep
16 and actually where to get his meals.

17 Q. [12:31:11] All right. Now, this meeting -- well, let me ask you a preliminary
18 question. Were the investigators aware that person number 2 was coming to meet
19 you at location number 6? Were they aware that he was travelling to location
20 number 6 for the purposes of meeting you, should I say?

21 A. [12:31:37] Yes, they were aware that he was travelling.

22 Q. [12:31:40] Were they aware of the fact that you were going to meet him on
23 (Redacted) at location 15?

24 A. [12:31:52] My Honour, I reported to the investigators that person number 2
25 wanted to see me on the said date, (Redacted). But I was told -- or I was requested

1 not to see him on that date.

2 Q. [12:32:14] When were you supposed to meet him?

3 A. [12:32:16] The following day, my Honour.

4 Q. [12:32:20] All right. And did the investigators say why they didn't want you to
5 meet him on the (Redacted) ?

6 A. [12:32:32] Yes, my Honour. They had -- the investigators had arranged where
7 we were going to meet.

8 Q. [12:32:41] All right. And did you advise the investigators -- well, sorry. Let
9 me ask you then, despite this advice, you met with him. Why did you agree to do
10 that?

11 A. [12:32:53] My Honour, I want to confess that I did contrary to what
12 the investigators had requested me. I took my own initiative to go and meet person
13 number 2, because if I did not, he will have suspected that there is something fishy,
14 because it was in the evening and there was no way I was -- I could not say I was
15 anywhere else, like, say, in a meeting, or -- or have a cover-up story that I will give
16 him in order not to meet him that time. Therefore, I took a big risk in order to
17 keep -- to keep him -- not to make him suspicious that there was anything that was
18 going on in concern with what we had arranged, in order to get information that we
19 wanted from him.

20 Q. [12:34:03] All right. Now, you've previously told the Court that you were
21 asked by the investigators to record each and every conversation you had with this
22 person. Did you record the conversation on the (Redacted) ?

23 A. [12:34:16] Yes, my Honour. I did not want anything that I was in conversation
24 with person number 2 to go and record it. I recorded all the conversation that we
25 had with him during this time on the (Redacted) .

1 Q. [12:34:31] You say you recorded all the conversation, the entire conversation; is
2 that correct?

3 A. [12:34:38] Yes, my Honour.

4 PRESIDING JUDGE SAMBA: [12:34:41] Mr Steynberg, just a moment, please. I just
5 want clarification by the witness.

6 Mr Witness, you said location number 6 is outside Kenya; is that correct?

7 THE WITNESS: [12:34:53] Yes, my Honour.

8 PRESIDING JUDGE SAMBA: [12:34:56] Thank you very much.

9 MR STEYNBERG:

10 Q. [12:35:02] And perhaps, just for those who are unfamiliar with the area, and I
11 think this is a matter of public record, but is location number 15 a location within
12 the broader area of location number 6?

13 A. [12:35:14] Yes, my Honour.

14 Q. [12:35:17] All right. So it's a specific location within location number 6?

15 A. [12:35:21] Yes, my Honour.

16 Q. [12:35:23] Okay. And so you recorded all the conversation. Did you provide
17 this recording to the investigators subsequently?

18 A. [12:35:31] Yes, my Honour. I handed all the recordings to the investigators.

19 Q. [12:35:38] Okay. I'll return to that once I've dealt with the meetings of the next
20 day.

21 So you've already told the Court that during this meeting you wanted to get
22 information about who was sending the accused and those details. What did
23 the accused tell you in that regard? Who was -- who sent him? Where was
24 the money coming from? In your own words. Again, this is all recorded in detail
25 already in your evidence, but --

1 PRESIDING JUDGE SAMBA: [12:36:09] Mr Steynberg, do you mean the accused or
2 person number 2?

3 MR STEYNBERG: [12:36:14] I beg your pardon. Person number 2. I misspoke.
4 Thank you for the correction, your Honour.

5 Q. What did person number 2 tell you about -- about the scheme, should I say, to
6 bribe you?

7 A. [12:36:38] I am trying to check on this list --

8 Q. [12:36:40] Right.

9 A. [12:36:41] -- if we have the name.

10 Q. [12:36:46] All right. Perhaps I can just mention to you that the names on this
11 list are only those names of people who are not known publicly. So the names of
12 public personalities, as well as the names of persons involved in the case, such as
13 the accused, you will not find on the list. And those can be mentioned in public.
14 Does that help you?

15 A. [12:37:18] Yes, my Honour.

16 Q. [12:37:20] All right. Please proceed.

17 A. [12:37:22] My Honour, person number 2 did confirm that the money was
18 being -- being paid -- or will get -- or I will get the money from Mr Gicheru.

19 Q. [12:37:49] Did you see Mr Gicheru here today?
20 It might be difficult to see. It's a big courtroom.

21 A. [12:38:01] Yes, my Honour. He is the one seated over behind there.

22 MR STEYNBERG: [12:38:07] Pointing towards the accused, your Honour.

23 PRESIDING JUDGE SAMBA: [12:38:11] Thank you.

24 MR STEYNBERG: [12:38:12]

25 Q. [12:38:13] All right. And did he tell you where the source of the money was

1 that Mr Gicheru was going to pay you?

2 A. [12:38:24] Yes, my Honour. Person number 2 did confirm to me that
3 the money was being gotten from Mr Ruto.

4 Q. [12:38:41] Just for the record, Mr William Ruto, the accused in the case where
5 you testified previously?

6 A. [12:38:48] Yes, my Honour.

7 Q. [12:38:50] Okay. All right. As I say, the -- further details of this conversation
8 are recorded. They are described in your statements in your prior testimony and
9 also clarified, and I don't propose to go into any more detail at this stage.

10 Can I move then to the following day, the next day. How many times did you meet
11 with person number 2 on that day?

12 A. [12:39:21] Person number 2, we did meet with him the following day, but we
13 had several short meetings with him on the same day, because at different instance he
14 would request me to go and look for person number - let me check on this list - for
15 person number 18, whom he believed that I was able to convince her to come on
16 the same meeting so that he -- she will also agree to recant her testimony.

17 Q. [12:40:18] And to your knowledge, what was person number 18's involvement
18 in the case, the Ruto and Sang case?

19 A. [12:40:29] She was a witness too, my Honour.

20 Q. [12:40:33] And how do you know that?

21 A. [12:40:36] Person number 18, we were working in the same organisation before I
22 became a witness of this -- of this Court.

23 Q. [12:40:50] Perhaps while we're on that subject, can you refer to the list of
24 organisations and just clarify which organisation that was.

25 A. [12:41:01] Organisation number 2, my Honour.

1 Q. [12:41:05] I see. And do you know how -- how person number 18 came to
2 become an ICC witness?

3 A. [12:41:23] Person number 18, I know her as a monitor of organisation number 2.

4 Q. [12:41:32] All right. I'm going to stop you there because I'm just concerned that
5 you're going to give out some identifying information. Let me rephrase
6 the question.

7 Do you know who introduced this person to the ICC? Who put the ICC in contact
8 with this person, person number 18?

9 A. [12:41:50] I did, my Honour.

10 Q. [12:41:53] I see. And did you put any other persons in contact with the
11 Office of the Prosecutor of the ICC as potential witnesses? Again referring to the list,
12 please.

13 A. [12:42:09] Yes, my Honour.

14 Q. [12:42:11] Who?

15 A. [12:42:12] I did also introduce person number 16. I also introduced person
16 number -- number 2.

17 Q. [12:42:24] Yes. Anyone else?

18 A. [12:42:45] Those are the ones I remember for now, my Honour.

19 Q. [12:42:50] All right. Okay. Let me move on then.

20 I just want to clarify one issue, and I'm conscious of the fact that you're not testifying
21 in your mother tongue. English is not your -- is not your native language. But you
22 said earlier, when I asked you how many times you had met with person number 2
23 on the -- on the second date, you said, "We had met him. We had several short
24 meetings with person number 2."

25 Who are you referring to when you said "we had meetings with person number 2"?

1 Was there anyone else besides yourself, perhaps I should say?

2 A. [12:43:34] No, it was only me and him.

3 Q. [12:43:35] I see.

4 A. [12:43:36] That's why I referred it as "we".

5 Q. [12:43:39] All right. I think that sufficiently clarifies it.

6 And again, without giving the specific -- well, in fact, you can possibly -- yes. With
7 reference to this list, can you tell specifically where in location number 6 you met him
8 on the second date, if you recall the name.

9 A. [12:44:23] I don't recall the name of that hotel now, my Honour.

10 Q. [12:44:27] Okay. You say it was a hotel.

11 A. [12:44:30] Yes, my Honour.

12 Q. [12:44:31] And where in the hotel? In the reception, at the reception desk, in
13 the lobby, in a room? Where was it?

14 A. [12:44:39] In an open area inside the building.

15 Q. [12:44:43] I see.

16 A. [12:44:45] There were -- there were set chairs on -- where people could get
17 a drink, and -- and we had -- we had -- we sat in one of the place. There were also
18 places on top, on the -- on the upper ground.

19 Q. [12:44:59] All right. Now I'm going to ask you to have a look at a photograph.
20 If the Court will bear with me. I'll ask the court officer to call up a photograph
21 for -- for sight only within the courtroom, please, not for public broadcast. It's
22 KEN-OTP-0111-0159. Your Honours, you will find this at tab 29 of the binders that
23 the Prosecution has provided.
24 I'm not seeing it. I'm perhaps on the wrong channel.
25 Is everyone else seeing it yet?

1 A. [12:46:21] Yes, my Honour, I can see the photos. I confirm these are the photos
2 of me and person number 2.

3 Q. [12:46:34] All right.

4 If your Honour will bear with me. I can't see it, so I'm clearly --

5 THE COURT OFFICER: [12:46:39] The material is on evidence channel 1.

6 MR STEYNBERG: [12:46:43] That was the next button. Thank you.

7 Q. [12:46:47] Sorry. I missed that in all the commotion. You say you
8 confirm -- who's in the photograph?

9 A. [12:46:54] Before me, on my -- on my right is myself, and on my left is person
10 number 2.

11 Q. [12:46:59] All right. I think photograph number 2 is probably the clearest.
12 You say that's you on the right and person number 2 on the left of that photograph.
13 That's photograph number 2 of the document I have called up, titled "Annex H"?

14 A. [12:47:17] Yes, my Honour.

15 Q. [12:47:18] And do you recognise the location where this photograph is taken?
16 Without mentioning the name, is this the location where you met?

17 A. [12:47:28] Yes.

18 Q. [12:47:29] That you've just described?

19 A. [12:47:30] Yes, my Honour.

20 Q. [12:47:31] All right. Do you know who took the photograph?

21 A. [12:47:37] The investigators did take the photographs.

22 Q. [12:47:40] Okay. Thank you.

23 Then again, because you've gone through this in detail and we have the recordings,
24 can you just describe or summarise what was discussed at this meeting.

25 A. [12:48:00] My Honour, at this meeting, it was a continuation of what we had

1 discussed on the 20th. And I continued to ask in detail who was going to provide
2 the money and if, truly, that money was available. I wanted to know who was
3 involved in this process where witnesses were being asked to recant so that I could
4 actually know and keep it in the record to hand it to the investigators.

5 Q. [12:48:57] Now, you said you were asked to locate some other witnesses,
6 including person number 18. How many people did you discuss with person
7 number 2 that you would locate for him?

8 A. [12:49:18] Person number 2 wanted me to locate person number 18. We also
9 discussed for other witnesses who were in another country, and he was
10 supposed -- he told me on his plans to go and locate those -- those ones that were
11 away.

12 Q. [12:50:05] All right. The witness who was in another country, is that location
13 on the list? That country, should I say.

14 A. [12:50:31] I don't see.

15 Q. [12:50:32] Okay, never mind. We can clarify then in private session, if
16 necessary.

17 All right. Now -- in fact, let me leave that and move on. I think there's sufficient
18 evidence on this point on record already.

19 So after this series of meetings, you've said that you handed over the recordings to
20 the investigators. The recordings from -- from the previous day and from this day,
21 were they all on one device, or were they on separate devices?

22 A. [12:51:09] It was on the same device.

23 Q. [12:51:11] All right. So did you hand them all over one at a time or all together
24 after -- after the meetings?

25 A. [12:51:18] At every break that I took with (Redacted), I came up -- I found

1 a cover -- a cover story to -- and -- my apologies. My apologies.

2 PRESIDING JUDGE SAMBA: [12:51:36] Mr Witness, yes, please -- yes, please look at
3 the list and don't make references to names. Okay?

4 THE WITNESS: [12:51:44] My apologies, my Honour.

5 At every break I took with person number 2 after recording, I found cover story to tell
6 him in order to get a break to go and hand the part of recording that I had done to
7 the investigators. And during that time is when I was telling him that I'm going to
8 look for person number 18. That time that I went out from the meeting, for him, he
9 knew I was going to locate person number 18. But, actually, I was going to give out
10 the recordings to the investigators in order for the space of recordings to be freed.
11 And I get back to the -- to the meeting to continue to get more information from
12 person number 2.

13 MR STEYNBERG: [12:52:51]

14 Q. [12:52:51] And then did -- I presume the investigators then downloaded or
15 otherwise extracted this information from your device into their records; is that right?

16 A. [12:53:02] Yes, my Honour. I did see the investigators download the recording
17 to their computers, and I did sign documents to verify that I had seen that done.

18 Q. [12:53:23] All right. Now, in this process, was the recording from the previous
19 day also downloaded by the investigators?

20 A. [12:53:33] Yes, my Honour. All the recordings were downloaded.

21 Q. [12:53:38] Did you specifically mention at that time that in addition to the -- to
22 the recordings of the meetings on the second day, there was also a recording of
23 a meeting the previous day that you were handing to the investigators? Did you tell
24 them that?

25 A. [12:53:57] No, my Honour, I did not tell them about the first recording.

1 Q. [12:54:04] Why not?

2 A. [12:54:07] Because I had disobeyed their advice not to meet Mr Barasa -- person
3 number 2 -- person number 2. And also, I did not get sufficient time to make
4 the explanations, because it was a very busy day on that day, running up and down
5 in order to get this information that was vital.

6 Q. [12:54:40] All right. Now, a suspicious person might think that you didn't tell
7 the investigators about this meeting and you didn't mention the recording because
8 you were --

9 MR KARNAVAS: [12:54:55] Your Honour, I'm going to object to this line of
10 questioning. He's leading the witness. Obviously, he wants to tailor the answer.
11 He can ask an open-ended question; who, what, where, why, how explained. But
12 tailoring the witness's testimony through this sort of questioning I object to.

13 MR STEYNBERG: [12:55:15] I'll rephrase, your Honour.

14 PRESIDING JUDGE SAMBA: [12:55:16] Please.

15 MR STEYNBERG: [12:55:20] In fact -- in fact, I'm going to leave it there, because it's
16 already explained on the record, and my learned friend can take it up if he wishes.
17 Your Honour, I'm ready to carry on, but I'm about to move to a new topic, and we're
18 very shortly getting to issues that are going to have to be dealt with in private session.
19 I don't know whether this might be an appropriate time then to break for the lunch
20 adjournment.

21 PRESIDING JUDGE SAMBA: [12:56:05] Yes, I think we should now break for lunch.
22 It's close to 1. So we'll go away for lunch and resume at 2.30.

23 MR STEYNBERG: [12:56:15] Your Honour, before we rise, before your Honour rises,
24 may I also then just ask the court officer to provide the witness with the clarification
25 log. And, in fact, I've stapled it together with the witness preparation log, but that

1 just has names and dates on it, followed by the list of clarifications that the witness
2 provided, so that he can review that over the lunch adjournment, as discussed.

3 PRESIDING JUDGE SAMBA: [12:56:38] Thank you.

4 So we'll break at this point and resume at 2.30.

5 THE COURT USHER: [12:56:55] All rise.

6 (Recess taken at 12.56 p.m.)

7 (Upon resuming in open session at 2.31 p.m.)

8 THE COURT USHER: [14:31:36] All rise.

9 Please be seated.

10 PRESIDING JUDGE SAMBA: [14:31:53] We continue with the testimony in chief of
11 P-800, please. Thank you.

12 MR STEYNBERG: [14:32:13] I'm grateful, your Honour.

13 Your Honour, this brings us to the stage in proceedings where I'm going to have to
14 request, pursuant to the request of Rule 74 counsel, to proceed into private session
15 since the Prosecution anticipates that some of the answers to the questions I intend to
16 put to him may incriminate him in potential offences.

17 PRESIDING JUDGE SAMBA: [14:32:40] Madam Court Officer, can we please go into
18 private session, please.

19 (Private session at 2.32 p.m.)

20 THE COURT OFFICER: [14:32:55] We are in private session, Madam President.

21 (Redacted)

22 (Redacted)

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1 (Open session at 3.46 p.m.)

2 THE COURT OFFICER: [15:46:19] We're back in open session, Madam President.

3 PRESIDING JUDGE SAMBA: [15:46:24] Thank you very much.

4 Mr Steynberg, your witness, please.

5 MR STEYNBERG: [15:46:28] Thank you. In fact, one of the issues I had actually

6 proposed to do in public session I've dealt with now, so -- but perhaps it was best to,

7 in any event, do that in private session.

8 So all that really remains then, your Honour, is to ask the witness to confirm in

9 the public session what you told us in private session, that you've read the witness

10 clarification log from your witness preparation last week over the lunch break.

11 Q. [15:46:59] Is that correct?

12 A. [15:47:00] Yes, my Honour.

13 Q. [15:47:01] And is -- is that an accurate record of the clarifications you made?

14 Was there anything you'd like to change?

15 A. [15:47:30] Yeah, the -- the spelling of -- of number 17, KEN-OTP-0142-0699.

16 Q. [15:47:45] All right. We're in public session now. Is that -- is that something
17 you can mention in public session? No?

18 A. [15:47:53] No.

19 Q. [15:47:54] Can I ask you, I think the easiest is, if you -- do you have a pen with
20 you?

21 A. [15:48:02] No.

22 MR STEYNBERG: [15:48:03] Can the court officer please provide the witness with

23 a pen, and can he just write the correct spelling in the margin next to that, and we will

24 admit that exhibit into court.

25 In fact, I -- I can probably put this on the record without context. It's the name of

1 a location. It's a location which is not relevant to any of the -- to any of the issues
2 that have been discussed by the witness today. So it's easiest if I probably just -- no, I
3 won't. It would be safer not to. I beg your pardon, your Honour.

4 So this witness preparation log, your Honour, will then be entered into evidence, will
5 be registered and given an evidence number, along with the clarification log.

6 The Ruto and Sang one already has one. And then we will add that to the list of
7 items to be added -- to be submitted formally into the record of the case. So I will
8 hang on to this because we need to register it and give it an ERN number. Is that all
9 right?

10 I mean, the only thing is that this has witness's physical correction on it, so there's
11 only one of these.

12 And the witness has signed it. And I will return the original to -- to the court officer
13 in the morning, if that's -- if that's in order. All right?

14 I see the court officer seems to be happy with that arrangement.

15 PRESIDING JUDGE SAMBA: [15:50:51] Yes, I think that's okay.

16 MR STEYNBERG: [15:50:53] Thank you.

17 One final matter, your Honour. I mentioned -- and I'll be careful what I say, but I
18 mentioned an affidavit and a letter during the private session that were provided that
19 were -- yes, provided to the Prosecution. Those documents came under cover of
20 a letter from the attorney concerned, which this witness would not have seen. But I
21 think I would also like to introduce into -- into evidence -- they're actually part of
22 the same series of documents, but they were, unfortunately, omitted from the list.
23 Perhaps I can just read into the record the ERN number. It's KEN-OTP-0145-0566.
24 And it's a letter from person -- a firm of attorneys, including person number 25 on
25 the list. And it is dated 30 August 2013. I think that will sufficiently identify it.

1 And I have shown this document to my learned friend. I had asked him if he had
2 any objection to me showing it to the witness, but in retrospect, I don't think
3 the witness will have anything to say about it. So I'll just ask it be added also to the
4 other documents that he has identified. It's a cover letter, your Honour.

5 With that last piece of logistics, your Honour, I rest the Prosecution's direct evidence
6 of this witness. Thank you.

7 Thank you, Mr Witness, for your cooperation.

8 PRESIDING JUDGE SAMBA: [15:52:42] Thank you very much, Mr Steynberg.

9 I'm sure the day is far gone now, Mr Karnavas. It should be your turn for
10 cross-examination.

11 MR KARNAVAS: [15:52:53] I'm at your disposal. I can start right now, and we can
12 go until 4.30, or start tomorrow.

13 PRESIDING JUDGE SAMBA: [15:53:00] That's okay. Let's make use of the time
14 left.

15 Go ahead then. Your witness then, Mr Karnavas.

16 MR KARNAVAS: [15:53:09] Thank you. If I may have the podium.

17 PRESIDING JUDGE SAMBA: [15:53:12] Sorry, Mr Karnavas. I just thought as
18 much, that we only go until 4. The 4.30 is like if you're following the court
19 proceedings outside the Court, I think, because of the 30 minutes delay.

20 MR KARNAVAS: [15:53:25] (Microphone not activated)

21 PRESIDING JUDGE SAMBA: [15:53:28] Mr Karnavas, can you make use of your mic,
22 please.

23 MR KARNAVAS: [15:53:33] Apologies. I think we could stop because the first
24 question, the gentleman will need about 20 minutes to explain. So we could stop
25 right now.

- 1 PRESIDING JUDGE SAMBA: [15:53:42] Thank you very much, then.
- 2 Mr Witness, thank you very much for your presence here today. We'll continue with
- 3 this matter tomorrow, and you'll be open to cross-examination, as I'm sure
- 4 your -- the Prosecutor must have told you, that counsel on the other side,
- 5 Mr Karnavas, would ask you some questions.
- 6 So we'll start off -- start off with those questions tomorrow because, of course, today
- 7 we are, like, six minutes to the hour where we should leave the court. But I wish to
- 8 thank you very much on behalf of the Chamber for today's proceedings, and I wish
- 9 you -- we meet here again tomorrow for 9.30.
- 10 MR STEYNBERG: [15:54:27] I rise, your Honour, just to suggest for -- out of an
- 11 abundance of caution, that perhaps the witness may just be cautioned not to discuss
- 12 his evidence with --
- 13 PRESIDING JUDGE SAMBA: [15:54:33] Of course, of course.
- 14 MR STEYNBERG: [15:54:35] -- any other person outside of the courtroom.
- 15 PRESIDING JUDGE SAMBA: [15:54:39] Of course.
- 16 Mr Witness, do not discuss your evidence, anything that has transpired here today,
- 17 with any other person outside this courtroom. Okay?
- 18 THE WITNESS: [15:54:47] Yes, your Honour.
- 19 PRESIDING JUDGE SAMBA: [15:54:49] Okay.
- 20 Thank you very much, then.
- 21 Counsel, I think we could meet tomorrow at 9.30.
- 22 This matter stands adjourned, then.
- 23 THE COURT USHER: [15:54:58] All rise.
- 24 (The hearing ends in open session at 3.54 p.m.)