

Trial Hearing  
WITNESS: KEN-OTP-P-0613

(Open Session)

ICC-01/09-01/20

1 International Criminal Court  
2 Trial Chamber III  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. Paul Gicheru - ICC-01/09-01/20  
5 Presiding Judge Miatta Maria Samba  
6 Trial Hearing - Courtroom 3  
7 Thursday, 24 February 2022  
8 (The hearing starts in open session at 9.33 a.m.)  
9 THE COURT USHER: [9:33:28] All rise.  
10 The International Criminal Court is now in session.  
11 Please be seated.  
12 PRESIDING JUDGE SAMBA: [9:33:59] Good morning, everyone.  
13 Madam Court Officer, can you please mention the case.  
14 THE COURT OFFICER: [9:34:07] Good morning, Madam President.  
15 This is the situation in the Republic of Kenya, in the case of The Prosecutor versus  
16 Paul Gicheru, case reference ICC-01/09-01/20.  
17 And for the record, we are in open session.  
18 PRESIDING JUDGE SAMBA: [9:34:22] Thank you very much.  
19 Can the parties please introduce themselves.  
20 MR STEYNBERG: [9:34:27] Good morning, your Honour. Good morning,  
21 everyone.  
22 For the Prosecution today, Anton Steynberg, senior trial lawyer, and with me  
23 Mariana Gutierrez, acting associate trial lawyer, and intern Oğuzhan Öztürk.  
24 PRESIDING JUDGE SAMBA: [9:34:43] Thank you very much, Mr Steynberg.  
25 Mr Karnavas, please.

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1 MR KARNAVAS: [9:34:48] Good morning, your Honour. And good morning to  
2 everyone in and around the courtroom.

3 I'm with Suzana Tomanović, Noah Al-Malt and Ms Mascetti, Daria Mascetti.

4 PRESIDING JUDGE SAMBA: [9:35:02] For the Defence. Thank you very much.

5 I take note of Mr Gicheru in court. Good morning, Mr Gicheru.

6 And, Madam Witness, a very good morning to you.

7 This morning we're going to start with your cross-examination by Defence counsel.

8 Yesterday you took your solemn oath, so you're still under oath to tell the truth and  
9 nothing but the truth to this Court. Okay?

10 WITNESS: KEN-OTP-P-0613 (On former oath)

11 (The witness speaks English)

12 THE WITNESS: [9:35:31] Yes, your Honour.

13 PRESIDING JUDGE SAMBA: [9:35:32] Thank you very much.

14 Mr Karnavas, please, I'll appreciate it if we take it slow so that the interpreters could  
15 get what you're saying. We wait for the pause when the witness gives her answers.

16 Thank you very much.

17 MR KARNAVAS: [9:35:49] Duly noted. Duly noted.

18 PRESIDING JUDGE SAMBA: [9:35:51] Please go on.

19 QUESTIONED BY MR KARNAVAS:

20 Q. [9:35:56] Good morning, Witness.

21 A. [9:35:58] Good morning, your Honour.

22 Q. [9:35:59] I want to first begin by asking you a few questions on your background.  
23 From the information that we received from the Prosecution, you started  
24 a community-based NGO in location number 28 back in 2004.

25 PRESIDING JUDGE SAMBA: [9:36:19] Just a moment, Mr Karnavas. Yes.

- 1 Just a moment.
- 2 I'm having my transcript in French.
- 3 MR KARNAVAS: [9:36:42] I thought I had done something wrong.
- 4 PRESIDING JUDGE SAMBA: [9:36:45] Sorry, Mr Karnavas, just a moment.
- 5 MR KARNAVAS: [9:36:47] It's okay. I thought I'd done something wrong.
- 6 (Pause in proceedings)
- 7 PRESIDING JUDGE SAMBA: [9:37:15] Thank you very much, Thomas.
- 8 Yes, Mr Karnavas. Just to say that we're in public session, so we have to be mindful
- 9 of that --
- 10 MR KARNAVAS: [9:37:28] I am.
- 11 PRESIDING JUDGE SAMBA: [9:37:29] -- naming names and places. Thank you
- 12 very much, Mr Karnavas.
- 13 MR KARNAVAS: [9:37:30] I'm trying to keep it as public as possible, and I'll ...
- 14 Q. [9:37:36] So in 2004, you started a community-based organisation in location
- 15 number 28; is that correct?
- 16 Is that a "yes"?
- 17 If you look at the --
- 18 PRESIDING JUDGE SAMBA: [9:38:00] I think she's checking the PIL list.
- 19 MR KARNAVAS: [9:38:06] She is, your Honour. I would think that she would
- 20 know this answer.
- 21 Q. [9:38:14] It's on page number 8.
- 22 PRESIDING JUDGE SAMBA: [9:38:16] Of the -- of your binder or the Prosecution's
- 23 binder?
- 24 MR KARNAVAS: [9:38:20] No, on the -- on the document that she's looking at,
- 25 the -- this personal information list.

- 1 PRESIDING JUDGE SAMBA: [9:38:30] Madam Court Clerk, could you help  
2 the witness, please.  
3 Or have you seen it, Madam Witness?  
4 THE WITNESS: [9:38:37] Yes, I've seen it, your Honour.  
5 PRESIDING JUDGE SAMBA: [9:38:39] Okay.  
6 MR KARNAVAS: [9:38:41] Okay.  
7 Q. [9:38:42] Can you give me an affirmative or a negative answer on that?  
8 A. [9:38:47] No, your Honour, I didn't -- I didn't start it on 2004.  
9 Q. [9:38:50] You did not?  
10 A. [9:38:51] Yes.  
11 Q. [9:38:52] So on page number 8 of what was provided to us from the Prosecution,  
12 I believe, based on information obtained from you over a period of two or three days,  
13 where it states: "In 2004, started a community-based organisation" -- it gives  
14 the name -- "in [location 28], and was [the] chairperson until March 2011."  
15 Are you stating that that's incorrect?  
16 PRESIDING JUDGE SAMBA: [9:39:23] Did you say location number 28?  
17 MR KARNAVAS: [9:39:26] Number 28.  
18 PRESIDING JUDGE SAMBA: [9:39:27] Madam Witness, can you check it out, please.  
19 THE WITNESS: [9:39:30] Yes, your Honour, that is the location I lived in from --  
20 MR KARNAVAS: [9:39:37] All right.  
21 THE WITNESS: [9:39:38] -- 2004.  
22 MR KARNAVAS:  
23 Q. [9:39:39] Well, did you start this organisation, as you represented to  
24 the Prosecution? Because I'm sure Mr Steynberg would not have put this in on his  
25 own.

1 A. [9:39:55] Can I have a look at the record of the -- what I told the Prosecution?

2 Q. [9:40:04] Well, I wasn't privy to that, so let me just -- this is not a trick question.

3 So let me just ask it as plainly as I can.

4 According to the information provided to us, it states that: "In 2004, started

5 a community-based organisation" - It has the name. And if you look at the

6 document, it tells the name - "in [location 28], and was a chairperson until

7 March 2011."

8 So is this correct or incorrect?

9 A. [9:40:46] Incorrect.

10 Q. [9:40:48] All right. But you were, were you not, doing NGO work up until that  
11 time?

12 A. [9:41:03] No, I had another job.

13 Q. [9:41:05] Okay. Well, you were getting money, were you not, from  
14 the Ministry of Agriculture for doing various work -- for doing work in Kenya?

15 A. [9:41:18] I had several project.

16 Q. [9:41:20] Several NGO projects?

17 A. [9:41:22] Yeah, to do.

18 Q. [9:41:24] Okay. And, in fact, you were rather rich from those projects.

19 A. [9:41:29] Not rich, but I was doing -- I was working, but I was given something  
20 more sustainable for me to keep on --

21 Q. [9:41:41] Just -- just sustainable, or were you rich?

22 A. [9:41:46] I was not rich.

23 Q. [9:41:47] Okay.

24 A. [9:41:48] I was living a normal life, like other people, your Honour.

25 Q. [9:41:52] All right. If we could look at tab 24, and it starts with

- 1 KEN-OTP-0157-3244.
- 2 PRESIDING JUDGE SAMBA: [9:42:06] Mr Karnavas, can I ask, you're talking about
- 3 your own binder, correct?
- 4 MR KARNAVAS: [9:42:10] Yeah, my own binder.
- 5 PRESIDING JUDGE SAMBA: [9:42:11] Yes. Is it binder number 1 or --
- 6 MR KARNAVAS: [9:42:15] Number --
- 7 PRESIDING JUDGE SAMBA: [9:42:16] It's just to help the witness.
- 8 MR KARNAVAS: [9:42:17] Right. It's binder number 2. To be totally frank,
- 9 your Honour, I haven't seen the binders myself. They're prepared, but I will defer to
- 10 my --
- 11 PRESIDING JUDGE SAMBA: [9:42:31] Well, they are your binders.
- 12 MR KARNAVAS: [9:42:33] I know. But I will -- I will make sure to assist everyone.
- 13 So it's in binder number 2.
- 14 Q. [9:42:40] If you could -- do you have the binders there, Madam?
- 15 A. [9:42:42] Yes, your Honour.
- 16 Q. [9:42:43] And do you have binder number 2 in front of you?
- 17 A. [9:42:46] Yes, your Honour.
- 18 Q. [9:42:47] And have you opened up tab 24? Tab 24.
- 19 A. [9:43:12] Yes, your Honour.
- 20 Q. [9:43:13] Okay. If you could follow with me. (Redacted), those are your
- 21 initials, are they not?
- 22 A. [9:43:24] They are my initials, your Honour.
- 23 Q. [9:43:28] And (Redacted) are the initials of person number 12, correct? If you look
- 24 at that list of names and if you could verify that (Redacted) are the initials of person
- 25 number 12.

- 1 A. [9:43:51] Yes, your Honour.
- 2 Q. [9:43:53] Okay. So I'm going to read. "Yes, I used to be given money. In fact  
3 I used to be given -- I used to be given it by the Ministry of Agricultural for kicking  
4 hunger out of Kenya." Do you recall saying that?
- 5 A. [9:44:15] Yes, and it is true, I was given.
- 6 Q. [9:44:17] Right. And further down on line 72: "I used to be rich. Because  
7 I was running activities, I had money."  
8 Do you recall saying that? Do you recall saying that?
- 9 A. [9:44:35] Which tab?
- 10 Q. [9:44:37] It's on -- it's the same -- same page, Ma'am. Same page, on line 72. If  
11 you note on the left side of the page, there are some numbers, and it helps us ...
- 12 PRESIDING JUDGE SAMBA: [9:44:55] Madam Witness, you're looking at -- you  
13 should be looking at tab 25 of the Defence binder, volume 2.
- 14 MR KARNAVAS: [9:45:02] It's 24, Ma'am.
- 15 PRESIDING JUDGE SAMBA: [9:45:05] Twenty-four. Sorry. Tab -- I mean, tab 24  
16 of the Defence binder. Do you have Defence binder volume 2?
- 17 THE WITNESS: [9:45:13] I've got it, your Honour.
- 18 PRESIDING JUDGE SAMBA: [9:45:15] Thank you very much.  
19 So you look at page 3, KEN-OTP-157-3248, line 72.
- 20 MR KARNAVAS: [9:45:29]
- 21 Q. [9:45:30] Do you see it?
- 22 A. [9:45:31] I can see, your Honour.
- 23 Q. [9:45:32] Okay. Now, those are your words, are they not?
- 24 A. [9:45:34] They were my words.
- 25 Q. [9:45:36] If we -- if we go now to line 76: "I had money. I used to receive it

1 from" - and you name an organisation - "and the Ministry of Agricultural." Do you  
2 see that?

3 A. [9:45:49] Yes, your Honour.

4 Q. [9:45:50] Again, on line 79: "I [used to] receive it from the National Aid Control  
5 and the Ministry of Social Services." Do you see that?

6 A. [9:46:01] Yes, your Honour.

7 Q. [9:46:02] If we go down to line 86: "I used to have money and I was fat but  
8 when I see these people refusing to give me money, I get disturbed." Those are your  
9 words, are they not?

10 A. [9:46:19] Yes, your Honour.

11 Q. [9:46:20] And on line 90, again: "They used to" -- 91: "I used to have money  
12 and not that I was suffering." You said that as well, right?

13 A. [9:46:46] Your Honour, the conversation I had with person number --

14 Q. [9:46:53] Twelve.

15 A. [9:46:56] -- 12 wasn't accurate information because of some reasons.

16 Q. [9:47:03] Okay. I don't mean to be impolite.

17 A. [9:47:07] Yeah, that's why I wanted to let you know, the conversation I had with  
18 him, everything was not in -- up to date.

19 Q. [9:47:16] I understand.

20 A. [9:47:19] Thank you, your Honour.

21 Q. [9:47:20] And, as I indicated, I don't mean to be impolite. But we're going to go  
22 through some of those conversations because, you see -- let me help you. Do you see  
23 these pages?

24 A. [9:47:38] Yes, your Honour.

25 Q. [9:47:39] These are the transcripts of your conversations that you were having



1 with person number 2 -- number 12 when you were not aware that you were  
2 being -- that he -- that at least he was being recorded based on a request from  
3 the Prosecution. You're aware of that, aren't you?

4 A. [9:48:03] I'm not aware.

5 Q. [9:48:04] You're not aware. Okay. We'll get to that.

6 But anyway, for the record, if Madam -- if your Honour can see this, this is 1,450  
7 pages or so of transcript from conversations. I will not -- I promise you,  
8 your Honour, I will not go through all of these during this session with this witness,  
9 but just -- let's just say, the cream of the cream.

10 MR STEYNBERG: [9:48:35] Your Honour, may I just have some clarifications  
11 because that seems to be completely out of tally with what my expectation would be.  
12 Are these the transcripts of the recordings of person 12's phone calls or only those  
13 involving this witness?

14 MR KARNAVAS: [9:48:56] He's absolutely right. They're only involving this  
15 witness. These are the ones that you -- that you provided us, and these are with this  
16 witness and, sorry to say I, had to go through almost 1,500 pages of documents, but --

17 PRESIDING JUDGE SAMBA: [9:49:17] Mr Karnavas, go on. I mean -- and you  
18 really don't need to limit yourself. Do your best in the best interest of your client.

19 MR KARNAVAS: [9:49:24] I am. I am, your Honour.

20 There -- there is much gossip and other nonsense, so there's no need for us to go on  
21 that -- into that.

22 Q. [9:49:35] But, in any event, do you also recall saying: "That is why I complained  
23 to them that when they met me -- when they met me the children were already in  
24 boarding school[s]."

25 PRESIDING JUDGE SAMBA: [9:49:53] Madam Witness, you're looking at line 93

1 and 94, lines 93 and 94.

2 Mr Karnavas, if you can --

3 THE WITNESS: [9:50:01] Yes, your Honour, I can see it.

4 MR KARNAVAS: [9:50:03]

5 Q. [9:50:04] Okay. Now, you said that, right?

6 A. [9:50:05] Yes, your Honour.

7 Q. [9:50:06] Okay. So this was in reference to your children, right?

8 A. [9:50:09] Yes, your Honour.

9 Q. [9:50:10] And are you suggesting -- are you saying that at some point back then  
10 when you were -- this would be before 2011 -- you had the children in -- in boarding  
11 schools?

12 A. [9:50:17] I had my children before even I joined ICC in boarding school.

13 Q. [9:50:37] Okay. All right. And I suspect that that's pretty expensive.

14 A. [9:50:41] It wasn't that much expensive.

15 Q. [9:50:43] Okay. But once you got into the ICC programme, the ICC was paying  
16 for the children's education, including the boarding schools that you were demanding  
17 that they be educated in, right?

18 A. [9:50:56] No, your Honour. I was not demanding. But because of security  
19 reason, after entering to ICC, I had to remove, because one of the time, my son was  
20 visited by someone who is not in the list. And that is why I say they should move.

21 Q. [9:51:18] Okay. And we're going to get to this at some point, but just a point of  
22 clarification. You only have one -- one -- one son.

23 A. [9:51:32] Yes, your Honour.

24 Q. [9:51:33] And yet, from the very outset, you've always represented that you had  
25 three children.

- 1 A. [9:51:41] Yes, your Honour. The reason is, in our culture, we always put as  
2 your children, your brother is your children. Ask your -- Mr Gicheru, he knows that.
- 3 Q. [9:51:56] And the more children you have, the more money they have to provide  
4 you if they are providing you with security, right?
- 5 A. [9:52:03] No, your Honour. Because these are the children I had when they met  
6 me. It's not that I brought them when I met them.
- 7 Q. [9:52:11] You represented to the Court under oath that you had adopted  
8 the children. Do you recall that?
- 9 MR STEYNBERG: [9:52:20] Can we have a reference, please.
- 10 PRESIDING JUDGE SAMBA: [9:52:23] I think adopted is a legal -- it's a legal term.  
11 I don't -- anyway, let the witness -- I mean, if you can maybe explain to the witness  
12 and she should be in a position to answer. She understands adoption. Not cultural  
13 but adoption as a legal term.
- 14 MR KARNAVAS: [9:52:42] I wasn't going to go into it too much. I just wanted to  
15 give the witness an opportunity to -- to -- to tell us.
- 16 PRESIDING JUDGE SAMBA: [9:52:51] Because if I remember, what -- the word she  
17 used there was "guardian".
- 18 MR KARNAVAS: [9:52:56] I understand, your Honour. I totally understand.
- 19 Q. [9:53:01] Do you recall being questioned in the Ruto and Sang case?
- 20 A. [9:53:04] Yes, your Honour, I remember.
- 21 Q. [9:53:07] And do you remember the issue of those children coming into question,  
22 as to whether they were yours or whether you had adopted them, in the legal sense?
- 23 A. [9:53:22] What I understood by that time was I adopted, but it's just a word of  
24 using it so I can -- I was having the children for a long time, but I didn't adopt exactly  
25 because I was away. When all these things started, I had to leave. And my sister

1 was sick, and no one was providing my children. And so that is the reason why I  
2 wasn't able.

3 And the time when my sister went to court, wanted to -- to represent and sign  
4 affidavit to say I had children, the court in Kenya demanded me to go back and sign,  
5 but I wasn't able to go because of the situation I was in. That was the reason  
6 I didn't -- we didn't sign it. But I was a guardian. That's how it was.

7 Q. [9:54:29] So do you recall having any conversations with person number 12  
8 regarding your children, these children, and the adoption problems that you were  
9 having? If you recall.

10 A. [9:54:45] Yeah, I had a conversation with number 12.

11 Q. [9:54:48] Okay.

12 A. [9:54:49] And number 12 was -- he wanted me to leave the protection and join  
13 him. And it was hard for me. And he was asking me that he could look for  
14 a lawyer, and then the children will come after three months.

15 Q. [9:55:10] Okay. We're going to get to the adoption and the children later on. I  
16 just wanted to get that on the record for now. So let me move on to the next topic.  
17 As I understand it, it was sometime around May 2011 when you went into protection  
18 by an organisation in location, I think it's number 13, where the organisation is  
19 organised by -- do you recall that? Were you in protection in -- as of -- as of  
20 May 2011 by organisation number 13?

21 A. [9:56:09] Yes, your Honour.

22 Q. [9:56:10] Right. And that was for six months, was it not?

23 A. [9:56:15] It was, your Honour.

24 Q. [9:56:16] And so if we count from May 2011, we count six months, we're talking  
25 October, November, pushing it all the way maybe to December 2011, right?

1 A. [9:56:32] Yes, your Honour.

2 Q. [9:56:33] And after -- when the six months expired, were you still in protection?

3 A. [9:56:45] No, your Honour.

4 Q. [9:56:47] Okay. Thank you. Now, before we -- as I understand it, your first  
5 contact with the Prosecution was about a year later in December 2012. That was  
6 your first contact.

7 A. [9:57:17] I don't remember the date, your Honour.

8 Q. [9:57:19] Okay. We'll get to that.

9 Now, before we talk about your first contact and what happened thereafter, a couple  
10 of housekeeping matters, since we're talking about your background. Did you have  
11 a national identification card at that time?

12 PRESIDING JUDGE SAMBA: [9:57:42] At what time, Mr Karnavas?

13 MR KARNAVAS:

14 Q. [9:57:44] At 2011, 2012, did you have a national identification card?

15 A. [9:57:50] Yes, I had, your Honour.

16 Q. [9:57:52] Did you have a passport?

17 A. [9:57:57] No, your Honour.

18 Q. [9:57:58] Okay. What about, were you enrolled in the national social security  
19 fund?

20 A. [9:58:09] I don't remember that.

21 Q. [9:58:10] Okay. What about the national hospital insurance fund? You had  
22 children, you know, maybe that might help you remember.

23 A. [9:58:25] I remember when I was pregnant with my son, I used to pay, because  
24 when -- after the birth, I didn't bother to ...

25 Q. [9:58:41] Okay, all right. Did you have a mobile phone before meeting with

- 1 the Office of the Prosecution in 2012?
- 2 A. [9:58:49] Yes, your Honour.
- 3 Q. [9:58:50] And were you a registered voter?
- 4 A. [9:58:54] Yes, your Honour.
- 5 Q. [9:58:56] In fact, you were, I believe, a member of a political party, right?
- 6 The PNU. Were you enrolled with a particular party?
- 7 A. [9:59:08] Yes, your Honour.
- 8 Q. [9:59:10] Okay. And did you have a driver's licence, by the way?
- 9 A. [9:59:14] No, your Honour.
- 10 Q. [9:59:15] Okay. We already touched on the fact that you were working for
- 11 NGOs, right?
- 12 A. [9:59:24] Yes, your Honour.
- 13 Q. [9:59:25] And during that period up until, say, 2011, did you ever visit any
- 14 public offices or -- public offices, where you have to go into the building and show
- 15 identification?
- 16 A. [9:59:45] I don't remember that, your Honour.
- 17 Q. [9:59:46] Okay. And might I ask whether you recall having private medical
- 18 insurance?
- 19 A. [10:00:00] I don't remember, your Honour.
- 20 Q. [10:00:01] All right. For a national identification card, do you need -- do
- 21 you -- does that have a photograph?
- 22 A. [10:00:17] Repeat the question.
- 23 Q. [10:00:18] Does your national identification card has -- have your photograph?
- 24 A. [10:00:24] Yes, your Honour.
- 25 Q. [10:00:25] All right. And when you try -- when you go and get a mobile phone,

1 do you not have to produce photo identification in order to get a mobile phone?

2 A. [10:00:40] Yes, your Honour, that is what we register with.

3 Q. [10:00:43] Right. And when you register to vote, you also have to show your  
4 identification with your photograph on it, right?

5 A. [10:00:52] Yes, your Honour.

6 Q. [10:00:54] As well as when you register with a political party, you have to have  
7 your photograph, right?

8 A. [10:01:01] Yes, your Honour.

9 Q. [10:01:03] Okay. And have you ever heard of the national registration bureau?

10 A. [10:01:15] No, your Honour.

11 Q. [10:01:16] Okay. So you were not aware that your photograph and all your  
12 vitals, you know, height and weight and what have you, were actually registered  
13 already in the national registration bureau located in Nairobi?

14 A. [10:01:36] I don't know, your Honour.

15 Q. [10:01:38] All right. Just out of curiosity, do you think that the national security  
16 services were - I won't use the acronym - that you claim Mr Gicheru was trying to get  
17 your photograph through (Redacted)-- through -- through one of the witnesses in  
18 order to turn over to the national security services, do you think that they could not  
19 have gotten your photograph from your national identification card from  
20 the registration bureau?

21 A. [10:02:21] Your Honour, this is the information I was brought by someone who  
22 was having the meeting. For myself, I don't know your client.

23 Q. [10:02:27] Well, you --

24 A. [10:02:28] I never met him, and I have not spoken to him. So that is the people  
25 who are answering to him.

1 Q. [10:02:38] All right. Well, so you claim. Were you present at the meeting?

2 A. [10:02:44] I wasn't in the meeting. As you say, you hear the transcript saying  
3 that he heard he was in there when the meeting was on.

4 Q. [10:02:55] This is what you were told?

5 A. [10:02:57] Yes, you heard on the transcript, your Honour.

6 Q. [10:03:01] We're going to get a lot further and quicker if you just answer my  
7 questions. This is what you were told?

8 A. [10:03:08] Yes, your Honour.

9 Q. [10:03:09] And you just told us you never met him, did not know him, right?

10 A. [10:03:14] Yeah, I used to hear only he's a lawyer in town. Like -- like you hear  
11 minister so-and-so, but you haven't met him.

12 Q. [10:03:22] All right. And -- and so when someone told you that they were  
13 looking to find -- to get your photograph and that they would actually get paid  
14 2 million Kenyan shillings, you believed that?

15 A. [10:03:49] Yes.

16 Q. [10:03:49] All right. And it didn't dawn on you to say, "Wait a second. My  
17 photograph already exists on my -- on my national identification card"? That never  
18 dawned on you?

19 A. [10:04:14] I was scared because I had already have some issues with security.  
20 So when he mentioned that, made me also be scared, saying, why?

21 Q. [10:04:24] So you just believed it?

22 A. [10:04:26] Yeah, because I was having issues also, you know, before.

23 Q. [10:04:29] All right. I -- I'm not disputing that. What I'm trying to establish is,  
24 whatever you were being told, you took it at face value. You just believed it.

25 A. [10:04:43] Because I had already gone through security issues before and then I



1 went to protection, that's why I took it -- and this is the person, he was with

2 (Redacted). So I thought he was talking the truth, and I believe him.

3 Q. [10:05:07] I -- okay. That's fine. You believed him.

4 Well, yesterday, yesterday you mentioned a lot of names, and a lot of names were

5 mentioned by the Prosecution, Mr Steynberg, and all those names came in the context

6 of you telling us what they told you.

7 A. [10:05:40] Yes, your Honour.

8 Q. [10:05:40] And a lot of times what they were telling you is what others had told

9 them, right?

10 A. [10:05:48] I don't know.

11 Q. [10:05:49] Well, from the conversations, you're saying somebody is saying to

12 somebody who is then telling it to you. Isn't that what -- what was happening at

13 times?

14 A. [10:06:00] You heard the transcript saying that they -- they met and they called,

15 they talk each other. So it wasn't like from other people. It was from that person

16 particular saying that he had a meeting.

17 Q. [10:06:15] Okay. So at no -- at no occasion, you're telling me, that somebody

18 was telling you something that somebody else had not told them that they heard or

19 saw or what have you?

20 A. [10:06:31] Um ...

21 Q. [10:06:38] I can show you instances, but we'll get there at some point. It's either

22 a "yes", "no", "I don't recall", "I don't know."

23 A. [10:07:05] Trying to ...

24 Q. [10:07:20] Let me move on with the next question.

25 A. [10:07:23] Yes, I just wanted to make clear -- okay.

1 Q. [10:07:28] Everybody that was telling you things that you told us, and you made  
2 sure to mention my client's name, to mention Mr Gicheru, were all your friends  
3 and/or associates?

4 A. [10:07:48] Yes, your Honour.

5 Q. [10:07:49] There's not a single person that you mentioned that you had not  
6 worked with or had been involved with in a professional manner, or knew prior to,  
7 say, meeting with the Prosecution for the very first time in December 2012?

8 A. [10:08:15] Can you repeat the question.

9 Q. [10:08:17] There was not a single person that you mentioned that told you about  
10 what they had heard or what had taken place when you're mentioning my client that  
11 you had not had a professional or personal relationship with?

12 A. [10:08:42] I don't understand the question.

13 Q. [10:08:44] Okay. Let me -- let me go about it this way. Let's take person  
14 number 43. If you have that list handy, person number 43. Do you have it?

15 A. [10:09:09] Yes, your Honour.

16 Q. [10:09:10] Now you had -- you worked together in the PNU in 2007, right?

17 A. [10:09:22] Yes, your Honour.

18 PRESIDING JUDGE SAMBA: [10:09:25] Mr Gicheru, if you can maybe try not to  
19 mention organisations.

20 MR KARNAVAS: [10:09:33] (Microphone not activated) Sorry, I thought that was  
21 a freebie, but okay.

22 Q. [10:09:44] And, in fact, I think you indicated at one point that you gave  
23 a statement together back in 2008.

24 A. [10:09:57] I don't remember, your Honour.

25 Q. [10:09:59] All right. Just one second. Let's see if I can get the organisation.

- 1 I believe it was -- it's number 7. If you look at the organisations, number 7.
- 2 Do you recall going with him to give a statement to this organisation in 2008?
- 3 A. [10:10:46] I don't remember that (Overlapping speakers)
- 4 Q. [10:10:48] Okay. No problem. But you knew him?
- 5 A. [10:10:51] I knew him, yes.
- 6 Q. [10:10:53] You knew him very well.
- 7 A. [10:10:55] Yeah.
- 8 Q. [10:10:55] Did you socialise with him at all? I mean, like after work, maybe
- 9 have a beer, a coldie, listen to some music.
- 10 A. [10:11:04] Not at all, your Honour.
- 11 Q. [10:11:05] Okay. So it was just strictly professional.
- 12 A. [10:11:08] Yes, your Honour.
- 13 Q. [10:11:08] All right. But you had frequent contacts with him.
- 14 A. [10:11:11] Yes, your Honour.
- 15 Q. [10:11:13] All right. And I take it, when you meet somebody like that and you
- 16 have frequent contacts with him, it's because you get along with that person.
- 17 A. [10:11:25] Not really.
- 18 Q. [10:11:26] All right.
- 19 A. [10:11:27] It depends which --
- 20 Q. [10:11:29] Context?
- 21 A. [10:11:30] Yes.
- 22 Q. [10:11:34] Now let's look at person number 8.
- 23 (Microphone not activated) Do you see -- do you see him?
- 24 A. [10:11:59] Yes, your Honour.
- 25 Q. [10:12:00] Do you recognise that person?

- 1 A. [10:12:02] Yes, your Honour.
- 2 Q. [10:12:05] Would it be fair to say that you knew him fairly well also?
- 3 A. [10:12:09] Yeah.
- 4 Q. [10:12:11] I mean --
- 5 A. [10:12:12] Yes, your Honour.
- 6 Q. [10:12:13] All right. You --
- 7 A. [10:12:15] We came from the same area.
- 8 Q. [10:12:17] Yeah. And when he -- even went to the same church.
- 9 A. [10:12:24] Yes, your Honour.
- 10 Q. [10:12:25] And you actually worked together.
- 11 You worked together, did you not?
- 12 A. [10:12:31] Yeah, in human rights issues, your Honour.
- 13 Q. [10:12:35] Right, right. So you knew him fairly well.
- 14 A. [10:12:37] Yes, your Honour.
- 15 Q. [10:12:38] Did you know him more or less than, say, person number 43?
- 16 A. [10:12:44] All of those people were professional.
- 17 Q. [10:12:48] Okay. Then if we could look at, let's see, person number 14. Person
- 18 number 14. Do you recognise the name?
- 19 A. [10:13:12] Yes, your Honour.
- 20 Q. [10:13:13] And you knew him quite well also.
- 21 A. [10:13:18] Not really.
- 22 Q. [10:13:20] Did you not work together?
- 23 A. [10:13:22] No.
- 24 Q. [10:13:23] You never worked together in an organisation?
- 25 A. [10:13:26] No. We only met in meetings.

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- 1 Q. [10:13:29] Okay.
- 2 A. [10:13:30] Yes.
- 3 Q. [10:13:32] And did you not share the same office?
- 4 A. [10:13:36] No. He's from another location, and I'm from another location.
- 5 He's living in a neighbourhood which is far from where I lived.
- 6 Q. [10:13:46] Well, I'm not asking you where you lived and he lived. I'm asking
- 7 whether you worked in the same organisation.
- 8 A. [10:13:52] No. He had a different organisation which was in another location.
- 9 Yes, your Honour.
- 10 Q. [10:13:58] Okay, that's fine. All right. Then if we could look at person
- 11 number 53. Person number 53. Do you know that person? Do you recognise
- 12 the name?
- 13 A. [10:14:21] Yes, your Honour.
- 14 Q. [10:14:22] You've known him since 2006, right?
- 15 A. [10:14:26] Yes, your Honour.
- 16 Q. [10:14:28] And you're from the same area.
- 17 A. [10:14:31] Yes, your Honour.
- 18 Q. [10:14:32] So I take it you would come into frequent contact with him between,
- 19 say, 2006 and 2011, 2012. You had ...
- 20 A. [10:14:42] Yes, I was -- I was -- he was a driver with -- can I say it in open
- 21 session?
- 22 Q. [10:14:54] You don't need -- don't mention any --
- 23 PRESIDING JUDGE SAMBA: [10:14:57] Is it on the list? What you want to say, is it
- 24 on the list?

- 1 THE WITNESS: [10:15:01] No. No, your Honour.
- 2 PRESIDING JUDGE SAMBA: [10:15:02] Can we go into private session for just
- 3 a split second, please.
- 4 (Private session at 10.15 a.m.)
- 5 THE COURT OFFICER: [10:15:19] We're in private session, Madam President.
- 6 (Redacted)
- 7 (Redacted)
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7 (Open session at 10.16 a.m.)

8 THE COURT OFFICER: [10:16:52] We're back in open session, Madam President.

9 PRESIDING JUDGE SAMBA: [10:16:56] Thank you very much.

10 Mr Karnavas, please.

11 MR KARNAVAS: [10:16:58] Thank you, your Honour.

12 Q. [10:16:59] And then there's person 62. If you could -- you knew him. You  
13 don't have to tell us, you know, what he did for a living, but you knew him.

14 A. [10:17:16] Yes, your Honour.

15 Q. [10:17:17] Okay. Not just of him because of his profession, but you actually  
16 knew him.

17 A. [10:17:25] No, your Honour. I knew him.

18 Q. [10:17:26] Okay. Good. All right. Then we talked a little bit about person  
19 number 30. Do you recall that?

20 A. [10:17:47] Yes, your Honour.

21 Q. [10:17:48] And, in fact, you were in touch with him quite a bit, were you not?

22 A. [10:17:53] Yes, your Honour, he was my neighbour.

23 Q. [10:17:56] And yesterday there was - just as an aside - there was this exchange  
24 where you had indicated -- or the Prosecution, Mr Steynberg, had confronted you  
25 with what person number 30 had said concerning a meeting he had with you and

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1 what had transpired during that meeting. And you said, "No, because a hotel is  
2 a very public place, and having such conversations" --

3 A. [10:18:31] Is dangerous, your Honour.

4 Q. [10:18:33] -- "is dangerous." Right, right.

5 If we could look at tab 45. The second binder. And it's KEN-OTP-0160-0609. And  
6 we're looking at page 6 out of 16, and it's KEN-OTP-0160-0614. And to put some  
7 context into this, this is from an interview where you gave a statement over a period  
8 of, it appears, days, several days, several hours in 2021, starting in April -- or in  
9 October -- October 2021.

10 Do you recall coming to The Hague in 2021 and speaking with Mr Steynberg and his  
11 many associates who were there?

12 A. [10:19:52] You say 2000 and?

13 Q. [10:19:56] Twenty-one.

14 PRESIDING JUDGE SAMBA: [10:19:57] Do you have -- are you looking at tab  
15 number 42, Madam Witness, of the Defence's bundle? Yes, look at it. It's volume 2,  
16 if that maybe help you.

17 MR KARNAVAS: [10:20:13] If I'm going too fast, let me know. I'll slow it down, if  
18 it's possible.

19 PRESIDING JUDGE SAMBA: [10:20:21] You're doing well so far, Mr Karnavas.

20 MR KARNAVAS: [10:20:24] Thank you. Thank you.

21 THE WITNESS: [10:20:31] Yes.

22 MR KARNAVAS:

23 Q. [10:20:32] Okay. Now, do you recall -- if you could get tab -- tab 45, tab 45.

24 Have you found it? And if you turn over the page, it's page 6 of 16. And before I  
25 get to that, I need to ask you a question, so if you could -- I'll read the relevant portion.



1 So if I could have your attention for a second and -- do you recall coming -- coming to  
2 The Hague and meeting with Mr Steynberg and, as I said, his -- his other associates?

3 A. [10:21:17] Yes, I remember.

4 Q. [10:21:18] Okay. And the purpose for that meeting was to have another  
5 interview with you, right?

6 A. [10:21:28] I'm not sure if it was an interview or it was a --

7 Q. [10:21:33] Was he grilling you? Was he interrogating you?

8 A. [10:21:37] No, no, interrogation.

9 Q. [10:21:38] He looks like a pretty easygoing guy.  
10 He was asking you questions, right?

11 A. [10:21:44] Yes, your Honour.

12 Q. [10:21:45] And you were answering those questions, to the best of your ability,  
13 right?

14 A. [10:21:50] Yes, your Honour.

15 Q. [10:21:51] And that's when you discovered also that they had been monitoring  
16 your conversations with person number, I think it was 12, right? That's when you  
17 were -- you first learned of that, right?

18 PRESIDING JUDGE SAMBA: [10:22:05] Check -- check who person number 12 is,  
19 please, Madam Witness.

20 THE WITNESS: [10:22:25] Yes, your Honour.

21 MR KARNAVAS: [10:22:27]

22 Q. [10:22:28] Okay. So -- and during that period, when you were here being asked  
23 questions and answering those questions, Mr Steynberg or his associate -- because we  
24 don't have a verbatim transcript, so we don't really know what happened during all  
25 those days. We just have a -- a summary, which they wrote, and we take their word

1 that the summary was accurate. That is the way they present it.

2 One of the topics during that conversation was -- they asked you about what  
3 so-and-so might have said about you and to give you an opportunity to affirm it or  
4 negate it, to say "yes" or "no", to clarify. Do you recall that?

5 A. [10:23:23] I don't recall, your Honour.

6 Q. [10:23:24] All right. If you look at paragraph 24 -- do you have it?

7 A. [10:23:35] Yes, your Honour.

8 Q. [10:23:36] Okay. Now, if you would like to read it so we could -- you know,  
9 read it to yourself. I'm trying to keep from going in and out of public session. If  
10 you could read it. Take a moment. And when you've read it, let me know.  
11 Do you see that?

12 A. [10:24:06] I can see that, your Honour.

13 Q. [10:24:08] And do you see where you correct Mr Steynberg, that this meeting  
14 actually did not take place in a hotel but, rather, it took place in a restaurant?

15 A. [10:24:25] Your Honour, we use that word in -- you know, here -- in here, it's  
16 different from -- if you go even in a village restaurant, people call hotel. So it's  
17 a kind of -- if you say hotel, it's generalising everything. It doesn't mean like to be  
18 specific.

19 Q. [10:24:55] Okay. But my point is -- and maybe I'm being hyper-technical here,  
20 so forgive me. The conversation took place in a restaurant, that's what you're telling  
21 Mr Steynberg, right?

22 A. [10:25:10] Yeah.

23 Q. [10:25:10] And it was a public restaurant.

24 A. [10:25:12] Yeah.

25 Q. [10:25:12] It wasn't some private room. It was in a public area.

1 A. [10:25:15] Yes, your Honour.

2 Q. [10:25:16] And that's my point.

3 That was just a little aside, your Honour, to clarify that matter. So I won't belabour  
4 the point anymore.

5 Thank you. Thank you very much.

6 And, of course -- person number 12, of course, we know that you had several hours.

7 I have the exact number of hours. I'll get it to you later on. You knew him quite  
8 well also, person number 12, before -- before 2012, when you met with  
9 the Prosecution, you knew him, did you not?

10 A. [10:26:00] I knew him because we -- we reside from the same location.

11 Q. [10:26:06] And, of course, person number 63 -- person number 63, if you could  
12 be so kind as to look at person number 63. You knew him as well.

13 A. [10:26:30] Yeah, I met him one time when we had a meeting. That's how I  
14 came to know him. But not that much. Since that time, we have been talking in  
15 a phone.

16 Q. [10:26:46] You knew him. You knew him, did you not?

17 A. [10:26:50] I knew him.

18 Q. [10:26:51] And, in fact, he came to visit you once. You don't recall that?

19 A. [10:27:00] I don't recall that.

20 Q. [10:27:02] Don't you recall when he came to visit you when you were in  
21 the hospital?

22 A. [10:27:08] Oh, yes. Yes, your Honour.

23 Q. [10:27:11] Okay.

24 A. [10:27:12] Thank you for reminding me.

25 Q. [10:27:14] All right. And I take it, when he came to visit you in your hospital,

1 one of the reasons he came was to check up and see how you were doing.

2 A. [10:27:22] No, your Honour. He wanted me to go back to Kenya.

3 Q. [10:27:25] Okay. But he didn't -- he didn't ask about your health.

4 A. [10:27:30] No. He was coming to check if I was well and then we go.

5 Q. [10:27:34] Okay. All right. So -- you know, I had a list of questions to pose to  
6 you, but it seems that you've answered every one of them on your own about not  
7 knowing Mr Gicheru, never having called him, never having talked to him, never  
8 having met him. So you saved us a lot of time on that.

9 But concerning that topic, you said that you knew him as a lawyer. Were you also  
10 aware of the -- or did there come across to you at some point that he had represented  
11 someone who had withdrawn as a witness for the Prosecution? It made the news.  
12 It was in the newspapers. Did you know that? Had you read about that?

13 A. [10:28:31] Yes, your Honour.

14 Q. [10:28:32] All right. So you knew exactly who he was at that time?

15 A. [10:28:38] Not really.

16 Q. [10:28:39] Okay. All right. Well, we won't belabour the point.

17 Now let's go to your first meeting with the Prosecution.

18 And here, your Honour, I'm going to be referring to tab 88, which is in volume 3.

19 Tab 88. Tab 88.

20 PRESIDING JUDGE SAMBA: [10:29:08] Madam Witness, binder volume 3 of  
21 the Defence's court bundle.

22 MR KARNAVAS:

23 Q. [10:29:22] You're going to get some exercise going back and forth with these  
24 binders. I apologise.

25 Do you have it, Ma'am?

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1 A. [10:29:46] I do have.

2 Yes, your Honour.

3 Q. [10:30:08] Okay. Now, if you could turn to tab 88. Tab 88.

4 PRESIDING JUDGE SAMBA: [10:30:36] Are you at tab 88, Madam Witness?

5 THE WITNESS: [10:30:49] Yes, your Honour.

6 MR KARNAVAS: [10:30:50] Okay.

7 Q. [10:30:51] And, for the record, it's KEN-OTP-0087-0315.

8 If you can look at the document, just kind of look at the front page, and I assume this  
9 is one of the documents that you were given an opportunity to review during  
10 the proofing session before coming here to testify, right?

11 A. [10:31:24] Yes, your Honour.

12 Q. [10:31:24] Okay. So you're familiar with this document?

13 A. [10:31:29] Yes, your Honour.

14 Q. [10:31:30] Okay. And if we look at the dates at the bottom of this first page,  
15 the first time it was a meeting in December 1, 2012, from 1100 hours to 1800 hours.

16 By my calculation, that's seven hours. And then on the next day, from 11 to  
17 1700 hours, that's six hours. So for approximately 15 hours you met over a period of  
18 two days with the -- with members of the Prosecution, right?

19 A. [10:32:09] I don't remember exactly the time.

20 Q. [10:32:12] Okay. But can we agree that this was your first meeting with  
21 the OTP, the ICC OTP?

22 A. [10:32:21] Yes, your Honour.

23 Q. [10:32:22] Okay. Good.

24 Now, if we could go to page 11, that's the very last page. Go to page 11. Please,  
25 when you find it, let us know.

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1 It's the same document, only it's the very last page of this -- this document. And it's  
2 KEN-OTP-0087-0325. Do you have it, Ma'am?

3 A. [10:33:05] I have it, your Honour.

4 Q. [10:33:06] Okay. Good. Now, if we look at paragraph 59 -- I will read it. I'm  
5 going to read 59, 60 and 62. And I'll go slowly. So let me read:

6 "I know that the Kalenjin youth" --

7 MR STEYNBERG: [10:33:27] Sorry, your Honour. I'm just looking at this  
8 paragraph and wondering whether this can be done in public session.

9 MR KARNAVAS: [10:33:35] I agree. We could go in private.

10 PRESIDING JUDGE SAMBA: [10:33:36] Madam Courtroom Officer, can we go into  
11 private session quickly, please.

12 MR KARNAVAS: [10:33:41] And I thank my colleague for that.

13 (Private session at 10.33 a.m.)

14 THE COURT OFFICER: [10:33:48] We're in private session, Madam President.

15 (Redacted)

16 (Redacted)

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WITNESS: KEN-OTP-P-0613

(Private Session)

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Trial Hearing  
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7 (Open session at 10.56 a.m.)

8 THE COURT OFFICER: [10:56:10] We are back in open session, Madam President.

9 PRESIDING JUDGE SAMBA: [10:56:16] Thank you very much.

10 Madam Witness, we're going to break for some 30 minutes. So we'll come back here

11 for 11.30, and Mr Karnavas will continue his cross-examination with you. Okay?

12 THE WITNESS: [10:56:29] Yes, your Honour.

13 PRESIDING JUDGE SAMBA: [10:56:30] Thank you very much.

14 So we break for 30 minutes. We're back here at 11.30, please. Thank you very

15 much.

16 THE COURT USHER: [10:56:36] All rise.

17 (Recess taken at 10.56 a.m.)

18 (Upon resuming in open session at 11.33 a.m.)

19 THE COURT USHER: [11:33:29] All rise.

20 Please be seated.

21 PRESIDING JUDGE SAMBA: [11:33:52] Good morning, again.

22 Madam Witness, we are going to continue with your cross-examination.

23 Mr Karnavas, please.

24 MR KARNAVAS: [11:34:03] Thank you, your Honour.

25 With the Court's permission, since we were in private session, if I may give a short

1 summary for the public as to what happened. I won't mention any names, but I  
2 thought it would -- it might be useful.

3 Q. [11:34:21] So if I can give the essence of what we have been discussing so far this  
4 morning. I won't be mentioning any names or places. I'll refer to numbers. And  
5 I'll just take a couple of minutes of your time. And if you think I give a -- an accurate  
6 description of what we have discussed, then we can move on to the next section.

7 Okay?

8 A. [11:34:45] Yes, your Honour.

9 Q. [11:34:46] Okay. Good.

10 All right. Thus far we -- we said that in December 1 and 2 of 2011 - yeah, 2011 - is  
11 when you first went to the OTP -- 12, I'm sorry, 12. 2012, my apologies. You went  
12 to the OTP investigators to provide your first statement; is that right?

13 A. [11:35:19] Yes, your Honour.

14 Q. [11:35:20] And we also indicated that, in giving that statement, you gave them  
15 some information. And based on that information, they had made a determination  
16 that all the information you were providing them was secondhand, and therefore,  
17 they could get that information from the source and you were not needed by them.  
18 We've discussed this, right?

19 A. [11:35:56] Your Honour, I had explained the reason why.

20 Q. [11:35:59] I understand. We're going to get there. I just want to give  
21 a summary.

22 And then after that, you gave an explanation as to why you only told half the truth on  
23 that occasion, right?

24 A. [11:36:13] Yeah, because I (inaudible).

25 Q. [11:36:17] Right. So months later, months later you have a second interview,

1 and that's in -- in July 2013. And during that interview, after you're given an  
2 opportunity to read what you had told them the first time, you clarified that you  
3 actually had more information to give them, and you did that, right?

4 A. [11:36:57] Your Honour, as --

5 Q. [11:36:59] Did we discuss this this morning? I know we -- I'm just doing  
6 a summary for the public so they know what exactly we discussed. I'm not trying to  
7 go over the same thing.

8 A. [11:37:14] Yes, your Honour.

9 Q. [11:37:14] Okay. All right.

10 And in clarifying matters, you indicated that you had actually gone to a house that is  
11 located near location number 6. So if you look at location number 6. Right?  
12 That's where that house was, in that -- in that area. Not -- not at location, but in  
13 the area of location number 6.

14 A. [11:37:50] Yes, your Honour. Not -- not very far from --

15 Q. [11:37:54] Not very far from there. And that's where, now rather than saying  
16 you passed by that house, you actually went, and on two different days you cooked.  
17 Right? You cooked for the warriors who were getting ready or were in the midst of  
18 waging war. We discussed that, right?

19 A. [11:38:30] Yes, your Honour, with a reason.

20 Q. [11:38:32] Right. And the reason that you -- you are giving us today, the reason  
21 that you're giving us today that you omitted to tell us -- you know, tell  
22 the investigators the first time, and why you were comfortable telling them months  
23 later, having been declared not sufficiently qualified as having information for them  
24 as a witness, that you omitted those minor details because you were worried about  
25 your security. That somehow, providing those details to the ICC investigators, who

1 were there to investigate the very same things that you were describing, you were  
2 afraid that your security was at risk, and that's why you could not disclose that  
3 information to the ICC investigators, right?

4 PRESIDING JUDGE SAMBA: [11:39:36] Wasn't her testimony, Mr Karnavas, that,  
5 during the first meeting with the investigators, the reason you are now referring  
6 to -- her testimony is such that she did not say all of that because of her security.  
7 That was the first time.

8 MR KARNAVAS: [11:40:02] Right, right, right. That's -- that's what I'm trying to  
9 say, your Honour.

10 PRESIDING JUDGE SAMBA: [11:40:06] And not the second time --

11 MR KARNAVAS: [11:40:08] Not the second time.

12 PRESIDING JUDGE SAMBA: [11:40:09] -- when she gave the full information.

13 MR KARNAVAS: [11:40:11] No. And I -- if I --

14 Q. [11:40:13] During the first time, you were worried about your security, which is  
15 why during the first interview, you did not disclose that information to  
16 the Prosecution.

17 A. [11:40:22] Yes, your Honour.

18 Q. [11:40:23] Okay. But in the second -- the second instance, months later,  
19 somehow you felt secure enough, at least with the -- with the ICC, to disclose that  
20 additional information to them.

21 A. [11:40:41] Yes, your Honour.

22 Q. [11:40:42] Okay. All right. And you also told us that one of the reasons you  
23 went and cooked for a couple of days with the other women for the warriors, who  
24 were waging war - and, as you admitted, they were killing and maiming and burning  
25 and what have you, your neighbours, fellow Kenyans of different tribes - was because

1 you didn't want to be punished. You were worried about being punished.

2 A. [11:41:15] Yes, your Honour.

3 Q. [11:41:17] Because you were of -- of a different political persuasion.

4 A. [11:41:21] Yes, your Honour.

5 Q. [11:41:23] All right. And just as your neighbour, as you learned, had been  
6 punished by having one of his cows taken and barbecued for the occasion. You  
7 didn't use the word "barbecued", but I mean --

8 A. [11:41:46] I know what you mean, your Honour.

9 Q. [11:41:49] Yeah. That's how he was punished, right, your neighbour? They  
10 took his cow away, and they slaughtered it for the feast, right?

11 A. [11:41:57] Yes, your Honour.

12 Q. [11:41:58] Okay. And also what we discussed while we were in private  
13 session - I think we were in private. I just want to make sure that we -- we're  
14 clear - that all of the people that you have been mentioning were well known to you  
15 and they were passing on information to you, right?

16 A. [11:42:18] No, your Honour.

17 Q. [11:42:19] They were not passing information on to you? Remember, we talked  
18 about --

19 A. [11:42:27] Oh, yeah, some.

20 Q. [11:42:29] Okay. And you also admitted that at no particular time had you  
21 ever met Mr Gicheru, talked to Mr Gicheru, had any conversations over the phone,  
22 any messages from him, none whatsoever.

23 A. [11:42:46] Yes, your Honour.

24 Q. [11:42:48] All right. And we also discussed the issue of your photograph.  
25 That your photograph was on your identification card, right? Your national

1 identification card, your photograph was there, right?

2 A. [11:43:04] Your Honour --

3 Q. [11:43:06] Was it on there or not, your photograph?

4 A. [11:43:08] I don't know.

5 Q. [11:43:09] You -- okay. All right.

6 Now just as a matter of technicality, because, you know, times change, are you  
7 suggesting that at that time -- 2011, 2012, 2013 -- the national identification card that  
8 one carried in -- in Kenya had maybe the name, place of birth, height, weight and  
9 what have you, description, but no photograph; is that what you're saying? That  
10 maybe this is sort of a new invention. They came up with a new version of  
11 the identification card.

12 PRESIDING JUDGE SAMBA: [11:43:52] Madam Witness, the ID card that you had  
13 at that period is what counsel is referring to. Your own ID card.

14 THE WITNESS: [11:44:00] Yes, your Honour.

15 MR KARNAVAS: [11:44:03]

16 Q. [11:44:04] "Yes" meaning, yes, your photograph was on there?

17 A. [11:44:08] What my point is, I don't know because when we go to get an ID, we  
18 fill the forms. We didn't use computer when I get the ID card.

19 Q. [11:44:22] Okay. But do they take your photograph?

20 A. [11:44:25] Yes, your Honour.

21 Q. [11:44:26] Okay. Usually, it's almost like an instant photograph these days.  
22 And you also told us that they would take your photograph for your voter  
23 registration. We talked about that, right?

24 A. [11:44:40] Yes, your Honour.

25 Q. [11:44:44] Now, you mentioned you were not aware of this bureau where all

1 these statistics are -- are kept. But you're not suggesting here today, are you -- and I  
2 want to be fair. I don't think I posed the question in this fashion, so I want to make  
3 sure that I'm clear. You're not suggesting that the national security services could  
4 not have located a photograph of you without having to have a lawyer ask someone  
5 to ask another person to get to you to photograph you.

6 A. [11:45:28] Your Honour, can I explain?

7 Q. [11:45:31] Well, I'm just -- can you answer my question first and then give  
8 the explanation.

9 You're not suggesting that -- let me put it this way: We've heard testimony here and  
10 with other witnesses that the national security services were capable of listening in on  
11 people's phones and even tracking them. Was that your experience as well or your  
12 fear, that they could listen into your phone and track you where you were, even if  
13 you were outside of Kenya?

14 A. [11:46:05] I don't know, your Honour, what were the plan, because I wasn't in  
15 the meeting with them. So I've no idea.

16 Q. [11:46:11] Ma'am, I'm not asking you about a plan, and I'm not asking you about  
17 a meeting. I'm asking you, were you in fear that the national security services of  
18 Kenya had the capabilities of listening into your phone? It's a yes, or it's a no.

19 A. [11:46:36] In fact, I was told they were listening, your Honour.

20 Q. [11:46:38] Okay. So they were able to -- you were told of this. Did you believe  
21 it?

22 A. [11:46:42] Yes, your Honour.

23 Q. [11:46:43] You believed that they were able to listen in on your phone  
24 conversations?

25 A. [11:46:48] Yes, your Honour.

1 Q. [11:46:48] And maybe even track you?

2 A. [11:46:50] Yes, your Honour.

3 Q. [11:46:51] So would a security service that had those capabilities, would they be  
4 so inept that they would not know to go to the national bureau where they keep all  
5 these statistics, including your photograph on your identification card, voter  
6 registration and what have you, that they would have to send somebody and actually  
7 offer a 2 million-dollar -- a 2 million shilling bribe to get a photograph of you?

8 A. [11:47:21] Your Honour, it's not like not in -- intelligent. There is hitmen also  
9 which is -- doesn't have your photo. It doesn't mean like it is only national security.

10 Q. [11:47:37] Okay.

11 A. [11:47:39] There is hitmen. Like number -- person number 43, we don't know  
12 what happened.

13 Q. [11:47:46] Well, we don't know -- you're not suggesting that he was a hitman.

14 A. [11:47:50] I'm not saying, but is no more. And what happened, we don't know.  
15 So something like that can happen, and we don't know exactly who did that.  
16 So something like that might happen, what was, you know (Overlapping speakers).

17 Q. [11:48:09] But that's --

18 A. [11:48:09] That's the reason. It's not a must to be national security.

19 Q. [11:48:08] Ma'am --

20 A. [11:48:09] No, no. I'm saying it's not a must. If someone asks, he knows better  
21 the idea why he was asking. But it was only my opinion to say, they beat national  
22 security, or he knows better.

23 Q. [11:48:24] Ma'am, I'm just saying -- I'm just going by your transcript. You  
24 obviously believed that somebody was being offered 2 million Kenyan shillings to get  
25 to your photograph.



- 1 A. [11:48:34] Yes, your Honour.
- 2 Q. [11:48:35] Okay. And you gave your opinion as to why that photograph was  
3 needed. That was an opinion that you were giving.
- 4 A. [11:48:46] Yeah, because I'm not in a position to know much that he was -- he  
5 was giving who. Is it -- is it hitmen or ...
- 6 Q. [11:48:55] Okay. You're saying "he". Who's "he"?
- 7 A. [11:48:58] I say hit.
- 8 Q. [11:49:01] Hit. Okay. All right.
- 9 A. [11:49:03] Who knows.
- 10 Q. [11:49:04] All right. So we don't know whether that's true, we don't know  
11 whether that's false, that they were looking for your photograph.
- 12 A. [11:49:09] It's true, they were looking for my photograph.
- 13 Q. [11:49:12] Okay. And you have something concrete, something tangible,  
14 something that we can see, something objective that would prove beyond a  
15 reasonable doubt that in fact that was the case.
- 16 A. [11:49:26] According to person number 53.
- 17 Q. [11:49:29] Okay, thank you.
- 18 A. [11:49:30] And he was in a meeting with -- with them.
- 19 Q. [11:49:34] All right. That's what 53 told you, person number 53.
- 20 A. [11:49:38] Yes, your Honour.
- 21 Q. [11:49:39] But you were not at the meeting.
- 22 A. [11:49:40] No.
- 23 Q. [11:49:41] And you don't have a transcript from that meeting, if that meeting  
24 ever occurred.
- 25 A. [11:49:47] I have only the transcript of the recording, as you read it yesterday.

1 Q. [11:49:53] Ma'am, I'm asking you, do you have a recording of that particular  
2 meeting? Because you're claiming that a meeting actually took place.

3 In fact, you don't know whether a meeting took place, do you? That's what you  
4 were told, but you don't know that for a fact, do you?

5 A. [11:50:06] I don't know.

6 Q. [11:50:07] Okay. We got somewhere.

7 Okay. Let's see now what happens after you're rejected as a witness. Because we  
8 see from the second interview that from the first interview, you are noticed that they  
9 don't need your information. Your information is secondhand, information that you  
10 receive from someone else, and now you're passing that on.

11 So that was in December, 1 and 2, 2012, when you had -- when you get -- you got  
12 the rejection. So let's look at tab 51. Tab 51. And it's KEN-OTP-0129-0297. And  
13 that is in binder 3. Binder 3.

14 Do you have it?

15 If you could go to tab 51.

16 Do you have it?

17 A. [11:52:02] Yes, your Honour.

18 Q. [11:52:02] Okay. Was this one of the documents shown to you, if you recall,  
19 during your proofing session?

20 A. [11:52:09] I don't recall.

21 Q. [11:52:09] Okay. Now if we look at this document, it says (Redacted). Do  
22 you recall that number?

23 A. [11:52:29] Yes, your Honour.

24 Q. [11:52:29] That's a familiar number?

25 A. [11:52:31] Yes, your Honour.

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1 Q. [11:52:32] Okay. That's in reference to you, right?

2 A. [11:52:35] Yes, your Honour.

3 MR STEYNBERG: [11:52:37] I wonder whether this can be done in private session,  
4 your Honour.

5 MR KARNAVAS: [11:52:41] It can. It can. Thank you.

6 PRESIDING JUDGE SAMBA: [11:52:46] Madam Court Officer, can we go briefly  
7 into private session, please.

8 (Private session at 11.53 a.m.)

9 THE COURT OFFICER: [11:53:01] We're in private session, Madam President.

10 (Redacted)

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9 (Open session at 12.22 p.m.)  
10 THE COURT OFFICER: [12:22:21] We're back in open session, Madam President.  
11 MR KARNAVAS: [12:22:26] (Microphone not activated)  
12 PRESIDING JUDGE SAMBA: [12:22:28] Mr Karnavas, your mic.  
13 Have you looked at tab 27. I see quite a few numbers and names there. So we  
14 remain -- do you want us to be in public session or ...  
15 MR KARNAVAS: [12:22:41] We might be able to go quicker in -- in private session,  
16 then I could always do a little summary, your Honour, if that's not too -- and I think I  
17 tend to be rather concise and precise.  
18 PRESIDING JUDGE SAMBA: [12:22:55] I'm sorry, Madam Court Officer. Can we  
19 go briefly again into private session.  
20 (Private session at 12.22 p.m.)  
21 (Redacted)  
22 THE COURT OFFICER: [12:23:12] We're in private session, Madam President.  
23 (Redacted)  
24 (Redacted)  
25 (Redacted)



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10 (Open session at 12.59 p.m.)  
11 THE COURT OFFICER: [12:59:09] We are back in open session, Madam President.  
12 PRESIDING JUDGE SAMBA: [12:59:11] Thank you very much.  
13 Mr Karnavas, what we're going to do is to continue your cross-examination when we  
14 come back after lunch.  
15 So we will be back here at 2.30, Madam Witness, and the Prosecution and  
16 Defence team. At this stage I'll adjourn this matter till 2.30. Thank you very much.  
17 THE COURT USHER: [12:59:35] All rise.  
18 (Recess taken at 12.59 p.m.)  
19 (Upon resuming in open session at 2.30 p.m.)  
20 THE COURT USHER: [14:30:57] All rise.  
21 Please be seated.  
22 PRESIDING JUDGE SAMBA: [14:31:23] Good afternoon, all.  
23 We shall continue with the cross-examination of the witness.  
24 Mr Karnavas, your witness, please. I note that we are in open session.  
25 MR KARNAVAS: [14:31:36] Yes. Yes. Yes.

1 Thank you, your Honour. And again I want to make sure that we're very clear,  
2 I was not suggesting that we're not getting a fair trial. If anything, I am content that  
3 we are. So I just want to make sure that that's on the record and we're very clear on  
4 that.

5 PRESIDING JUDGE SAMBA: [14:31:56] Thank you very much, Mr Karnavas.

6 MR KARNAVAS: [14:31:58] Also, if we could, five minutes reserve at the end for  
7 a housekeeping matter that has nothing to do with this witness, but just something  
8 that I wish to raise. Nothing alarming, but it's a housekeeping matter.

9 And with that, if we could turn to tab 78, and what I wish to do to clarify the -- to  
10 clear the record and to do a bit of the Prosecutor's rebuttal, redirect, if I may. He  
11 referred to a document that was dated, I believe, April, April 7, 2013. It's tab 78. It's  
12 KEN-OTP-0097-0068. And he's absolutely correct and this was in our binders, as  
13 you could see. But I just wanted to differentiate between investigating in the main  
14 case and investigating in Article 70 matters, so ...

15 Binder 3. This way perhaps Mr Steynberg need not tax himself tonight.

16 PRESIDING JUDGE SAMBA: [14:33:26] Madam Witness, if you're looking for it, it is  
17 in volume 3 of the Defence's binder.

18 MR KARNAVAS: [14:33:36] And I believe that this is the document that  
19 Mr Steynberg was referring to.

20 PRESIDING JUDGE SAMBA: [14:33:46] Have you seen it, Madam Witness?

21 THE WITNESS: [14:33:49] You say which number?

22 PRESIDING JUDGE SAMBA: [14:33:51] Tab 78.

23 MR KARNAVAS: [14:33:53] Tab 78.

24 THE WITNESS: [14:34:00] The number here is showing 49 is the last.

25 MR KARNAVAS: In binder --

1 PRESIDING JUDGE SAMBA: [14:34:04] In volume 3.

2 MR KARNAVAS:

3 Q. [14:34:06] Volume 3. Volume 3. So the ...

4 A. [14:34:11] Not here.

5 Q. [14:34:15] My apologies. There are so many documents, but I can assure you  
6 we're not going to go through every single one of them.

7 Do you have it, Ma'am?

8 A. [14:34:45] Yeah, you say 73.

9 Q. [14:34:49] Yeah. All right. I mean 78. I'm sorry, 78. Volume 3, 78, tab 78.

10 And on page 1, when you locate it, you'll see that this is an interview of you that was  
11 mentioned by Mr Steynberg and it's April 7, 2003. It's one of those short interviews.

12 It's only an hour and a half. Do you have it?

13 A. [14:35:26] Yes, your Honour.

14 Q. [14:35:27] Okay. Good. Good. Good.

15 Now if you could be so kind as to turn to page -- page 3. This is just a housekeeping  
16 issue.

17 If we look at paragraph 14, it says: "I have been shown a number of documents by  
18 the investigators ..." and they list all those. So they actually -- now this time they're  
19 sharing information with you. Okay? Right? Do you recall that meeting?

20 I know it was a long, long time ago. But it says here that: "I have been shown  
21 a number of documents by the investigators". In other words, they showed you

22 documents on that particular day. Do you see that?

23 A. [14:36:31] It was a document. Not documents.

24 Q. [14:36:34] Okay. I'm just reading this. So if you want to correct it, that's fine.

25 So you're saying that on that particular day you vividly remember, on April 7, 2013 - I

1 know that you've been blessed by God with a good memory - you're saying on that  
2 particular day the investigators have it wrong, they only showed you one document  
3 and not all the documents that are listed.

4 A. [14:37:07] I don't remember that.

5 Q. [14:37:09] Okay. But that's what it says, that you were shown documents.  
6 That's what this says, right?

7 A. [14:37:16] Yes. Yes, your Honour.

8 Q. [14:37:20] Okay. All right. And there's no trick question. There's no need to  
9 think where's he going with this question. These are very simple questions  
10 and -- and the sooner you answer them the sooner we can get out of here:

11 "I recognise these as reports - plural - "which I gave to [person number 63] of  
12 the [organisation of -- of 1]." Do you see that?

13 And then you say: "I sent these reports in one parcel to him by post through the bus  
14 company." Do you see that?

15 A. [14:38:27] I can see that, your Honour. But you said which one again --

16 Q. [14:38:31] Okay, if we look at -- if we look at paragraph 14 --

17 A. [14:38:38] I'm talking about the organisation, your Honour.

18 Q. [14:38:40] Oh, the organisation, it's number 1.

19 It's on page 3 of this document. If you look at that organisation, number 1, it seems  
20 to match the one that's ...

21 A. [14:39:02] Yes, your Honour.

22 Q. [14:39:03] Okay. So you stand by that, right?

23 A. [14:39:06] Yes, your Honour.

24 Q. [14:39:09] Okay. Then you go down to page -- to paragraph 15. You say:

25 "The author of these reports is ..." and you give the name of number 8, right?

1 A. [14:39:30] Yes, your Honour.

2 Q. [14:39:30] Okay. So then we go to paragraph 16 and you say: "I received the

3 information concerning the disagreement between ..." between 43 and this other

4 individual, I don't know if he's on the list. I don't believe he appears on the list.

5 But anyway, you can -- you can -- you can -- and person 1. Is that the same person?

6 I believe so.

7 A. [14:40:19] Yes, your Honour.

8 Q. [14:40:20] Okay. And he's with organisation 4, correct?

9 Correct? He's with organisation number 4?

10 A. [14:40:45] Yes.

11 Q. [14:40:45] Okay.

12 A. [14:40:47] Yes, your Honour.

13 Q. [14:40:49] Okay. Now just to make sure that we're clear and that

14 the Prosecution is -- is content, the information that you're providing here is -- is not

15 based on the main case, Ruto and Sang. This has to do with witness interference?

16 MR STEYNBERG: [14:41:11] Sorry, can I just ask my learned friend to give me more

17 precession. Does he mean all the information he's referred to or is it only

18 the information in the last paragraph?

19 PRESIDING JUDGE SAMBA: [14:41:22] Mr Karnavas.

20 MR KARNAVAS: [14:41:22] Well, the why I'm looking -- the way I'm reading it, it

21 appears to be all related to Article 70.

22 MR STEYNBERG: [14:41:32] I wonder whether my learned friend has actually read

23 the annexes to this statement and what they're about. Because that might answer his

24 own question.

25 MR KARNAVAS: [14:41:44] The report doesn't talk about annexes. Annexes may

1 have been provided. I'm talking about the report itself.

2 MR STEYNBERG: [14:41:51] Your Honour, paragraph 14, there's annex 1, annex 3,  
3 annex 4, annex 7.

4 MR KARNAVAS: [14:42:01] In none of those annexes, your Honour, has the witness  
5 given a statement, and I think Mr Steynberg knows that. We see it in the July  
6 statement. That's the first time since the first statement that she gave where they  
7 actually give her an opportunity to clarify what she said after she was declared to  
8 have insufficient evidence. I'm not suggesting -- I'm not suggesting that she was not  
9 passing on other information. We're talking -- there's a difference between  
10 providing documents that somebody else generated and her passing on information  
11 regarding what she heard, observed, in the Ruto and Sang case. And frankly  
12 it's -- it's beside the point. I think we can move on. But if -- if the gentleman thinks  
13 that I'm being unfair to the witness, he can clarify it.

14 PRESIDING JUDGE SAMBA: [14:43:05] Mr Karnavas, let me hear you. Carry on,  
15 please.

16 MR KARNAVAS: [14:43:11]

17 Q. [14:43:11] Okay. If we can go on to tab 47. Tab 47, 0117-0898. And that's in  
18 binder number 2. Binder number 2.  
19 Do you have the document, Madam?

20 A. [14:43:59] Yes, your Honour.

21 Q. [14:44:00] Okay. If you look at paragraph 2, we see that you gave figures of  
22 42,500 Kenyan shillings for your child to attend the primary school. And then 38,838  
23 Kenyan shillings for the other two children. Do you see that?

24 A. [14:44:34] I can see, your Honour.

25 Q. [14:44:35] And the total was 120,176 Kenyan shillings. This was money that



1 was provided to you by the OTP or by the victims unit?

2 A. [14:44:57] I don't know, your Honour, which -- who was who.

3 Q. [14:45:01] All right. But nonetheless, while you were in -- in their care, if we  
4 could put it that way, they were providing you with funding for a variety of things,  
5 including education, you know, school, school tuition?

6 A. [14:45:26] But that time, your Honour, I was away from home and the children  
7 were ...

8 Q. [14:45:32] I understand. I'm not -- I'm not suggesting anything wrong with that.  
9 But I just want to make sure that they're providing what would appear to be  
10 somewhat substantial amounts of money for what would also appear to be private  
11 education.

12 Now I don't know, but is that the case?

13 A. [14:45:56] Your Honour, even when I was in Kenya, my children was in private  
14 education.

15 Q. [14:46:03] So is the answer to my question, yes, they're providing you funds for  
16 private education of your children? Is that the answer to my question?

17 A. [14:46:15] Yes, your Honour.

18 Q. [14:46:15] Okay. Now just to be clear, because I don't know how -- how tuition  
19 is paid, was this for a whole year or was it for part of the year, this amount?

20 A. [14:46:33] I can't remember, my Honour, because I was away. I wasn't the one  
21 who was receiving fees for the children. There was someone who was receiving fees  
22 and handed over the receipt to the OTP, or you say VWU. So I was away, so I didn't  
23 myself receive the money. The guardian who was with the children that time was  
24 the one who was paying fees. And if you want more clarification you can go to and  
25 then they will give you more sufficient because I wasn't -- I wasn't in accounting.

1 I don't know.

2 Q. [14:47:11] Well let me be very, very clear. I'm not suggesting that you  
3 were -- they were giving you this money and that you were using it for other  
4 purposes, not here at least, so ...

5 But when you were, as you indicated, you had the children in private schools, did  
6 you get a bill once a year or did you have to pay in instalments? And do you recall  
7 how much money you were paying at the time when your children -- when you were  
8 paying for the private education?

9 A. [14:47:40] It was every term. But if you want to pay the whole year, you pay  
10 the whole year. If you want to pay every term, it's up to you.

11 Q. [14:47:56] Okay. And do you know whether these amounts would be for  
12 a term or a whole year?

13 A. [14:48:01] I've no idea, your Honour. As I told you -- can I explain,  
14 your Honour?

15 Q. [14:48:08] Yes, please. Please, please, please.

16 A. [14:48:08] As I told you, I was away from, so the people which were sending fee  
17 structure to OTP or VWU was -- according to they could not send, and then after  
18 the payment they send the receipt.

19 Q. [14:48:28] Okay.

20 A. [14:48:29] So most of the things I didn't know how much, because after  
21 the security issue my children was transferred to in Eldoret town where I was. So I  
22 didn't know that because I never ask and I was away from home.

23 Q. [14:48:45] Okay. Okay. And -- and so -- but just, it's a technical matter  
24 because I, you know -- how many terms does a year have?

25 A. [14:48:55] In Kenya it's three terms.

1 Q. [14:48:57] Three terms. Okay. Thank you. Now you indicated at one point  
2 that when you wanted to, or you could contact the -- the elder or chief in a village to  
3 get information. I think that was something you had said earlier this morning to one  
4 of my questions. So from that, I -- I suspect that you had the ability when you were  
5 outside Kenya to call and get information concerning your loved ones, including  
6 the children. Right?

7 A. [14:49:35] You are mixing the words (Overlapping speakers).

8 Q. [14:49:40] If you could just answer my question.

9 A. [14:49:42] No, your Honour.

10 Q. [14:49:43] Okay, so you could not -- you could not make phone calls  
11 from -- from outside in order to call your sister, for instance? Be careful, you're  
12 under oath.

13 A. [14:49:55] You are talking about number 36. You are not talking about my  
14 sister.

15 Q. [14:49:59] Well, right now I'm giving you an example about.

16 A. [14:50:02] But you didn't say example, your Honour.

17 Q. [14:50:05] All right. Could you communicate when you were outside of  
18 Kenya with your family members? Could you?

19 A. [14:50:10] Yes. Yes, your Honour.

20 Q. [14:50:14] Did you communicate with your family members?

21 A. [14:50:20] I could communicate, but I was not accountant to know how much  
22 or -- it is between my sister and OTP. And if you want more they have accountant,  
23 they have receipt, and the schools are there, we can find out how much (Overlapping  
24 speakers).

25 Q. [14:50:35] Ma'am, Ma'am, there's no need to get excited. And I'm not doubting,

1 and I'm not talking about the amounts. Okay. I've moved on. I just want to know  
2 whether you were able to communicate with your loved ones?

3 A. [14:50:52] Yes, I was.

4 Q. [14:50:52] To find out, to find out where, for instance, the children were being  
5 schooled?

6 A. [14:50:58] Yes, I could communicate and I was told they have gone to school or  
7 not yet.

8 Q. [14:51:03] Okay. And I take it you knew, did you -- or who selected  
9 that -- the schools that they were going to, or were they the same schools that they  
10 had been going to all along?

11 A. [14:51:19] According to there were -- my sister was in there looking after them  
12 when I was away, so he was the one looking which school is having more security,  
13 and because you cannot go putting up school which doesn't have security and  
14 my -- my life was in danger.

15 Q. [14:51:46] I understand. Okay. So it was your sister that selected the schools  
16 that somebody else was going to pay for because you were away and couldn't take  
17 care of them. That's the essence of the story, right?

18 A. [14:51:59] Yes, your Honour.

19 Q. [14:52:00] Okay. All right. We can move on to another subject. Okay.  
20 Now this is one of these housekeeping matters, something small, nothing big.

21 If we could look at tab 28, which is in volume 2. Tab 28, volume 2 is  
22 KEN-OTP-0102-0178.

23 When you find the document, please let us know.

24 A. [14:52:45] I have it, your Honour, in front of me.

25 Q. [14:52:47] okay. Good. Good. Now you'll see that -- do you see your name

1 on this document at the very top?

2 A. [14:52:55] Yes, your Honour.

3 Q. [14:52:56] Okay. And further down, if we go down where it says "Date(s) and  
4 Time(s)", we see that it was May 15, 2013 and, boy, this looks like an eight-hour  
5 interview.

6 Do you see that?

7 A. [14:53:15] Yes, your Honour.

8 Q. [14:53:17] Okay. Now if we could -- could be so kind as to turn to page 5,  
9 page 5. That would be KEN-OTP-0102-0182.

10 This is another example where you were communicating with the Prosecution,  
11 incidentally.

12 Now, if I could direct your attention to -- to paragraph 24. And it says.

13 "Yesterday [at] (14 May 2013) when I was travelling, I received a phone call from  
14 [person number 12] at 20:49. He introduced himself and asked if he speaking to me,  
15 which I confirmed. I asked him who gave him my number, but he refused to reveal  
16 the name of the person. I told him that I was not able to talk. He said that he  
17 would call me back later."

18 Do you recall that?

19 A. [14:54:33] Yes, your Honour.

20 Q. [14:54:34] Okay. And by that point, it seems from here that you were well  
21 acquainted with person number 12?

22 A. [14:54:48] I knew him before, your Honour. And when I went to protection in  
23 Kenya, I changed my number which we used to communicate before, and I had  
24 a number which I handed over to investigators.

25 Q. [14:55:03] Right.

1 A. [14:55:05] So and that is the -- I was wondering who gave him my number  
2 because I changed the number which he was -- he knew it before.

3 Q. [14:55:15] Okay. I do have a document that was provided to me by  
4 the Prosecutor, which we'll get to at some point, where you also note that you had  
5 many numbers, many phones, many numbers.

6 A. [14:55:28] The information which I talked with person -- this person wasn't  
7 accurate because I knew that person wasn't up to date, and things which he wanted  
8 me to say or to do wasn't right for the Court.

9 Q. [14:55:41] Okay.

10 A. [14:55:42] So it reaches a point I was -- discussed with him I wanted to know, to  
11 explore his mind because he wanted me to go to get a lawyer and stop talking to ICC.

12 Q. [14:55:59] Okay, well now we're heading -- we're jumping ahead of ourselves  
13 a little bit, because you were jumping a few years ahead.

14 A. [14:56:06] I was explaining why --

15 Q. [14:56:07] I understand.

16 A. [14:56:07] -- why that person was like most anything which I said to him wasn't  
17 accurate.

18 Q. [14:56:13] I understand.

19 A. [14:56:14] The information which was in the conversation, maybe the OTP got it  
20 in or tucked in was not accurate.

21 Q. [14:56:24] I understand. I understand. But we're not talking about that period.

22 We're talking about now a telephone conversation that you had on 14 May 2013.

23 Okay. This is -- I want to concentrate on this one, not the ones that follow,  
24 the 44 hours, 2 minutes and 57 seconds.

25 So if we go to paragraph 25, you say:

1 "I know [person number 12] very well [very well] because we come from the same  
2 area and we were together in [this political party] in 2007. Before 2007 I had heard of  
3 him but we had never met. After [person number 12] left Kenya, he contacted me  
4 once. I believe it was in mid-2011. At that time, I was in a witness protection  
5 programme run by [organisation 13]. [Person number 12] asked me why I had not  
6 gone with him and the rest of the witnesses to The Hague."

7 Do you recall having that conversation?

8 A. [14:58:07] I recall.

9 Q. [14:58:07] And you recall passing on this information as it's reflected here?

10 A. [14:58:12] Yes, I pass it.

11 Q. [14:58:14] Okay. Now --

12 A. [14:58:15] Because I knew the investigators and there was -- it was ICC witness,  
13 so.

14 Q. [14:58:18] Okay, I'm just -- I just want to make sure that -- now here we are  
15 going to fast forward a little bit and we're going to go to 2021, 2021. We're going to  
16 look at tab 45. Tab 45, which is in binder 2. And we've looked at this before. I'm  
17 not going to go into all of your explanations concerning this gentleman, but just to  
18 touch on one issue. So when you get to tab 45, let me know. Binder 2, tab 45.

19 A. [14:59:10] Yes, I have it.

20 Q. [14:59:11] And it's KEN-OTP-0160-0609, and I want to focus your attention, and  
21 in fairness to you, Ma'am, I will get back to this document because here you give your  
22 full explanation of your relationship and your conversations with the gentleman, so  
23 you will get a chance, but I just want to focus your attention for right now on  
24 paragraph 58, which is on page 16, which is on page 16, and it's KEN-OTP-0160-0619.  
25 So if you could be so kind as to go to paragraph 58 on page 11, and when you get

1 there let me know. Paragraph 58, page 11.

2 And for clarification for the -- for the record, this is your interview in 2021 where  
3 Mr Steynberg was present. I don't know whether he was present on this particular  
4 day because this is a multiple day, multiple hour interview. I would call it proofing  
5 session.

6 But, in any event, if we look at paragraph 58:

7 "I cannot recall the first time when [person number 12] called me but it was when  
8 I was still in Kenya. It was before I gave a statement to the ICC. [Before I gave  
9 a statement to the ICC.]

10 I cannot remember who gave [person number 12] my number."

11 And then you say: "In my previous statements I had informed the OTP about [person  
12 number 12] ..."

13 (Counsel confer)

14 MR KARNAVAS: [15:01:32]

15 Q. [15:01:33] Okay. And I - I skipped, I skipped something where -- where it says:  
16 "They told me that they were witnesses and they lived in the Netherlands". Do you  
17 recall that?

18 A. [15:01:48] Yes, your Honour.

19 Q. [15:01:48] And that's what you said last summer, 2021?

20 A. [15:01:54] Yes, your Honour.

21 Q. [15:01:55] Okay. And you say here that: "It was before I gave a statement to  
22 the ICC." Well, we've been going through lots of statements. We know your first  
23 statement was, at least for -- for the main case, in December 1 and 2 of 2012. We  
24 talked about some of these other statements. The Prosecution made an intervention.  
25 And here you're saying that you talked to this person before you gave your statement.



1 Now, this is when he called you, right? Now are we talking about -- are we talking  
2 about the 2011 call where you say he might have -- you might have had this  
3 conversation with him? Or are you talking about the time when he's asking you  
4 why aren't you in The Hague with the rest of us?

5 A. [15:02:56] Your Honour, I was talking about before.

6 Q. [15:02:58] I see. I see. So when you said: "They told me that they are  
7 witnesses", who is "they"? The Prosecution told you?

8 A. [15:03:13] Themselves.

9 Q. [15:03:13] Themselves. Well, who are they, who are -- could you -- was it more  
10 than one person?

11 A. [15:03:25] According to -- to them, they're well known because they went  
12 on -- on media, so they were well known in Kenya that those are ICC witnesses.

13 Q. [15:03:36] Well, could it be number 5? Could number 5 be there, be one of  
14 them?

15 A. [15:03:55] Yes, your Honour.

16 Q. [15:03:58] And were there anybody else or just those two?

17 A. [15:04:06] There were other two.

18 Q. [15:04:08] Okay. And were they -- were they calling you, or were you calling  
19 them, or were you all calling each other? Which of the three?

20 A. [15:04:19] I never called three of them. But the one who was calling me is  
21 person number 12.

22 Q. [15:04:33] Okay. And what about?

23 A. [15:04:35] That is he started calling me, but I never talked to the others until  
24 when I came here.

25 Q. [15:04:40] Okay. All right. That's fine. Well, I just wanted to clarify that

- 1 point.
- 2 If we could go now to the next document, tab 79. Which is in binder number 3.
- 3 Tab 79. The document is dated 25 May 2013. Tab 79, binder 3.
- 4 Do you have it? Volume 3, you know, binder 3, tab 79.
- 5 A. [15:06:14] It's starting from 50, tab 50.
- 6 Q. [15:06:19] You don't have a tab 79?
- 7 PRESIDING JUDGE SAMBA: [15:06:26] It starts from tab 51. So look for tab 79.
- 8 THE WITNESS: [15:06:40] I've got it, your Honour.
- 9 MR KARNAVAS: [15:06:43]
- 10 Q. [15:06:43] Okay. Could you please look at it.
- 11 Do you see it? Okay.
- 12 A. [15:07:24] Yeah, I can see, your Honour.
- 13 Q. [15:07:26] Okay. Can I pose the question or you still want to read it?
- 14 A. [15:07:30] You can pose the question.
- 15 Q. [15:07:31] Okay. Now, this is dated 25 May 2003 --
- 16 A. [15:07:35] Thirteen.
- 17 Q. [15:07:35] Thirteen. Sorry, sorry, I'm getting a little tired here: "She received
- 18 the 78,100 Kenyan shillings for the first term fees yesterday." Okay. Do you see
- 19 that?
- 20 A. [15:08:02] Yes, I can see (Overlapping speakers).
- 21 Q. [15:08:04] So it would now appear that, at least for one term, I don't know
- 22 whether it's for one or two or three children, it's 78,000. "She received", does that
- 23 mean that you received it or it was paid?
- 24 A. [15:08:25] It was paid.
- 25 Q. [15:08:26] Now, further down on the third point it says: "She had previously

1 quoted a figure of 15,000 Kenyan shillings/month which her sister would require for  
2 storing her belongings and looking after her children."

3 Now is this the children -- is this the mother of those two children?

4 A. [15:08:53] Yes, your Honour, but she wasn't feeling well.

5 Q. [15:08:55] I understand. I just want to -- I just want clarification because you  
6 had more than one sister, right? Or no, is she the only one?

7 A. [15:09:03] No, I have more.

8 Q. [15:09:05] okay. Well, that's why I'm asking for the -- it's just clarification, you  
9 know, just to be precise:

10 "However she gave this figure on the spur of the moment, after consulting with her  
11 sister, she believes that her sister will require 20,000 Kenyan shillings/month."

12 This money, where was it coming from? Was it the OTP, because this is an OTP  
13 report? So can I assume that this is money given or provided to you or your family  
14 members by the Prosecution?

15 A. [15:09:46] I don't know where it came from, your Honour.

16 Q. [15:09:49] Okay.

17 A. [15:09:49] But I just give the message and then it was ...

18 Q. [15:09:54] Right. And when you were in their care, somebody else was paying  
19 for your expenses, right, your accommodations, your food, your -- you know, to top  
20 up your phone and all of that, right?

21 A. [15:10:11] Yes, your Honour.

22 Q. [15:10:12] And were you also getting some sort of an allowance, if you want to  
23 call it that, some spending money?

24 A. [15:10:19] It was -- was little money.

25 Q. [15:10:21] I know it was little, but, you know, my father never gave me any

1 spending money, so little is better than nothing, right?

2 A. [15:10:27] Yes, your Honour.

3 Q. [15:10:28] Okay. All right.

4 Now, if we go further down, and it says that -- I want to make sure I don't say  
5 the name.

6 It says that you talked to person number 64. If you could look at -- find person  
7 number 64 on your list. Okay, you see it?

8 A. [15:11:15] Yes, your Honour.

9 Q. [15:11:16] Talked with person number 64 last month, and he told you that he is  
10 looking for some new OTP witnesses to see if he can get them to withdraw. Do you  
11 see that?

12 A. [15:11:33] Yes, your Honour.

13 Q. [15:11:34] Now, where were you? In what location were you at this time? Or,  
14 you know, the month before?

15 A. [15:11:46] I don't remember, your Honour.

16 Q. [15:11:48] All right. And person number 64, did you know him?

17 A. [15:11:56] Yes, your Honour. I know him when we met in -- when we were  
18 giving out WAKI report, and he's the one who disclosed me, that is why I was in -- on  
19 the run, then I went for protection. He is the one who disclosed my --

20 Q. [15:12:18] Your identity?

21 A. [15:12:19] Yes.

22 Q. [15:12:19] And that's why you decided to -- to go in hiding? And that is why  
23 you decided to go in hiding? I'm just -- right?

24 A. [15:12:28] Because they want to (Overlapping speakers).

25 Q. [15:12:30] Right. I just want to make sure that I have it right. So the person

1 who exposed you and caused you to run, now this is the same person that comes up  
2 to you and says, "Hey, I'm looking for more witnesses to withdraw, more OTP  
3 witnesses to withdraw."

4 So my first question is, where was it that you talked to this person? Was it in person  
5 or was it over the phone?

6 A. [15:13:09] I think it's over the phone.

7 Q. [15:13:12] Now when you say you think?

8 A. [15:13:14] I don't remember.

9 Q. [15:13:15] I see, okay. That falls in the category "I don't remember", "I don't  
10 know."

11 A. [15:13:19] I don't remember.

12 Q. [15:13:20] Okay. And do you remember, by any chance, whether he contacted  
13 you or you contacted him, or it was just by happenstance, by serendipity that  
14 this -- this meeting or this talk took place?

15 A. [15:13:42] Your Honour, I don't remember meeting him. On the conversation it  
16 was through phone, because I already knew this person was and then I don't -- I  
17 wasn't comfortable meeting anyone anyway, so (Overlapping speakers).

18 Q. [15:13:59] I understand that. But now, see now you're embellishing a little bit.  
19 First you say you don't know, now you're saying it was for sure a conversation over  
20 the phone. So you either remember or you don't remember. You can't have it both  
21 ways, but -- and I think we established that you said you don't remember.

22 But might I add -- might I ask, do you recall having this conversation?

23 A. [15:14:30] It has been long time, I don't remember.

24 Q. [15:14:33] Okay. So if I were to press you for more information on this  
25 particular conversation, I suspect the answer that we would be getting is "I don't

1 remember."

2 If I would press you for details on this, we would -- your answer would probably  
3 have to be "I don't remember".

4 A. [15:14:58] I will answer which I know, which I remember. But if I don't  
5 remember, I don't want to give a guesswork or assume.

6 Q. [15:15:06] Okay. So as of this -- right now, just to be clear, you don't remember  
7 whether this person -- whether you had a conversation with this person in which he  
8 told you he was looking for -- for OTP witnesses to withdraw?

9 A. [15:15:23] My answer is I remember.

10 Q. [15:15:26] Okay.

11 A. [15:15:27] I know I had conversation, but I don't remember exactly when was it.

12 Q. [15:15:32] Now, when you had this conversation with this person, did you know  
13 that he had exposed you? You said that he exposed you, caused you to go on the  
14 run. Did you know that he was the one responsible for exposing you?

15 A. [15:15:51] Yes, your Honour.

16 Q. [15:15:53] Okay. And did -- and obviously he knew that he had exposed you,  
17 if -- if indeed that's what happened, right?

18 A. [15:16:05] He knew that I had kept in contact and he was also -- he  
19 wanted -- also he was -- he was in newspaper and he was on radio. He was talking  
20 freely about ICC, so -- and it was anybody who went for WAKI report, they were  
21 suspecting that he is with ICC.

22 Q. [15:16:27] Okay.

23 A. [15:16:28] So everybody was trying his best to get to know who is who. And  
24 because he was there, he knew very well that so and so and so, we were together  
25 when we were giving WAKI report. So he was using that opportunity. And there

1 were also ...

2 Q. [15:16:47] Yeah, I'm listening, I'm listening.

3 A. [15:16:50] The other side knew also. (Redacted) knows people in that side.

4 Q. [15:16:56] Okay. Alright. We have to be careful not to say any -- I think we're  
5 in -- in public session. So I kindly ask you not to mention any names or places.

6 And then if we go to the very last section, the very last point, it says that -- I don't  
7 have the number right off the bat, but my cheat sheet, but it looks like 53, is it? Okay.  
8 Hold on. One moment, your Honour.

9 (Counsel confer)

10 MR KARNAVAS:

11 Q. [15:17:45] That person number 63, his wife, had a conversation with you. Do  
12 you see that? To tell you that person number 62 has been hired by the other side.  
13 Do you see that?

14 A. [15:18:11] Yes, your Honour. She told me.

15 Q. [15:18:12] Okay. So this is again information that somebody is telling you.  
16 Presumably, she heard it from somebody else, right?

17 A. [15:18:24] I -- I can confirm it to you, your Honour, that this information was  
18 true, because in the recording I spoke to that person and he said he came to location  
19 where he was, he met and he left a message for me.

20 Q. [15:18:41] Okay. So this is one of those occasions where you actually had  
21 evidence that would support what his wife was -- was telling you. That's what  
22 you're telling us?

23 A. [15:18:58] Yes, your Honour.

24 Q. [15:18:59] So just to make sure I understand this - and this is a critical  
25 point - that -- that this person confirmed to you what his wife had learned from him,

1 and that's why you could say with such certainty that indeed this is a fact?

2 A. [15:19:35] Yes, your Honour.

3 Q. [15:19:35] Okay. Thank you.

4 If we go on to the next document. And this is in tab, tab 41. Binder 2, tab 41.

5 Do you have it?

6 A. [15:20:47] Yes, your Honour.

7 Q. [15:20:48] Okay. Now this document is dated May 26, 2013. And again it  
8 appears that you are contacting the OTP investigators to give them more information.

9 So you're like an investigator out there in the field gathering information, learning  
10 and passing it on to the investigators.

11 A. [15:21:15] Your Honour, I was not investigator, but I was supporting them to get  
12 information, the truth about post-election violence, what happened.

13 Q. [15:21:25] And it just so happened that everybody was talking to you and that's  
14 why you were able to facilitate that information from them to the OTP?

15 A. [15:21:35] Even people didn't know that I was in contact with them, but because  
16 of other witnesses went and reported that I am in contact with them. That is  
17 the reason all these things was -- was paused.

18 Q. [15:21:52] I thought -- I thought you said earlier that everybody assumed that if  
19 you were being protected by them you were automatically with the ICC. That was  
20 an assumption, it went without saying. That's what you told us earlier.

21 A. [15:22:06] What did you say?

22 Q. [15:22:07] That it was people believed, whether it was true or not, that you  
23 already were on the ICC side because you were being protected by them. That's  
24 what you told us.

25 A. [15:22:21] No, your Honour. Let me clear. What I said is people in the village,



1 they don't understand between human rights and ICC. They think they work  
2 together. So whenever you were working with human rights, they assume it is ICC.  
3 So even when I was with human rights they were still thinking I was with ICC. And  
4 they were all over, because I remember one incident I went to a church and then one  
5 village elder stand in front and say there are two people had come out and we expect  
6 those ones which are around to come out and talk and say publicly we declare we are  
7 no longer with. So it was just assumption, because I didn't support the other side, so  
8 it was all of them was against me, thinking that I am in that ...

9 Q. [15:23:19] I understand, Ma'am. I understand totally. And you said  
10 the assumption was that if you were -- if you were in hiding that you were with  
11 the ICC. That's what -- that's the impression that you gave us earlier. Just like  
12 you're saying that because you were in human rights the assumption was you were  
13 with the ICC.

14 A. [15:23:36] Yes, if you go hiding they think you are with ICC.

15 Q. [15:23:44] Right. So if they think that you're with the ICC ...

16 A. [15:23:48] So they keep on trying, asking, are you one of them, so they can bribe  
17 you. And if I was -- all this is assumption, why did they -- your client pay money to  
18 the other witnesses? Because if it was true (Overlapping speakers)

19 Q. [15:24:06] Earlier -- Ma'am, Ma'am, earlier today you told us that you never met  
20 him, you never heard from him, you never had any contact with him. But now  
21 you're saying as if you know that this occurred. Now I understand --

22 A. [15:24:19] According to --

23 Q. [15:24:21] I under -- according to what you were being told?

24 A. [15:24:22] Yes, your Honour.

25 Q. [15:24:25] Exactly.

1 PRESIDING JUDGE SAMBA: [15:24:26] Okay. Apart from that, Madam Witness,  
2 this is how we do things here: Counsel puts the question to you and you answer.  
3 Okay?

4 THE WITNESS: [15:24:38] Yes, your Honour.

5 PRESIDING JUDGE SAMBA: [15:24:39] Not asking questions.

6 MR KARNAVAS: [15:24:41] If we could go --

7 PRESIDING JUDGE SAMBA: [15:24:43] Okay?

8 THE WITNESS: [15:24:41] Yes, your Honour.

9 MR KARNAVAS: [15:24:45] Thank you, your Honour.

10 Q. [15:24:47] Tab 41, if we could look at the details of the incident and it says:

11 "The witness" - that's you - "called the FOLC to ask him to call [person number 30],  
12 who she claims [she claims]" - that's you - "had not been in communication with OTP.  
13 She was asked if she had been tasked by the ID handler to establish communication  
14 with [person number 30], a question she evaded by asking the FOLC just to call and  
15 establish the facts."

16 Do you see that, Ma'am?

17 A. [15:25:56] It's there, but I don't remember.

18 Q. [15:25:57] You don't remember. Well, would they be lying when they say that  
19 when they were asking you if you had been tasked, if you had been given an  
20 assignment to establish communication with person number 30 that you  
21 avoided -- evaded answering the question? Would they be lying about that?

22 A. [15:26:32] I don't know.

23 Q. [15:26:35] Okay. You don't know whether they would be lying or you just  
24 don't remember being cagey about it?

25 A. [15:26:43] I don't remember.

1 Q. [15:26:45] But it's possible that you were cagey, because -- for whatever reason?

2 A. [15:26:51] No, your Honour.

3 Q. [15:26:52] Okay. Thank you. And then it says here that you had a new  
4 contact number and you provided that number to them, right?

5 A. [15:27:03] Yes, your Honour. This is my neighbours, and I used to  
6 communicate with, and people ICC.

7 Q. [15:27:10] Ma'am, I just wanted to establish the fact. The point that I was trying  
8 to make is that you all of a sudden are calling, as if you are an investigator, telling  
9 the OTP what they should be doing. And when asked concretely whether you were  
10 tasked with that mission, you were cagey in your answer, you avoided answering  
11 the question. That's all I'm trying to establish. And you're telling us that you have  
12 no recollection of this; is that right?

13 PRESIDING JUDGE SAMBA: [15:27:54] Do you want to answer the question,  
14 Madam Witness?

15 THE WITNESS: [15:27:59] Yes, your Honour. I was --

16 MR KARNAVAS: [15:28:08]

17 Q. [15:28:08] You were being cagey?

18 A. [15:28:09] No, your Honour.

19 Q. [15:28:10] You don't remember?

20 A. [15:28:11] No, I was not.

21 Q. [15:28:12] Okay. Very well.

22 Let's go on to tab 48. Tab 48 and in binder number 2.

23 Tab 48, binder number 2. It's a document that was filed on June 7, 2013. It's

24 KEN-OTP-0117-0901.

25 Do you find -- do you see it?

1 A. [15:29:02] Yes, your Honour.

2 Q. [15:29:03] Okay. And if you look at the first part, it says that you advised OTP  
3 investigators that individuals suspected of working for -- for Ruto were involved in  
4 attempting to locate witnesses. This is one of -- another one of those occasions, and  
5 then we see three particular names. Do you see that?

6 You're passing on information again what you heard to the OTP, right?

7 A. [15:30:00] Yes, your Honour.

8 Q. [15:30:00] And then it goes on, it says P -- it says that you are expecting that at  
9 least one of them will attempt to you dissuade you from testifying, by offering  
10 something.

11 Do you see that?

12 A. [15:30:22] Yes, your Honour.

13 Q. [15:30:23] So you were forecasting that one of those three people is bound to try  
14 to tempt me not to testify by offering me money. You were forecasting it?

15 A. [15:30:44] No, your Honour.

16 Q. [15:30:45] Okay. We can move on to tab 56.

17 A. [15:31:01] In the same binder, your Honour?

18 Q. [15:31:03] I'm sorry, binder number 3. Binder number 3. Apologies.

19 Do you have it?

20 A. [15:31:48] Yes, your Honour.

21 Q. [15:31:49] Okay. And this is KEN-OTP-0117-0155. It's dated July 20, 2013.

22 And it says: "The witness sent a text message to FOLC that reads ..." that (Redacted)  
23 was attacked last night (Redacted). Do you see that?

24 A. [15:32:29] Yes, your Honour.

25 Q. [15:32:30] Okay. Then if we go to tab 50 -- tab 57. That should be

1 the next -- next document. We can see an investigator report, looks like a follow up.  
2 And if we look at the first paragraph and it appears that you're being contacted so  
3 that more information can be gathered concerning (Redacted) assault; is that  
4 correct?

5 A. [15:33:21] Yes, your Honour.

6 Q. [15:33:23] Okay. Now if we go to tab 33, which is in binder 2.

7 I apologise, these are not in order. I keep shifting everything so -- as I rework my  
8 cross.

9 Do you have it? Do you have it? Tab 33. Tab 33. This is another one of those  
10 reports. It's a witness statement, but it's a continuation of the same thing. And  
11 the KEN number is OTP-0111-0162.

12 And I should have mentioned the other two KEN numbers. I apologise. For 56,  
13 tab 56 it should be 0117-1055, and for tab 57 it is KEN-OTP-0117-0915. Apologies.  
14 Now, here we have a witness statement, it's by you and we can see the date. In fact  
15 there are multiple dates, 17, 20, 21, 22 July 2013 over extended periods of time. Do  
16 you see that? The bottom of the page.

17 A. [15:35:52] Yes, your Honour.

18 Q. [15:35:54] All right. And then if we look at paragraph 44, paragraph 44, which  
19 is on page 9, on KEN-OTP-10 -- OTP-0111-0170. On paragraph 44 you seem to give  
20 a description.

21 If you could look at 42, 43 and 44, they relate to this incident, right?

22 A. [15:36:32] Yes, your Honour.

23 Q. [15:36:32] And it was during this time that it was suggested that perhaps you  
24 could call (Redacted), get him on the phone and tape-record him, right? So he  
25 could relate to you what had happened. Do you recall that?

1 A. [15:36:54] Yes, your Honour, I was with investigator when I was talking to  
2 (Redacted).

3 Q. [15:36:59] Exactly. The investigator wanted you to call him up on the spot,  
4 which I assume they could have done and did do on other occasions, to have you call  
5 somebody, tape record them to get the story, right? And that's what happened here,  
6 you called (Redacted)?

7 A. [15:37:18] Yes, your Honour.

8 Q. [15:37:18] Okay. Now if we look at tab 53, which is in binder 2. Binder 3,  
9 apologies. Binder 3. And it's KEN-OTP-0160-1362.

10 And here, when you find it, I'm afraid we have it only in English, and if you see  
11 the red marks, when you get to it --

12 A. [15:37:51] You are saying tab?

13 Q. [15:38:08] The tab, I'm sorry, tab 53, tab 53. The translation was corrected  
14 recently. Or as the OTP puts it, enhanced. And so the red markings are  
15 the enhancement of the transcription and the translation. And so if we begin we  
16 could see the initials. Do you see your initials? If you look at page 1. Just look at  
17 page 1 at the very top, you don't have to page through all of these.

18 A. [15:38:58] Yes, your Honour.

19 Q. [15:38:59] And those -- do you see your initials?

20 A. [15:39:01] Yes, your Honour.

21 Q. [15:39:03] And the other initials, are those of (Redacted)?

22 A. [15:39:06] Yes, your Honour.

23 Q. [15:39:07] Okay. And I don't think I want to read all of it, but if you were to  
24 spend a minute or so in looking over up until, say, line 25, to tell us whether this was  
25 the conversation that you were having with (Redacted) when you were asked

1 to -- to tape-record him - unbeknownst to him, by the way, he didn't know that he  
2 was being tape-recorded, not that it matters - and tell us whether this is  
3 the conversation.

4 A. [15:39:56] Yes, your Honour.

5 Q. [15:39:58] Okay. If we go to line 25, just for a little context. It says, (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Do you see that?

14 MR STEYNBERG: [15:40:42] I apologise to interrupt my learned friend, but I wonder  
15 whether this is a matter that shouldn't be dealt with in private session.

16 MR KARNAVAS: [15:40:52] Your Honour, it doesn't need to be dealt in private  
17 session, we haven't mentioned any names. The point I think -- I don't need to read  
18 on. Maybe a couple of more lines, but you'll see there are no names being  
19 mentioned.

20 MR STEYNBERG: [15:41:06] But my learned friend has mentioned a relationship  
21 and a specific incident and a specific conversation.

22 PRESIDING JUDGE SAMBA: [15:41:13] Yes, Mr Karnavas, I think let's go into  
23 private session for a little bit.

24 MR KARNAVAS: Yes.

25 PRESIDING JUDGE SAMBA: [15:41:18] Madam Court Officer, please kindly get us

1 into private session.

2 (Private session at 3.41 p.m.)

3 THE COURT OFFICER: [15:41:32] We're in private session, Madam President.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)



Trial Hearing  
WITNESS: KEN-OTP-P-0613

(Private Session)

ICC-01/09-01/20

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Trial Hearing  
WITNESS: KEN-OTP-P-0613

(Private Session)

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Trial Hearing  
WITNESS: KEN-OTP-P-0613

(Private Session)

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10 (Open session at 3.49 p.m.)  
11 THE COURT OFFICER: [15:49:15] We are back in open session, Madam President.  
12 PRESIDING JUDGE SAMBA: [15:49:18] Thank you very much, Madam Court  
13 Officer.  
14 And I note that we just released the witness. Cross-examination will continue  
15 tomorrow.  
16 Yes, Mr Karnavas, over to you, please.  
17 MR KARNAVAS: [15:49:31] Thank you. Thank you, your Honour.  
18 Over the lunch break, over the lunch break the Prosecution provided us with  
19 a courtesy copy of a victim application form and it's, as I understand it, for the next  
20 witness. Now, this victim's application form was filled out on 17 March 2011. So  
21 we received it today at approximately 1.43 p.m. The witness is scheduled to start on  
22 Monday.  
23 Now I understand that, in trying these sort of cases where there are lots of documents  
24 and what have you, things just fall through the cracks, it just happens. But I have to  
25 say that, and I don't mean this disrespectfully because I know that my learned

1 colleague on the other side is trying his level best, but it's not enough. He has plenty  
2 of people, and maybe that's the problem, he's got too many people, too much staff,  
3 that's why they -- they can't get their act together to provide us with the disclosure  
4 material on time. And I'm being very blunt.

5 I think this is not going to make or break our weekend. We're not going to show up  
6 asking for a continuance because somehow this document is preventing us from  
7 getting a fair trial. But what I am suggesting, and I'm putting my marker down  
8 because I've been -- I've been rather patient and I've been rather generous in letting  
9 them slide. Even when the -- your Honour has been telling them over and over  
10 again this is not the first time, second time, third time, they have been -- you have  
11 been warning them that they needed to be a little bit more careful.

12 I'm hoping that this is the last time that I'm going to receive late disclosure material.  
13 If they have other late material to disclose, they ought to tell us that maybe there's  
14 other stuff forthcoming with other witnesses so we can make an application. But  
15 certainly, if it's something serious, I will be asking that it not be admitted.

16 And again, I understand things fall through the cracks. I don't wish to embarrass  
17 anyone, but it puts us in a very difficult position. It taxes our limited resources and  
18 it tests our patience. Thank you.

19 PRESIDING JUDGE SAMBA: [15:52:33] Certainly, because you also have to prepare  
20 for your case.

21 Mr Steynberg, do you have any comments to make, and if so do you -- I want you to  
22 address the Court on whether or not you have more disclosure materials, in fact.

23 MR STEYNBERG: [15:52:50] Your Honour, firstly this also came to my attention. I  
24 have been in court all day and all day yesterday, as you know, so it's the persons that  
25 have been preparing this witness that discovered this document that was overlooked.

1 I cannot speak to the circumstances of it as I stand here today.

2 But I'm just trying to grasp the logic of my learned friend's argument that -- that when  
3 he asked me if there are any other overlooked documents that I might want to  
4 disclose. I mean, it's not like I'm withholding -- we're withholding documents that  
5 we know we have, but we have an ongoing, obviously, duty of disclosure, and if and  
6 when documents come to our attention that ought to have been disclosed and will be  
7 disclosed, then they have been and will be provided to the Defence as soon as  
8 possible, as we've done in this case.

9 For the record, my learned friend says he would object to this material being admitted.  
10 This is not being disclosed as INCRIM, and we don't rely on this. We're providing  
11 this to my learned friend so that he can prepare, and we provided as soon as we  
12 found it, which was today.

13 PRESIDING JUDGE SAMBA: [15:54:00] Well, what I can say is that you have to try  
14 a little bit more, Mr Prosecutor, so that you disclose documents or evidence in  
15 a timely manner. Because, you know, you have to be -- we have to be fair to  
16 the Defence, they have to prepare their case. It's a case against them, they have to  
17 really, really try to, you know, appear before the courts to know what they're doing.  
18 But if you disclose late, I mean like Mr Karnavas is saying, that's not too good.

19 MR STEYNBERG: [15:54:31] Understood, your Honour. And obviously we  
20 apologise for this oversight. But, I mean, my learned friend is implying that has  
21 happened repeatedly, and as far as I'm aware there have been a very limited number  
22 of oversights, considering the volume of documents. I mean if one were to do  
23 a calculation as to the number of thousands of pages that have been disclosed by  
24 the deadline and the number that have been discovered since, it's -- it's -- honestly, it's  
25 a drop in the ocean.

1 But, of course, our wish is that we pick up and disclose everything by the necessary  
2 deadlines, and of course where we -- where we fall short of that standard we will  
3 obviously apologise and do our best to rectify as soon as we can.

4 PRESIDING JUDGE SAMBA: [15:55:16] Thank you very much. Thank you.

5 Mr Karnavas.

6 MR KARNAVAS: [15:55:17] Nothing, your Honour. I just -- I take -- I take  
7 the gentleman at his word and, yes, there have been some late disclosure, but overall  
8 there have been instances where, with all due respect, they've been less than diligent.  
9 And it's been pointed out to them, not by me, but by the Chamber, in messages. So I  
10 understand the gentleman is very busy and others are looking after it, but he is  
11 the boss, he is the one in charge, he's going take the blame. And when he wins, he'll  
12 take the glory too, if he wins.

13 MR STEYNBERG: [15:55:49] Your Honour, if I may just add one other thing. It  
14 would have been nice if my learned friend -- he raised this issue at the beginning of  
15 this session, he could have provided me with some -- a heads-up that he was going to  
16 raise this point. He surprised me now and, obviously, now I'm expected to provide  
17 an answer to the Chamber, which puts me in a very difficult position when I've been  
18 given no notice of the issue that he wishes to raise.

19 PRESIDING JUDGE SAMBA: [15:56:11] That's okay. That's addressed.

20 On that note, we're going to 4 o'clock now, so this Court stands adjourned. We meet  
21 here tomorrow at 9.30 in the morning to continue with the cross-examination of  
22 the witness.

23 Thank you very much.

24 THE COURT USHER: [15:56:28] All rise.

25 (The hearing ends in open session at 3.56 p.m.)