

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul and
4 Judge Cuno Tarfusser
5 Situation in the Republic of Kenya - ICC-01/09-01/11
6 In the case of the Prosecutor versus William Samoei Ruto,
7 Henry Kiprono Kosgey, and Joshua Arap Sang
8 Confirmation of Charges Hearing
9 Wednesday, 7 September 2011
10 The hearing starts at 2.30 p.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE TRENDAFILOVA: Please be seated.
15 Good afternoon to everyone present in the courtroom and in the
16 public gallery. Let us start with the Court Officer kindly calling the
17 case.
18 COURT OFFICER: Good afternoon, Madam President, your Honours.
19 This is the situation in the Republic of Kenya, in the case of the
20 Prosecutor versus William Samoei Ruto, Henry Kiprono Kosgey, and
21 Joshua Arap Sang, case number ICC-01/09-01/11. Thank you, Your Honours.
22 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer.
23 Now we have approached the time for the questioning -- in our
24 schedule for the questioning of the second witness of the Defence of
25 Mr. Sang. I was informed by the Victims and Witnesses Unit that we have

1 just for the witness to enter the courtroom to go into closed session,
2 and then he's going to answer the questions by the Defence team, the
3 Prosecutor, if the Legal Representative would like to pose some questions
4 in open session.

5 So, Court Officer, would you make arrangements for -- for us to
6 go into a closed session.

7 (Closed session at 2.32 p.m.)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Open session at 2.35 p.m.)

24 COURT OFFICER: Madam President, your Honours, for the record,
25 we're back in open session. Thank you.

1 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer. Again
2 good afternoon, Mr. Witness. You're before Pre-Trial Chamber II of the
3 International Criminal Court. You're called to give your testimony in
4 the case of the Prosecutor against Mr. Ruto, Mr. Kosgey, and Mr. Sang.
5 You have been invited especially by the Defence team of Mr. Sang.

6 Just to inform you about -- to make some points and to inform you
7 first of the order of the questions to be put to you. First, it is the
8 Defence team of Mr. Sang who has invited you to the court to answer some
9 of the questions that are going to be put to you. Thereafter, if some of
10 the other Defence teams would have some questions, and then comes the
11 Prosecutor's team. Of course, last will be again the Defence team of
12 Mr. Kosgey to put some questions to you -- of Mr. Sang, I'm sorry.

13 Apart from the duty of the Registrar to inform you about the --
14 about some procedures before the ICC, I would like to inform you that
15 pursuant to the statutory documents of this institution, the Rome
16 Statute, the Rules of Procedure and Evidence, the
17 Regulations of the Court, the Regulations of the Registry as well, each
18 of the witnesses have to make a solemn undertaking as to the truthfulness
19 of the evidence you're going to provide to Pre-Trial Chamber II. Thus
20 you're required in a while to give an undertaking as to the truthfulness
21 of the information to be provided to us.

22 I would also like to remind you that in accordance with Article
23 70(1)(a) and Rules 66(3) of the Rules of Procedure and Evidence, the
24 court has jurisdiction over the offence of giving a false testimony as
25 well as jurisdiction with regard to misconduct before the court.

1 Finally, I would like to inform you about your right pursuant to Rule 74
2 against self-incrimination. In particular, you have to be aware that
3 according to the law, you may object to make any statement that might
4 tend to incriminate you, and second, you have to be assured that the
5 evidence provided in response to the questions to you will not be used
6 directly or indirectly against you in any subsequent prosecution by the
7 court. Of course, with the exception of the offences -- if you are to
8 commit some offences here in the courtroom and misconduct before the
9 court. Then, in these two cases - that we strongly hope will not be the
10 case with you, like with any other witness up until now - we have
11 jurisdiction. Apart from this, you can just provide the information as
12 you have yourself observed regarding the events that fall within the
13 subject matter of the case before the Chamber.

14 Now, would you, Court Officer, assist the witness in his solemn
15 undertaking.

16 COURT OFFICER: I solemnly declare.

17 THE WITNESS: I solemnly declare.

18 COURT OFFICER: That I will speak the truth.

19 THE WITNESS: That I will speak the truth.

20 COURT OFFICER: The whole truth.

21 THE WITNESS: The whole truth.

22 COURT OFFICER: And nothing but the truth.

23 THE WITNESS: And nothing but the truth.

24 WITNESS: KOSGEI JACKSON KIPKEMOI

25 PRESIDING JUDGE TRENDAFILOVA: Thank you very much indeed.

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1 Now, before we proceed with the questioning, I would ask you to
2 identify yourself by stating your full name, date, and place of birth,
3 your education, your marital status, and current occupation.

4 THE WITNESS: Thank you. Madam President, your Honours, my names
5 are Kosgei Jackson Kipkemoi, born in 1956, in Lambos (* phon) location,
6 the current Baringo county. I am married, blessed with four children,
7 and a grandfather of three. I am a clergyman in the sense that I'm a
8 Christian leader and a preacher. Yep.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Kosgei.
10 That is how you're going to be addressed by us.

11 Now the floor is over to the team of Mr. Sang for questioning of
12 Mr. Kosgei.

13 MR. KIGEN-KATWA: Madam President and your Honours, the evidence
14 will be led by my colleague Mr. Philemon Koech, with your permission,
15 your Honours.

16 PRESIDING JUDGE TRENDAFILOVA: Of course. Please, Mr. Koech, go
17 ahead.

18 MR. KIGEN-KATWA: Yes, Madam President, your Honour.

19 MR. KOECH-BUSIENEI: Thank you, Madam President.

20 Questioned by Mr. Koech-Busienei:

21 Q. Bishop, following your introduction, as requested by the Chamber,
22 the first thing I would like you to do is to expand on your academic and
23 other achievements of your life.

24 A. I have a minimum university degree, Bachelor of Arts in theology
25 and social sciences, just among others, and entire my life I've been a

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1 clergyman, participated in social -- Christian social concerns in welfare
2 associations for communities in the Republic of Kenya. I have also been
3 serving in a state office as commissioner in the National Commission on
4 Gender and Development, until now when the bill enacting the new
5 commission which is going to be a successor and therefore have been --
6 those are, in brief, the capacities I've served.

7 Q. (* Overlapping speakers)

8 A. I've also served in different boats, Mr. Defence.

9 Q. Thank you very much, Bishop. Now, do you know the suspects in
10 this case, Henry -- William Samuel Ruto, Henry Kosgey, and Joshua Sang?

11 A. Yes, I do.

12 Q. Are any of them related to you?

13 A. No.

14 Q. Now, your current occupation. Please repeat your current
15 occupation as at this time.

16 A. As at this time I am a leader of the church. I have been
17 severing the church from 1974 for the last 37 years. I have served in
18 the national executive council of the same from 1987. I was elected the
19 general secretary of my organisation from 1997 to last year when I was
20 elected the presiding bishop of my church through an election. Today I'm
21 the presiding bishop, meaning the executive of our organisation which
22 cuts across the whole country.

23 Q. Right. You said the -- your church cuts across the whole
24 country?

25 A. Surely.

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1 Q. Right. Who are the other officials of the church?

2 A. Well, I'm deputised by -- would you like me to mention names?

3 Yes. Then my presiding -- deputy presiding bishop is Elliott

4 Karanja (* phon). The second General is Jonathan Kiragu. The deputy

5 secretary-general is Enok Ugwom (* phon). Those names -- and then among

6 those other top executive officers.

7 Q. Thank you. Now, do you know my client Joshua Sang?

8 A. Yes, I do.

9 Q. In what capacity do you know him?

10 A. I've known Joshua Sang one is -- has been working with the

11 Christian studio for many years before he joined the current studio. He

12 was serving with Biblosema (* phon) Studio and that's where I knew him

13 because we were conducting several programmes using the station. I came

14 to know him. I have also known his family. They are Christian families,

15 and through to that extent I know Joshua.

16 Q. Right. Have you interacted with the radio station where he works

17 in any way?

18 A. Like I said, like many other radio stations, we have used -- we

19 have two, three Christian radio stations Sayare, we have Osimba -- I mean

20 Biblosema Studio, we have Radio Injili, and then the Kass FM. We have

21 Changei. We have related with -- I have carried out programmes through

22 all of them.

23 Q. Have you ever been interviewed by Mr. Sang?

24 A. Sure, yes.

25 Q. Now, would you mind telling this Chamber what happens, what

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1 preliminaries happen before such an interview is conducted.

2 A. In interviews carried out in radio stations -- and you can tell
3 I've been in the church for many years, and I've been a public speaker
4 addressing various issues in the country. And like any other rules,
5 routine rules, Joshua would talk about being aware that the regulations
6 under the Communication Commission of Kenya, which regulates licence and
7 regulates every radio station in the country, requires that you do
8 everything within the laws of Kenya. Two, every matter discussed should
9 not implicate anybody personally or corporate bodies in a manner that
10 would suggest you're preaching the law in the country and be ethical
11 using your language. I think those are basically some of the basic
12 rules.

13 Q. Thank you very much. Moving on to another issue. Were you in
14 Kenya in the year 2007?

15 A. Sure, yes.

16 Q. Did you listen to Kass FM during that time?

17 A. Yeah. Often as I have time I would listen to Kass FM, yes.
18 Especially mornings before we -- we go for duty.

19 Q. Would that be the programme called Lene Emet?

20 A. Yes, sure. Sure.

21 Q. Did you hear any incitement or bad language about violence
22 pronounced by the presenter Joshua Sang at that time?

23 A. No. No. And I would wonder how would that happen, because the
24 radio station was broadcasting to millions of people in the country, and
25 it is under the full eye and observation of the state. I had not -- did

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1 not hear, and I would not expect it, Mr. Defence.

2 Q. All right.

3 A. I wouldn't have expected it, yeah.

4 Q. Were you aware of any code that was in use at Kass FM at around
5 that time?

6 A. Cord? Could you repeat that?

7 Q. Did you become aware of any code? Coded language?

8 A. Coded language?

9 Q. Yes.

10 A. Mr. Defence, it is interesting to hear of a coded language in a
11 broadcast which is aimed at broadcasting issues to the people of Kenya.
12 I don't know. I never had. I don't know of any coded language. Maybe I
13 would (* indiscernible) for that.

14 Q. Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: Mr. Kosgei, would you address the
16 Chamber.

17 THE WITNESS: Okay.

18 PRESIDING JUDGE TRENDAFILOVA: Because the information is
19 important for us.

20 THE WITNESS: Okay. I will oblige.

21 PRESIDING JUDGE TRENDAFILOVA: First and foremost.

22 THE WITNESS: Thank you.

23 MR. KOECH-BUSIENEI:

24 Q. Had you hear any unusual parables and metaphors coming from the
25 radio station at that time?

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1 A. Madam President, I've never heard of that except words that are
2 commonly used and understood in the Kalenjin. And by the way, the
3 audience of Joshua Sang is so cosmopolitan in terms of the area in that
4 most -- and many tribes mingle together. They have lived for about a
5 hundred years or more, so much that language is almost understood. You
6 would find somebody understanding the same language from both side. So
7 it is difficult to get some coded words or strange words that cannot be
8 understood, yeah.

9 Q. Are you aware of -- generally, about any coded language in the
10 Kalenjin language, within the Kalenjin language?

11 A. No, no.

12 Q. Now, before we move on, did you say you were Kalenjin?

13 A. Yes, I am.

14 Q. Of which sub-tribe do you come from?

15 A. I come from Tugen tribe.

16 Q. Are you aware of which sub-tribe of the Kalenjin the three
17 suspects in this case come?

18 A. They come from a Nandi. Nandi sub-tribe, yes.

19 Q. Regarding the Nandi language, are you a Tugen able to understand
20 that language?

21 A. Oh, sure. It is -- Nandi is -- is more or less and can be
22 understood by the rest of the sub-tribes because they speak moderately
23 with words common almost to the rest of the communities. Early writings
24 that were written, and especially the Bible which was written in 1953,
25 interpreted into Kalenjin language, was written in Nandi, and majority of

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1 the Kalenjins for the last 50 or almost 60 years have read the Bible and
2 have heard the Nandi-speaking people, and it is understood by majority of
3 the sub-tribe, Madam President.

4 Q. Right. Moving on to another issue, Mr. Bishop. In the lead up
5 to the elections in the year 2007, did you notice any special treatment
6 of the first suspect in this case by Kass FM?

7 A. First suspect --

8 Q. Suspect is William Samoei Ruto.

9 A. Ruto. Run-up to election?

10 Q. Yes.

11 A. I think the station is a privately owned company, and whoever
12 would like to go and market this party was given a priority because you
13 got to pay to be able to broadcast, and I could listen to several
14 parties. At that time, there were parties known in the country and among
15 the parties that came sent their officers to come and present. The first
16 suspect, I don't know him to have been a special guest at the studio
17 because we had several other guests that came, including the presidential
18 candidates, minus, of course, I never had our president go to the studio,
19 but the others did go. So he was among them.

20 Q. Right. Talking about political parties, which political parties
21 were in competition in that year, the year 2007?

22 A. Apart from the traditional parties which include the Democratic
23 Party of Kenya, the KANU, there were newly parties that were formed
24 hurriedly in 2007 made; that is, PNU and ODM. The two parties are the
25 ones who formed a major and significant competition run-up to election

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1 2007 to the extent I know.

2 Q. Right. Do you know when these two parties were formed, PNU and
3 ODM?

4 A. I may not know the exact date, because like any event that takes
5 place in your life, if you're not taking into account that one day you
6 will give account about it, I think -- I just remember it was sometimes
7 some few months towards the end of the year. I -- must have been between
8 maybe May, around June, July. I don't -- I can't remember exactly the
9 date, but the year was 2007. It was near election. Actually, it was
10 just close to election.

11 Q. Right. Within the Kalenjin areas in the Rift Valley, are you
12 aware of any aspirants that ran on tickets other than the Orange
13 Democratic Party?

14 A. Yes, Member of Parliament from Kachileba went and ran for
15 election, he is the minister of communication today, through ODM Kenya,
16 that's a different party; Member of Parliament of Marakwet east, a lady,
17 went to parliament through KENDA party; and also my own Member of
18 Parliament, Madam President, where I come from, campaigned through a UDM,
19 United Democratic Party. He -- she has been a cabinet minister up to
20 recently.

21 Q. What was her name, for the benefit of the Chamber?

22 A. Professor -- Honourable Professor Hellen Sambili is my Member of
23 Parliament. That's where I come from.

24 Q. And away from the Kalenjin areas of the Rift Valley, do you know
25 of any areas in the hands of other parties other than ODM?

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1 A. Well, several of them but I may not remember the names. But ODM
2 a sizable member of parliament in Rift Valley, Taret (* phon) in the
3 coast, Taret in western Kenya, north-eastern and so on across the
4 country, Madam President.

5 Q. I want to ask you a specific question regarding the ethnic
6 groups of Kambas and Kisiis. Are you aware of any officials from these
7 two tribes in ODM at that material time?

8 A. Madam President, because I'm not a politician, I never took so
9 much interest in -- in knowing much of the officials except those who
10 came out outstanding, which include the presidential candidate who's name
11 was very loud. I think we were looking at him as he was leading the rest
12 of his team, and the secretary-general of the party and the chairman of
13 the party. Those are the people we knew. There are several others who
14 are officials of the same party. I may not be able to give account of
15 the other's name. I can just remember the leading lights, on that day.

16 Q. That's all right.

17 A. Yeah.

18 Q. Would you recall in which party most Kamba people were pursuing
19 elective posts, most Kamba politicians, Kamba (* indiscernible).

20 A. From Kamba community, and that is eastern province were mostly in
21 ODM Kenya. The other time they were in ODM together. This was a party
22 that split on the way. It was ODM together, that is Kamba people were in
23 ODM and the rest were in ODM like western Kenya, from Rift Valley
24 towards -- and then southern part, the coast and eastern. They were
25 together in ODM before they split finally later on.

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1 Q. Bishop, were you aware at the time leading up to the general
2 elections of any network that was in the Rift Valley pursuing a violence
3 agenda?

4 A. Come again?

5 Q. Were you aware of any network at all in the Rift Valley that was
6 pursuing an agenda to evict other Kenyans from the Rift Valley?

7 A. No.

8 Q. Were you -- are you aware of any security -- any government
9 security agencies that would have addressed such issues as networks in
10 the Rift Valley?

11 A. Kenya, Madam President, is an independent country with refined
12 structures of security apparatus and system of intelligence which, as
13 given Kenya's stability for the last 50 years after independence, in the
14 midst of war-raging countries around us, with these kind of structures, I
15 don't think such a question would arise whether government had the
16 capacity or were there that can handle any criminal organisations. It's
17 a very strange description, Madam President.

18 Q. Do you recall the government that was in power just before the
19 general elections in the year 2007?

20 A. As in who formed it?

21 Q. (* overlapping speakers)

22 A. Yes, it was (* overlapping speakers).

23 Q. At that time (* overlapping speakers)?

24 A. Yes. It was formed by a party as a result of election of 2002,
25 having wrestled power from a dominant party since independence, KANU. It

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1 was party called NAK, the National Rainbow Coalition.

2 Q. And who was the president again, if I may ask?

3 A. His excellency the President Mwai Kibaki.

4 Q. And what is his ethnicity, if you don't mind?

5 A. He is a Kikuyu.

6 Q. Are you aware that there was an outbreak of violence after the
7 general elections?

8 A. Yes.

9 Q. In your own assessment, what caused this violence?

10 A. Kenyans conducted relatively high profile campaign which was very
11 peaceful, and after the results of every constituency's results had been
12 received, the presidential results were a little bit delayed, and in the
13 glare of cameras there was some kind of misunderstanding between the
14 electoral election commission then that was running then with the
15 candidates over the delay of the presidential results. It is after the
16 announcement, and I remember it was 6.00, I was at home, in the evening
17 that when the announcement was announced, made, there was spontaneous
18 violence and reported from the city of Nairobi, and then all of a sudden
19 it was also reported by the same media in Kisumu and then that is how
20 violence started, yes.

21 Q. How widespread was this violence in terms of scale across the
22 country?

23 A. The -- first, I cannot describe, because I cannot describe. What
24 I know is that violence was so spontaneous, and then the leaders of the
25 party aggrieved at that time, the secretary-general of the party

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1 announced that we are not satisfied about the outcome of the election,
2 and therefore we go for a mass action, and that means let's go for
3 demonstration. So as the demonstration were called, people went to the
4 streets, then in any riot where there is no proper leadership, then it
5 was hijacked by -- you could see looters, you could see all sorts of
6 crimes that took place, yes.

7 Q. Can you recall the name of the secretary-general that you're
8 talking about in?

9 A. Yes, it's Honourable Professor Anyang Nyongo who is
10 secretary-general of the ODM people. He is currently a cabinet minister.

11 Q. All right. Bishop, I will be moving on to another issue
12 altogether.

13 PRESIDING JUDGE TRENDABILOVA: Counsel, a little bit slow down in
14 order not again to create problems for the interpreters.

15 MR. KOECH-BUSIENEI:

16 Q. Now, I was asking you, moving to another question, about a
17 society or a foundation called Emo. Do you know it?

18 A. Yes, I do.

19 Q. Do you have any association with Emo?

20 A. Yes, I'm the patron of that foundation and the founder.

21 Q. When was it founded, Emo Foundation?

22 A. Emo Foundation as a foundation was thought as an idea that is
23 good for the people as a welfare late in 2007. We started applying for
24 registration late 2008, and we waited. As usual, Emo Foundation is one
25 that should have been and is registered under the NGO act. It is subject

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1 to, like any other society and welfare association, to government
2 scrutiny, and it took time. Until it was registered 2010, on 9 December
3 2010, it was registered as an entity, Madam President. And I am also
4 aware that there are other Emos in -- in Kenya and which I'm aware of
5 which by 2007, 2008, were part of the peace-building in Rift Valley and
6 working with the government and foreign embassies to restore peace in
7 Rift Valley. Mostly was the embassy of America, USA. I am aware about
8 that. The leader died 2009 was leading that. I was aware about that.
9 But about Emo Foundation, specifically, was registered 2010,
10 Madam President.

11 Q. Thank you, Bishop. Would you be able to tell the Chamber about
12 eligibility to be a member of that organisation, Emo Foundation?

13 A. Emo Foundation is supposed to be a welfare organisation and must
14 be registered under the act -- NGOs act. It must be in the interest of
15 Kenyans. And any membership must never segregate against any other
16 Kenyans otherwise the government cannot approve it and therefore it is
17 in -- according to its own rules which is approved by the attorney
18 general's office, it must be rules that are in the interest of every
19 Kenyans. So the conditions that are given are ethical, moral, ethically
20 accepted generally by the country and must be approved.

21 And the standard rules for NGOs are the same, whether registered
22 by corporate body or registered by an individual to serve in honour of
23 his legacy like we have other NGOs associated with individuals like
24 Kalonzo Musoka Foundation, Emo Africa Foundation, several others in the
25 country. So it is registered under the same and the rules it remain the

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1 same. This was not exception.

2 Q. All right. How many members do you have currently in Emo?

3 A. Emo Foundation has officials, and it has about 28 people. The
4 foundation, that is, and I'm -- I think that is in this Chamber what is
5 available, and I -- I saw it. It is Emo Foundation, and I will restrict
6 myself there.

7 Q. Right. Any of the suspects in this case members of
8 Emo Foundation?

9 A. No.

10 Q. Have they attended any of your meetings?

11 A. I -- not that I can remember, but Joshua Arap Sang, being a
12 journalist, has been able to attend and because of the -- and the
13 programmes that we organised, like prayers. We've had prayers,
14 interdenominational prayers where communities are gathered for prayer.
15 He comes to cover in Wesparis (* phon) foundation is concerned, just
16 Joshua, but I can't remember the other honourable members being part of
17 Emo activities and attending meetings with an intention of advancing the
18 welfare issues of Emo, but they're welcome if -- because it's not
19 exclusive, Madam President. I don't mean that.

20 Q. Right. Have you ever as Emo Foundation contemplated opening a
21 bank?

22 A. We have not opened a bank, neither do we operate a bank, but
23 members who associate with Emo would want to be -- would want to buy
24 shares in banks, and to this extent they have not acquired any bank.
25 They don't have any bank. But as individuals, there is an encouragement

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1 in the country for people to invest, and members of Emo individually
2 would like to buy shares in banks, which they have not at the moment.

3 Q. Right. For the benefit of the Chamber, could you tell the
4 Chamber the tallest building in the Nairobi central business district, if
5 you know.

6 A. I'm not sure. I would think that there are -- for many years we
7 used to think one we used to call KICC has been the tallest, but recently
8 buildings are mushrooming in the city. I don't know which one is the
9 tallest, but in the centre the tallest is the time towers, I assume,
10 because it looks like -- as you enter the city, you see -- you see it on
11 top of many others, and I understand -- I'm not sure. It's about
12 32-storey building. Yes, I think -- I assume that is the tallest,
13 because as you enter Nairobi, Madam President, you can see that one.

14 Q. All right. Would you tell the Chamber what is housed in times
15 tower?

16 A. Largely, it is the Kenya Revenue Authority of Kenya, and part of
17 it is hosting the Central Bank of Kenya, but the operational corporation
18 which is there is the revenue collection towers.

19 Q. Is it a house or a building that a stranger would easily pick
20 out?

21 A. Oh, no. It's a protected area.

22 Q. Between Kass FM and Emo Foundation, have the two organisations
23 ever contemplated merging?

24 A. Merging?

25 Q. Yes.

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1 A. Madam President, Kass FM is a private institution. The owner of
2 Kass FM is neither a member of Emo Foundation, and at what -- at any time
3 we have never, and this I can say with certainty because I am the patron
4 of that society, ever had an intention to have a merger, because we have
5 no reason to do so. There was no need for it. We needed only services
6 of the media service, and there are several stations in Kenya that we
7 could use, and we had no intention whatsoever. We do not have even today
8 to have any merger with it. It's a private. We are a Christian
9 organisation. It is a secular station.

10 Q. Now, do you use Kass FM as a media?

11 A. As a media, yes. I think I have stated that before.

12 Q. Do you pay for any service rendered to you by Kass FM?

13 A. Yes, Madam President. I also -- we have alluded from my earlier
14 comments the same.

15 Q. Are there any common directorships or shareholding between
16 Emo Foundation and Kass FM?

17 A. No.

18 Q. It is the Prosecution's case before this Court that
19 Emo Foundation has fund raised a whopping sum at some point of 1.2
20 billion shillings. Has that ever happened?

21 A. That is strange. It is quite strange. By the time I have come
22 this country and visit this Honourable Court, Emo Foundation as a
23 foundation has not raised that money on records, and for you to raise
24 such amount of money which is traceable you must bank it, and I think our
25 bank accounts are open. It can inspected. I say no.

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1 Q. Prior to these charges before the ICC, did the Office of the
2 Prosecutor ever contact you or any official of Emo Foundation?

3 A. No.

4 Q. Have you, Emo Foundation any ties with a bank called Kada bank?

5 A. No ties. We are customers like we are customers in Cooperative
6 Bank. We are also customers in other banks in Kenya.

7 Q. I want to, Bishop, so recollect events of the 30th of December,
8 the year 2006. Would you recall whether you were in the first suspect's
9 home on that date in Sugoi Turbo?

10 A. 2006 I was in Nairobi on the 30th, that was before the new year,
11 preparing to come to Eldoret sports club the following day, 31st, for a
12 prayer -- interdenominational prayer meeting. I had no plans. I had no
13 invitation. I had nothing to do with anything that concerned the date in
14 the house of the -- the first suspect, Madam President. I -- I don't --
15 why? I had no business in his house for that day. I can remember,
16 because being a clergy, I have a diary, I have an office. My movements
17 are -- are recorded, which are official. So on that day, 30th, I was in
18 Nairobi preparing to come to Nairobi -- to Eldoret the following day for
19 an interdenominational prayer.

20 Q. Bishop, would you be able to remember whether you've been in one
21 meeting at any given time with my client Joshua Sang and several other
22 individuals, including the first suspect, including one Farouk Kibet,
23 including the late Kipkalya Kones?

24 A. Madam President --

25 Q. (* Overlapping speakers) meeting?

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1 A. Madam President, unless this question is reframed -- are you
2 talking a church meeting? Are you talking about a political meeting?
3 Are you talking about a business meeting? What meeting are you talking
4 about?

5 Q. A private meeting.

6 A. Private meeting? I don't remember, and I've never been in a
7 meeting in such arrangement. I've never been.

8 Q. Have you ever held a meeting in the presence of my client
9 together with one Augustin Cheruiyot? Do you know him?

10 A. Augustin Cheruiyot, I do know him, having been a prominent
11 military officer in our country, yes, but we've never had a meeting with
12 him. For what?

13 Q. How about Mr. Samson Cheramboss?

14 A. I also know him, Samson Cheramboss, who has been commander of the
15 GSU, but he has -- but we have never had a meeting with him. For what
16 reason? I don't know for what is it.

17 Q. How about Lieutenant-General Koech?

18 A. I do know him, but we've never had a meeting during the same date
19 stated time.

20 Q. Now, coming further forward to the 2nd of November, the year
21 2011 -- to the year 2007.

22 A. Ah.

23 Q. Sorry. Do you recall being in a meeting at the Sirikwa Hotel in
24 Eldoret?

25 A. 2nd of November?

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1 Q. The year 2007, yes.

2 A. 2nd of November I was in Nairobi. Emo at that time, as we were
3 in the process of seeking for registration, we had a meeting and had
4 visited the president of the Republic of Kenya earlier on in September,
5 and we had asked him for two things. One, to be a guest in reception of
6 athletes who had won medals, some -- from Kenya. They were in Japan, and
7 they were coming home. We wanted to prepare a homecoming, and the
8 president agreed and the date of his coming was 4th of November, 2007.
9 On 2nd, the date you've mentioned, we were in a meeting preparing and
10 liaising with the ministry of sports to prepare for the celebration with
11 the president at Eldoret on 4th of November. That one again is on
12 record. Why any meeting? We didn't have any meeting anywhere with
13 anybody except the official meetings that were in our offices at that
14 time.

15 Q. Bishop, I would like to move on to another issue. Are you aware
16 of any Kalenjin institutions that were fashioned to evict other Kenyans
17 from the Rift Valley?

18 A. I'm not. Madam President, it is interesting, as I'm going
19 through this, as it appears like there was an emergency in Kalenjin,
20 which I'm not aware of. I don't know. There was no emergency. The
21 community of Kalenjins were not under threat from anybody, and I don't
22 remember that the community was in much anxiety except the national
23 general election campaigns that were going on. So to that extent,
24 Madam President, to the question advanced by the -- Mr. Defence, I
25 don't -- I'm not aware of any organisation. I'm not aware.

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1 Q. Going back briefly to some of the meetings that is in the
2 Prosecution dossier before the Court, do you recall having any meeting --
3 attended any meeting on the 2nd of September, 2007, with Mr. Joshua Sang
4 and any of the suspects before this Tribunal, before this Court?

5 A. Apart from Joshua Sang being a media person, we have never had
6 common business to warrant having meetings together. What meeting would
7 I have attended? Doing what? Unless he host me in the studio or he's
8 invited to our meetings as a media person. As a religious person and a
9 leader, what -- I don't know of a meeting. We -- we are not a member of
10 any political party. I'm not a member of the media council where they
11 have their meetings, and -- and I'm not a Member of Parliament that I had
12 had meetings with other colleagues. The only meetings I usually have are
13 with the bishops and my church organisation, so, no, I had no meeting.

14 Q. Thank you, Bishop. Do you mind telling the Court in your own
15 words what would be the significance of an individual being made a
16 Kalenjin elder?

17 A. I am not an anthropologist but a student of anthropology, and I
18 have experience and having worked as a church minister and interacted
19 with the culture of the community, anybody being made or given honoured.
20 There is being an elder and there is the honour of an elder. Being an
21 elder, you must be mature in age. Usually it is almost three generations
22 higher than the youth of the time, and you -- these are people who
23 becomes the fallback of the community, and they are mostly stabilising
24 social governance by regulating moralities and social values and ethics,
25 Madam President. And being given the honour of an elder does not amount

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1 to being an elder. It amounts to being given the respect and right to be
2 listened to by the elders as you express your opinion and to be accepted
3 to participate when elders are saying whatever. It is given to people
4 who have done -- participated in welfare of the people. Like we have
5 foreigners, people who may not belong to the same community. It is also
6 given to young people who have who have demonstrated that they have --
7 they have some ability to lead their own age mates and prepare them to be
8 elders in their time. And so there the two -- there are two different,
9 that definition of what you understand being given as an elder. A
10 younger person cannot be an elder at the status of being over an elder
11 who is matured. Always elders have the final say in their age by
12 blessing the community, but not a younger person, or whoever has been
13 given as an outsider.

14 In this case recently, the American -- the just -- were just
15 gone -- just -- has been -- he retired, the ambassador of Kenya, who
16 served for a long time, interacted with the Kalenjins. He was given an
17 honourary of being an elder. That means that you are accepted amongst
18 our community. And others, several others. Some missionaries have been
19 given the same who had practiced in areas helping people. And several
20 young people. It's not the right of one man. It's the right of the
21 society recognising the contribution of young people also.

22 Q. Do you recall whether the first suspect in this case,
23 Mr. William Ruto has been made an elder of the Kalenjin community?

24 A. Madam President I have a problem in the definition and the use of
25 the word "being made an elder," because that word would mislead. He has

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1 been given honoured as an elder, the honour of an elder, but in his own
2 age mates, as a leader in his time, but not the elder among the elders of
3 Kalenjin.

4 Q. It is the Prosecution's case, Bishop, that in the lead up to the
5 year 2007 and following, Mr. William Ruto, the first suspect of this
6 case, was then disputed leader of the Kalenjins.

7 A. That's not correct.

8 Q. Is that true?

9 A. That's not correct.

10 Q. Would you describe to the Chamber how traditionally and otherwise
11 the Kalenjins take their leaders? Are they, for example, subservient to
12 their leaders?

13 A. Kalenjin community is not a monarchical society. Community does
14 not belong to the leaders. It is the leaders who belongs to the
15 community. In the last 50 years, the Kalenjin community have had an
16 opportunity of having the vice-president of the Republic of Kenya coming
17 from the same community. They have had the privilege of having the
18 president, the second president of the Republic of Kenya, coming from the
19 same community. He's been a Member of Parliament for over 50 years. He
20 could have qualified to be the de facto and the undisputed Kalenjin
21 elder, but as it were Kalenjin community have a special respect for
22 honourable President Moi, but Kalenjins are not owned by a leader. They
23 own the leader.

24 I remember in the interest of this question, that by the year
25 2007, Honourable Ruto, who has been a friend and has been working

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1 alongside with Uhuru in 2002, was not actually a supporter of ODM party
2 strongly, but the community at that time demanded that "Ruto, you have to
3 go with us," and he was pushed by the community to become one -- one of
4 the members advancing the party. So Kalenjin community are not owned by
5 leaders. They have you today. They will have someone else tomorrow. So
6 you can never be undisputed leader.

7 Secondly, it is a community of consensus. You -- your word does
8 not abide. In fact, what Joshua Sang uses in the station, Lene Emet, is
9 a Kalenjin way of saying, "What are the rest of people saying?" It's not
10 what you say, but what is everybody saying because what everybody says --
11 and consent by consensus is agreed. Kalenjin community is a community of
12 consensus.

13 Q. Thank you. Bishop, are you aware of any council of elders of the
14 Kalenjin people? And if you were, when did it come into place?

15 A. Kalenjin community consist of about ten -- I mean not about, but
16 ten sub-tribes, Madam President. Each community -- sub-tribe has their
17 council. It was 2008 when the violence had broken, and different
18 agencies wanted to approach the community, and one of the ways that was
19 agreed was that it is important to have a cultural governance as a way of
20 reaching the people so that it can build bridges amongst communities.
21 This is when the Kalenjin elders bringing all the ten tribes together was
22 mooted, and it was registered 2009, bringing the whole nine -- I mean ten
23 sub-tribes together under one council of elders. Otherwise, individual
24 council of elders were -- were working. We have Tugen elders, we have
25 Nandi, we have Kipsigis, we have Pokot, and we also have

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1 Mandelkon (* phon), and the rest of the Kalenjin. They were not having a
2 united one before 2007. It is out of the violence and a need to find a
3 bridge to bring all communities together, but they needed to strengthen
4 their cultural leadership, and therefore under that particular need, one
5 person who has been championing peace in Rift Valley was elected the
6 first chairman 2009 as the same was registered as a Kalenjin council of
7 elders.

8 Q. One other Emo society called Emo Society.

9 A. Sure.

10 Q. Would you be able to tell the Chamber when it was registered and
11 its activities?

12 A. I am aware that it was registered. I don't remember the date,
13 but it should have been early -- either late 2005 or early 2006. I don't
14 remember. But the leader was -- the chairman was the late
15 James Kiprop Bett who has gone to rest and may God give him peace. And
16 that is when it came but it was started in 2001 as a welfare organisation
17 while they were looking for the registration.

18 Q. All right. Bishop, do the Kalenjin have any oaths? Oaths.

19 A. Oaths.

20 Q. O-a-t-h-s.

21 A. No. It is an abominable to have oaths in Kalenjin. They -- they
22 don't take oath. They fear oath. They say oath has a capacity to return
23 back and kill and have a negative impact on the two taking the oath and
24 then those are who watching it and those who are -- who heard about it,
25 and it has an effect on their children. Kalenjin don't take oath at all.

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1 Kalenjin is a society who believes that honesty is the key, and
2 they would like -- they say -- their word is yes, and yes is yes, and
3 when it is no, it's no, and that is known in the country. When a
4 Kalenjin says yes, he will change when he meet with him later and agree
5 that he changes. Otherwise, once he agrees, it is yes and that is it.

6 Q. Bishop, I wish to take you back --

7 A. Sure.

8 Q. -- to the 15th of April, the year 2007. Were you hosted anywhere
9 by one Franklin Bett?

10 A. I said -- these are interesting questions. The month of April is
11 usually Passover celebration in our churches. I travel across the
12 country preaching and teaching about the Passover that is in Christian
13 faith, and I was not available for any meeting if I -- if there was need
14 at that time, because matters of faith is my obligation. So no, I've
15 never been hosted by Franklin. And why, and for what purpose? I don't
16 know. I am not aware about it, and I can emphatically say no under oath.

17 Q. That's right. Now, I hope not to shock you Bishop, but does dog
18 blood feature in any ceremonies of the Kalenjin people?

19 A. It is interesting to hear that. Later on having the blood
20 spilled of a dog in my community, it is one of the abominable animals.
21 Kalenjins are not fond of keeping dogs. If they do, it is only kept for
22 hunting, and they don't do ceremonies using dogs. During sacrifices that
23 used to be done on mountains, the only blood that could be shed is for
24 ram. That's a sheep, and that is what was used commonly by Kalenjins in
25 their traditions about 50 -- many years -- 60 years ago. Now, over 70

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1 per cent of the Kalenjin community embraces Christianity and blood is --
2 is a respected and honoured item. So leave alone talking about dogs, but
3 even the very sheep and rams, Madam President, which used to be
4 traditionally overt to create cleansing on the occasion of any omen that
5 affects any community. And about dogs, that's a very interesting
6 description, very interesting indeed.

7 Q. Prior to the violence in the year 2007, 2008, Bishop, are you
8 aware of any clashes before that?

9 A. Yes. We had clashes in Kenya occasionally happening in the
10 country, riots in 1969 and the death of Tom Mboya. We had some riots in
11 1976, 1975 when J. M. Kariuki died. We have had riots in 1982 when there
12 was an attempted coup in the country. We have had riots in Kenya between
13 1998 and 1992 because of disputed elections that followed then. And
14 19 -- I say 1992, because I was part of the members of the clergy who
15 even buried people and be part of the peace-building in the Rift Valley.
16 In 1992, we were part of the clergy that were comforting families during
17 that tragedy, and also 1997 there was no clashes at the elections of
18 2002, just a little disturbance here and there, and then 2007 was
19 another, yes, as I recalled.

20 Q. Are you aware of any peace efforts by the government of Kenya to
21 avoid occurrence of such violence?

22 A. Yes. The government has tried, but as it were, some of these
23 complaints which is creating problems at the time of elections are more
24 or less of management of resource distribution in the country, and the
25 government has tried by heeding to the country and by going in and accept

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1 the review of the constitution in Kenya which has just been enacted. Due
2 to that, the greater emphasis has been made by dividing the national
3 resources into counties and created about 47 counties. This is in the
4 process of trying to address the ever-increasing problem which has been
5 affected. It is more or less of resource management and then the
6 management of election itself that has been, but the effort of the
7 government has been evident, and that is why they guided the country
8 tirelessly twice attempting -- or three times attempting to bring a new
9 constitution that will create new order in making resources available to
10 the people of Kenya, and by the grace of God last year, 2010, we had a
11 successful referendum that produced a document, a constitution, that is
12 creating a new order in the country, and that is, I'm sure, the duty of
13 every government to provide policy that will ease. And we look forward
14 that this will help in easing the complaints of the people of Kenya.

15 Q. Bishop, would you say in your own -- to your knowledge were any
16 crimes committed in the violence of 2007, 2008?

17 A. It is -- your Honour, it's difficult to say yes and no unless
18 with your permission I can say it.

19 MR. KOECH-BUSIENEI: Madam President, I wish to rest the further
20 questioning of this witness at this moment. I will come back to him
21 after the rest of the members questioning. Thank you.

22 PRESIDING JUDGE TRENDABILOVA: Thank you, Counsel. Before I turn
23 to the other Defence teams, I would like to ask Mr. Kosgei, do you need
24 some rest, Mr. Kosgei?

25 THE WITNESS: For now I can still handle, Madam President.

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1 PRESIDING JUDGE TRENDAFILOVA: We have around 14 minutes before
2 the break.

3 THE WITNESS: Okay. I can take that, yes.

4 PRESIDING JUDGE TRENDAFILOVA: So do someone from the other
5 Defence teams --

6 MR. ORARO: Madam President, we don't intend to raise any
7 questions with this witness.

8 PRESIDING JUDGE TRENDAFILOVA: You do not.
9 And on behalf of Mr. Ruto?

10 MR. KILUKUMI: Madam President and your Honours, we have no
11 questions for this witness on behalf of Mr. William Ruto.

12 PRESIDING JUDGE TRENDAFILOVA: Then we shall proceed with the
13 Prosecutor and his team. Just before we go ahead with the questioning on
14 behalf of the Prosecutor, I would like very shortly to make the point
15 without focusing on someone specifically, that I have noticed - and my
16 colleagues as well - some of -- some members of the Defence team laughing
17 while the witness was questioned. Please do behave properly. This is a
18 courtroom. Second, do respect the witness in this particular case who
19 went such a long way from Kenya in order to make a contribution to the
20 establishment of the truth by this Chamber for the purposes of his
21 decision, because as I warned politely everyone in my introductory words,
22 such behaviour is not going to be tolerated. I hope that serves the
23 purpose of my caution.

24 Now, Ms. Tai, you have the floor.

25 MS. TAI: Thank you, again, President. Ms. Corrie will examine

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1 this witness on behalf of the Prosecution.

2 PRESIDING JUDGE TRENDAFILOVA: The floor is over to you,
3 Ms. Corrie.

4 MS. CORRIE: Thank you.

5 Questioned by Ms. Corrie:

6 Q. Good afternoon, sir.

7 A. Good afternoon, Madam Prosecutor.

8 Q. As you may have remembered from our brief meeting yesterday, my
9 name is Karen Corrie and I will be asking you some questions on behalf of
10 the Office of the Prosecutor. If at any time I ask you a question you
11 don't understand, please let me know and I will rephrase it or try to
12 make it clearer for you.

13 I want to begin first by asking you some questions about
14 Emo Foundation and Emo Society, which you testified to at some length.
15 First, let's talk about Emo Society.

16 Is this a short name for the Emo Community Development Society?

17 A. Sure.

18 Q. And could you please explain for the Court briefly what that
19 organisation is.

20 A. Emo Society, as I am aware, Madam President, on behalf of the
21 Madam Prosecutor, is that Emo Society is a welfare organisation, a
22 nonpolitical, nonsectarian. It is started -- and this is not the first
23 one of its kind. I mean, societies are there in Kenya through a
24 programme of ministry of societies. I mean, they encourage communities
25 to come together, and this was the case from 1963 in an effort to improve

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1 their welfare by every society concerned. It is one connected to
2 teachers, connected to farmers, others connected to anybody who would
3 want to improve the livelihood of their people.

4 Q. And so you say that Emo Community Development Society is for the
5 community as a whole is that your testimony?

6 A. Yes. And especially it is targeted on the, as far as I'm aware,
7 to the welfare of the pastorals in general, those who live in Rift Valley
8 and communities that live in Rift Valley it is targeted on.

9 Q. Any particular communities?

10 A. We have the Kalenjins, we have the Maasais, we have the Turkanas,
11 we have the other communities who have migrated into Rift Valley for
12 their working together. There was a need to find by the founders that
13 certain things be encouraged in terms of use of their resources and
14 mobilise them for education, for health, and so on, yeah.

15 Q. Okay. So to make sure I understand --

16 A. Yes.

17 Q. -- it is your testimony that the Emo Community Development
18 Society is for all of the peoples living in the Rift Valley?

19 A. In the Rift Valley, yes.

20 Q. Where does the word "Emo" come from?

21 A. The word "Emo" comes from a Kalenjin word meaning "How are you
22 faring on" because as a welfare thought because, Madam President, those
23 who muted their concept of the welfare were members -- majority of them
24 came from the Kalenjin community and they looked for a word which is
25 common to welfare and they say, "How are you doing." So that is the

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1 word.

2 Q. So to make sure I understand, it's your testimony that an
3 organisation that represents all peoples of the Rift Valley -- --

4 A. Right.

5 Q. -- has a name that comes from the Kalenjin language?

6 A. Right.

7 Q. Do all people in the Rift Valley speak the Kalenjin language?

8 A. They may not speak Kalenjin language, but they understand. After
9 living together, many Kalenjin speak Kikuyu or Luo, and there are Luo who
10 can speak that who have lived together, and that is not the only
11 organisation with such a name so long as it is explained. We have
12 another community who has a name Gema. Gema is also a Kikuyu term. So
13 it's a common practice that could be used anywhere so long as it is --
14 has a footnote and understood by others. Yes, with a definition
15 everybody understood the use of the word.

16 Q. How long has the Emo Community Development Society existed for?

17 A. While it was seeking registration, it started in 2001, September,
18 and until now it's going on. It's been working with the government of
19 Kenya in many aspects, yes, Madam President.

20 Q. And do you have any particular role in Emo Community Development
21 Society?

22 A. Apart from being the -- I was requested to be the patron to
23 provide spiritual -- I mean, moral, in order with other spiritual leaders
24 in Rift Valley. I'm not the only one. We have about four, four patrons,
25 and I -- I chair those teams, at the moment the patron. The Emo society

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1 has its own leaders, executive council. It has its own seals and
2 operates as a society.

3 Q. How long have you been a patron of the Emo Community Development
4 Society?

5 A. I have been from 2000 and -- I have been from 2005 is when they
6 requested that I work with them as a -- as their -- as the patron among
7 other patrons.

8 Q. What does it mean to be a patron of the Emo Community Development
9 Society? If you could briefly explain for the Chamber.

10 A. It is -- being a patron means being like a father, providing a
11 fatherly guidelines, I mean, guidance in case of any need that needs some
12 kind of a solace or direction or understanding, and so on. Generally,
13 and as it relates to -- because this is a Christian organisation, is
14 where Christian values can be violated or Christian values should be
15 praised. It was on behalf of issues like morality.

16 Q. Now, you've also given us some testimony about the
17 Emo Foundation.

18 A. Yes.

19 Q. Is that connected to Emo Community Development Society in any
20 way?

21 A. Emo Foundation could be -- there is no organisation that is
22 registered under or in and within another organisation unless they
23 partner. Every entity is an entity on its own. Emo Foundation was
24 registered as a foundation for the purpose of serving as a foundation,
25 but the Emo Society was also registered as -- as a society. The

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1 connection is in the service, because it is a Kenyan -- Madam President,
2 it's registered in Kenya. It is serving the people of Kenya. The
3 difference is the other one is more or less focused on issues of
4 Rift Valley, that is society. It was focused to people in Rift Valley,
5 and Emo Foundation is a national foundation like any other foundation,
6 yes.

7 Q. So forgive me if I misunderstand, is it your testimony that
8 they're not connected in any way?

9 A. Well, it -- it would be -- it would be wrong to say not connected
10 in any way, because there are many ways in which organisations do get
11 connected. So unless you can redefine your question, I think it is too
12 broad in your approach to say is it connected in any way.

13 Q. Well, for example, what's your position with the Emo Foundation,
14 if any?

15 A. Emo Foundation, I said earlier on, because we are about six --
16 about eight spiritual leaders who come from Rift Valley were approached
17 by the young people and the Christian leaders to give them some spiritual
18 guidance. They gave to me chair them at the moment when Emo Foundation
19 was -- was registered last -- last year. They requested that I become
20 their chair and patron too.

21 Q. Are you familiar with another group called Emo Investments?

22 A. Yes, I am.

23 Q. And what is that group?

24 A. That is a group where members of Emo Society decided to buy a
25 farm off one Stephanus Kruger, a white settler in north rift. You cannot

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1 collect public funds unless you're a registered company, so they
2 registered a company, and they -- they acquired a land. They bought land
3 after negotiating with the government, and they went to see the president
4 2007 and the president agreed and the state assisted them to -- by way of
5 seceding their position as a government and allow the group to buy.
6 These are members of Emo Society, Madam President.

7 Q. Your Honour, may I have one more question before the break?

8 A. Sure.

9 PRESIDING JUDGE TRENDAFILOVA: Yes, one more.

10 MS. CORRIE:

11 Q. Do you hold any position with Emo Investments?

12 A. Apart from being the -- they asked me to -- to give them again
13 what they call presence of guidance within the same. I'm just seconded
14 as a -- as a honorary member of their board, just honorary member.

15 MS. CORRIE: Thank you. I can reserve the rest of the questions
16 until after the break.

17 THE WITNESS: Thank you.

18 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

19 Mr. Kosgei, now you will be ushered out of the courtroom, and we
20 will resume our session in half an hour.

21 THE WITNESS: Thank you.

22 PRESIDING JUDGE TRENDAFILOVA: But please let us go into closed
23 session as we have discussed and agreed in the beginning.

24 (Closed session at 3.58 p.m.)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 Recess taken at 4.00 p.m.

7 On resuming at 4.33 p.m.

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Open session at 4.34 p.m.)

13 COURT OFFICER: Madam President, your Honours. For the records,

14 we're back in open session. Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: Thank you very much,

16 Court Officer.

17 Welcome again, Mr. Kosgei, to the courtroom. We're really

18 grateful that you're with us, and now the Prosecutor's Office, you have

19 the floor. You can proceed with your questions.

20 MS. CHANA: Madam President, may I indicate at this time before

21 Ms. Corrie resumes her questioning of the witness that with your

22 permission, I would also like to put some questions to this witness.

23 PRESIDING JUDGE TRENDAFILOVA: Yes, but let first the --

24 MS. CHANA: Yes. After -- (* Overlapping speakers).

25 PRESIDING JUDGE TRENDAFILOVA: (* Overlapping speakers) The

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1 Prosecutor. Thereafter --

2 MS. CHANA: Thank you, Madam President.

3 PRESIDING JUDGE TRENDAFILOVA: -- the Judges of the Chamber do
4 not oppose this.

5 MS. CHANA: Obligated.

6 PRESIDING JUDGE TRENDAFILOVA: Okay.

7 MS. CORRIE: Thank you, Madam President.

8 Q. Good afternoon, again.

9 A. Good afternoon.

10 Q. Before the break we were discussing the Emo investment -- excuse
11 me, Emo Investments?

12 A. Right.

13 Q. And your role within that. Would it be incorrect to say you are
14 the director of Emo Investments?

15 A. Not director, because the use of the word "director" means the
16 only one. I'm an honorary one of the directors.

17 Q. So you are a director of Emo Investments?

18 A. One of them. Yes, one of them.

19 Q. Now you were mentioning before that Emo Investments was involved
20 in fundraising to acquire a farm?

21 A. Sure.

22 Q. And when was that farm acquired? Has it been acquired?

23 A. It is still in the process. It started 2007, December.

24 Q. And so Emo Investments had started the fund raising at that early
25 stage?

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1 A. They started that time, December.

2 Q. How much money has Emo Investments raised for the acquisition of
3 this farm?

4 A. At the time in question when it started they only raised 10
5 million shillings at that time.

6 Q. And how much has been raised now?

7 A. By now they have raised 120 million Kenya shillings.

8 Q. So I just want to make sure that I understand correctly. In
9 2007, 10 million Kenyan shillings had been raised?

10 A. You are correct.

11 Q. Okay. And this piece of land that you -- the farm that you want
12 to purchase, where is it located?

13 A. It is in Eldoret East. It is around a hill called Sergoit it's
14 about 10 or 15 kilometres east of Eldoret.

15 Q. And is there anything about that hill which is significant to the
16 Kalenjin community?

17 A. Apart from having been a hill where they used traditionally -- a
18 long time ago before the land was taken, Madam President, by the white
19 settlers, Kalenjins used to meet there to hold their meetings and have
20 towards the convergent soul between Mount Elgon. They say if you want to
21 know the road towards Tugen hills or Kayo (* phon), they used to use it
22 as a roadmap for connected -- connectivity. It was very important to
23 them in terms of identifying themselves, because it was a plain. It's a
24 hill in the middle of the plains, yes.

25 Q. Does the Emo Society have a web site?

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1 A. Yes, it does.

2 Q. And are you familiar with this web site?

3 A. Sure.

4 Q. Does Emo Society ever publish press releases about events that it
5 holds?

6 A. Come again?

7 Q. Does Emo Society ever publish on its web site information or
8 press releases about events that it holds?

9 A. Sure.

10 Q. Has it, to your knowledge, ever published any such information
11 about its events that you've been involved in?

12 A. Sure.

13 Q. During your direct examination, you gave some information about
14 your whereabouts on the 30th of December of 2006.

15 A. Sure.

16 Q. And I believe you said you were preparing to attend an interfaith
17 prayer meeting?

18 A. Sure. Are you talking about 30th of December?

19 Q. Yes.

20 A. Sure.

21 Q. And so did you attend that interfaith prayer meeting?

22 A. On the 31st.

23 Q. And where was that?

24 A. It was held in Eldoret sports club. Sports club is a ground
25 within Eldoret municipality. I came from Nairobi straight to the field,

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1 yeah. It was about a public rally, prayer meeting. It was a public
2 prayer meeting in the stadium.

3 Q. Did you speak at that prayer meeting?

4 A. I was one of the speakers in the meeting prayers. We were about
5 ten spiritual leaders. I spoke on my time and pray, and then the other
6 spiritual leaders also prayed, Madam President.

7 Q. Do you recall anything that you said during that prayer meeting,
8 during your sermon?

9 A. Apart from reading the scripture, I can't remember unless I go to
10 the notes that I spoke. I may not remember, but I remember the theme of
11 the day was Thanksgiving prayer service for (* indiscernible).

12 Q. Do you remember commending the efforts of the Emo foundation for
13 spearheading the establishment of Emo Community Development Society, the
14 Emo Investments Limited, and Emo bank?

15 A. No.

16 Q. You don't recall that?

17 A. I don't remember. I don't remember. Because the occasion was
18 not talking about the society. It was talking about prayer meeting.
19 I -- as I recalled, Madam President. It was not selling such ideas at
20 that time.

21 Q. Okay. Now, I want to talk a little bit about the membership of
22 all of these different parts of Emo that we've been discussing. If I'm
23 correct, you testified before during your direct examination that
24 Mr. Sang and Mr. Ruto, all the suspects, are not part of Emo Foundation;
25 is that right?

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1 A. Yes.

2 Q. Are they part of any of these other different parts or different
3 iterations of Emo?

4 A. Apart from Joshua, who put shares in the Kruger farm, he -- he
5 bought the shares in the Kruger farm, Joshua Sang.
6 Honourable William Ruto is not a member, neither is he a shareholder of
7 any of Emo's activities. Also, Henry Kosgey is not a member and not even
8 being a shareholder and not a promoter of Emo issues. They're not part
9 of it.

10 Q. Are any of the three suspects involved in Emo Community
11 Development Society in any way?

12 A. No.

13 Q. Not at all?

14 A. Not at all. Emo Community Development Society is a nonpolitical
15 organisation. It's a welfare organisation, so they -- and they know
16 about it. I think as politicians would like to go where politics would
17 really get more meaning than go for an association which is connected to
18 that.

19 Q. What about outside of their political lives? In their private
20 lives, are they involved in Emo Society in any way?

21 A. It is difficult to separate a leader from who he is,
22 Madam President. In his private and in his public engagement, none of
23 them has been part of what Emo has been in Rift Valley and in the
24 country.

25 Q. You gave also evidence during your direct examination about

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1 whether Emo and Kass FM ever merged, and you said that that had not
2 occurred; right?

3 A. Sure.

4 Q. Have the two organisations ever worked together?

5 A. Worked together means being partners in doing something, or
6 worked together in what? Because we are customers like anybody else to
7 the studio. When we want to announce or have some explanation about some
8 issues, that cannot be taken to mean working together. It means that
9 because we do that by paying for airing our issues. So that I don't
10 understand whether that means working together.

11 Q. So I want to make sure that I understand --

12 A. Sure.

13 Q. -- and the Court understand. So the only times that Kass FM and
14 Emo has ever done anything to support each other is when one is a
15 customer of the other?

16 A. Yes, yes.

17 Q. Do you know -- besides Mr. Sang, do you know any other employees
18 or persons related to Kass FM?

19 A. I know -- I don't remember them by name, because I don't have any
20 personal interest in the -- in the studio, but -- and again, I am not the
21 one who makes arrangements for me to speak in the studio. It's usually
22 the staff. If they have a programme, they we want me to go, they know
23 each other. I know Joshua Sang because he's one of the interviewers who
24 could interview me or any other people who are in the studio. So I don't
25 remember names, but certainly if I see them, I -- I -- would I know. But

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1 I wish I had a prior knowledge that I need to supply the same,

2 Madam President. I'm sure they're -- they are listed and they're

3 available, can be known, yeah.

4 Q. Do you know a man named Joshua Chepkwony or CJ Chepkwony?

5 A. Yes, I do. I know as the owner of the -- as one of the owners of

6 Kass media.

7 Q. How do you know him?

8 A. He comes from Baringo county where I come from, some few

9 kilometres, so to that extent I know him. He lives about 60 kilometres

10 away from where I live. I know him as a businessman. He's not in any

11 way involved in politics. He's an investor like any other investor in

12 Kenya. That's what I know about him.

13 Q. Have you ever travelled outside of Kenya with him?

14 A. No.

15 Q. So you didn't travel with him to the US in 2006?

16 A. We didn't travel with him, but he happens under -- he travelled

17 to the US when I also travelled to US, but we had no joint venture. I

18 was on my own. I have a holiday trip every year, Madam President, that I

19 travel to US, to Europe, and at that time I had - 2006, that is - I

20 travelled to the US for two months, and I understand he was also there in

21 the US.

22 Q. Was he in any of the same places in the US that you were at the

23 same time?

24 A. We had a church service that -- a joint church service where

25 Kenyans had converged for prayers, and -- in a church -- or in a -- in an

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1 auditorium. He was there. I was there too.

2 Q. Were any of the suspects present for that?

3 A. I don't remember.

4 Q. When you were on that trip, was it sponsored by any organisation?

5 A. No. I -- I went on my own sponsorship myself. I don't know how
6 Chepkwony travelled. I don't know how anybody else travelled what way.
7 I was on my usual trip, Madam President, to -- to US. I was preaching in
8 several churches, and I happened to have been in the state in which at
9 the same time Chepkwony was there, and I was on my own, he was on his
10 own, and we met just chancing on each other. And I think it is a
11 pleasure meeting people from home. I think that was it.

12 Q. I'd like to change the subject now a little bit to find out more
13 information about how you came to testify in court today.

14 A. Yes.

15 Q. How did you come to testify on behalf of Mr. Sang?

16 A. Good question. One, through the press I came to learn that this
17 indictment has had some basis from someone or some group who have
18 mentioned Emo, which I am connected, and the rest of us are, in a manner
19 that was likely to suggest what was of concern in the country. And I
20 also saw it in the press and also in the report of one of the reports
21 presented to the -- by the human rights, the copy we had, it came to our
22 office and to working commission. Yeah, that's I can -- and I got
23 interested in, yes.

24 Q. All right. But my question wasn't how you became interested.

25 How did you actually come to testify for Mr. Sang?

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1 A. Yeah. Based on that Madam Prosecutor, if -- with your
2 permission, Madam President, I called Mr. Sang to inquire about -- after
3 it came out that he was one of the suspect mentioned and that he was --
4 the process of pre-trial was going to start a few weeks to the date, I
5 called him, and he told me they are in -- he is in the process of
6 identifying people who would testify on his behalf, and I -- he asked me
7 whether I was willing to be one of the witnesses. I affirmed to him. I
8 said, "Yes, why not?" I think I am interested in the case because Emo
9 has been mentioned. I will say more later, maybe.

10 Q. At that time when you learned who the suspects in the case
11 were -- I should back up. Do you recall approximately when it was that
12 you called Mr. Sang to offer your services?

13 A. Yeah. I don't remember exactly, but it was about between two to
14 two -- to two and a half weeks before first travelling here, coming to
15 The Hague.

16 Q. Okay.

17 A. Yeah.

18 Q. So -- okay. Was that the first time you had spoken with Mr. Sang
19 about the facts that he was facing charges here?

20 A. Yes. In this manner, yes. The first is when I asked him, "Are
21 you aware of what I had seen in the domain, in the press?" And I saw his
22 name mentioned, Madam President. I asked him, "Have you seen this?" He
23 said, "Yes," and that was it. So from there we had to look at ourselves
24 to check on the facts behind it and in relationship to the existence of
25 the organisations.

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1 Q. When did you first learn that Mr. Sang was facing charges here?

2 A. I can't remember the date more specifically than when the -- this
3 Honourable Court announced exactly. I don't know before that. Apart
4 from that, it was just rumours in the press, in the papers in Kenya, and
5 just treated it as rumours, but it became apparently clear and confirmed
6 when it was announced by this court sometimes last year, end of last
7 year.

8 Q. All right. So it was approximately some time the end of last
9 year that you learned?

10 A. Sure. Yeah.

11 Q. Okay. And so you waited until about two or so weeks ago to
12 contact him to offer to testify for him?

13 A. Yes. We waited and -- because I never anticipated that I was
14 going to be a witness before, but as things came by, between 2010 when
15 the -- the names were announced and when they came to The Hague in -- in
16 April, Madam President, it became now necessary to look at issues as they
17 were coming, and because we had no connection whatsoever, we had not been
18 approached by the Prosecutor, we had no connection with this -- with
19 this -- with this Honourable Court, so we just waited. Nobody saw us,
20 nobody approached us, and we just heard about it, until finally when Sang
21 was preparing, I just asked him, not because I wanted to come or be a
22 witness, but I just to inquire about his preparation to come and whether
23 he needed any information from us about this because we have not been
24 approached. That is when he said, "We are in the process of identifying
25 the -- the witness to this case," Madam President.

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1 Q. After you volunteered your services to testify here, did you meet
2 with any lawyers to talk about the process of coming here to testify?

3 A. Not until I think a week before we were preparing to come,
4 because Sang told me that, "Just be waiting. You will be given
5 instruction on how to prepare to come." I think about a week before I
6 met the counsels, the Defence lawyers, and that was along with Joshua who
7 introduced me to his Defence.

8 Q. Now, the first time you spoke to Mr. Sang about testifying --

9 A. Yes.

10 Q. -- did you discuss with him what you would say?

11 A. No. I don't think I had any reason to tell him, because I knew
12 what we are, and I didn't need to -- to discuss with him. I didn't see
13 any reason, because it was obvious Emo is what it is as a fact, and I
14 think we -- I had more facts than -- than even Joshua would, because I --
15 I knew the organisation. So I said we have something to say about it.

16 Q. All right. So even though he hadn't talked to you at all about
17 what you were going to say, really, he referred you on to his lawyers who
18 then met with you?

19 A. Yes. He wanted to -- because I wanted to know how a witness
20 would be facilitated, Madam President, to be -- to the process of
21 witnessing, and he said you're going to come and meet the lawyers who
22 will tell you what to do.

23 Q. So when you met with the lawyers, who did you meet with?

24 A. I met one Mr. Bosek. I met one Mr. Koech, who has been
25 leading -- guiding me in the process. I met a Mr. Katwa, and a young

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1 lady Criselda who I was handed over to take me to meet the VWU of the ICC
2 at the same time.

3 Q. During that meeting, did you discuss with any of these lawyers
4 about what you were going to say in court?

5 A. Basically what we discussed with the lawyers, and he had -- they
6 had three things to tell me. They asked me whether I was aware that I
7 was a witness of Joshua, and they asked me whether I was volunteering to
8 do so. I said yes. And the second thing they asked me about is that,
9 "Are you aware about the charges Joshua is facing?" I said I have the
10 synopsis of the same, which was downloaded from your web site. I said I
11 just see a small information, and then coupled with what we know as the
12 content within the newspapers that was given, I think I'm aware
13 generally. They asked me the last question: "The other question is, are
14 you prepared in terms of documentation to travel? Do you have a
15 passport?" I said, "Yes." They asked me all other issues connected to
16 health. "Are you prepared to travel?" And I said, "Yes." "Are you
17 prepared to appear before the Court?" I said, "Yes." "Would you like to
18 appear?" I said, "Yes, because I think what I'm going to say is the
19 truth."

20 So basically those were some of the issues that the lawyers
21 raised, Madam President.

22 Q. And just so that I'm clear that I understand --

23 A. Sure.

24 Q. -- and the Court understands, you didn't discuss in any detail
25 the substance of what you would say?

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1 A. Not in the detail. The question they asked me was whether I was
2 aware about the charges that Joshua was facing and whether you are aware
3 that Emo is mentioned and that you are aware that the indictment process
4 is beginning -- I mean, the pre-trial is starting in September, and I
5 said yes. Yes.

6 Q. And that's all you said to them?

7 A. All -- yes. That's what we discussed together.

8 Q. And you didn't elaborate on your answers in any way?

9 A. Elaborate my answers? I don't think I needed, because the Emo
10 organisation has lawyers as staff. They have their own systems that have
11 given me information on this. My relationship with the Defence people
12 was in connection to introduce me on the process of coming to The Hague
13 to testify, Madam President. I didn't consider that as a priority at
14 that time, maybe it was necessary. I would oblige if this Court would
15 direct the same.

16 Q. After that first meeting with Mr. Sang's lawyers, did you speak
17 to any -- to those lawyers or any other lawyers associated with Mr. Sang
18 or Mr. Sang before coming to testify here today?

19 A. Apart from asking whether my documents are in order. We didn't
20 have time to discuss anything, because immediately after we met, they
21 handed us -- me over to the VWU team whom from that time on they were
22 with us. They're the ones who introduce us to the issues of travelling,
23 issues of accommodation, how to relate to the ICC process. From there we
24 didn't have any reason to meet, because what was necessary was the
25 documentation and my preparedness to come here, me personally. So I went

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1 to meet my staff and to be given update about the (* indiscernible)
2 organisation, if I can -- whatever I can recall at that time. So it
3 wasn't necessary. Maybe I would be given that direction that I
4 (* indiscernible) later.

5 Q. So before coming here to The Hague you never once discussed with
6 any detail the substance of your testimony here with Mr. Sang or his
7 lawyers?

8 A. I -- I didn't consider it necessary at that time, because it
9 related and -- and they were clear, because they told me, "What you are
10 expected to say is what you know, what you heard, what you can recall,"
11 and that's what they told me. They said, "It's not that you say what
12 you're researching to look for." He said -- they told me more of being a
13 witness, how to be a witness, and they said, "It is to do with what you
14 saw and what you know and what you heard, and speak the truth." That's
15 all. And I don't think I needed any further discussion on that because I
16 have resources to research on what I know, what I heard, being a leader
17 of my stature, I don't think I need it, but if I'm directed to be so, I
18 can -- I would always obey what the Court would direct.

19 Q. Okay. Now, you have given evidence today, if I'm correct, that
20 you in fact weren't involved in any way in planning violence that
21 followed the elections in 2007; is that right?

22 A. Yes, that's correct. Why would I?

23 Q. Okay. And you hadn't discussed planning violence prior to the
24 2007 election with anyone, had you?

25 A. Planning violence? It's -- you can imagine what it means to ask

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1 a clergyman that, planning violence. It's really an emotional reaction
2 you would really expect. Why?

3 Q. Forgive me, sir, but I need to ask: Is that a no?

4 A. Yes. No.

5 Q. Thank you.

6 A. But interesting, and serious.

7 Q. So if the violence had been planned, would you know?

8 A. No. I -- no. Why would it have been planned? I really don't
9 see, because of the precedence of elections that followed -- I mean, that
10 preceded that election. Between 2002 and 2007 was a very -- was a very
11 clear direction, Madam President, where the country was going. 2002 the
12 opposition won, and the president who had come to power was a democrat, a
13 liberal president. We had what we call a referendum. 2005, he was
14 leading the government to fight for the constitution to be passed. The
15 opposition won. The president agreed, showed signs of a liberal
16 president. And as we came to 2007, everybody expected - because the
17 president is a gentleman - I don't know why anybody would plan violence
18 for that. Before that, yes, people were complaining about dictatorial,
19 but as we were coming to 2007, most of the leaders were reformists in
20 Kenya.

21 Q. So just to make sure I understand your answer, sir, again, if the
22 violence was planned, your answer is that you would not have known.

23 A. No, it's not. As far as I know, no. Yeah.

24 Q. We've talked a lot about your relationship with one of the
25 suspects, Mr. Sang, but I'd like to now turn to your relationships with

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1 the other two suspects and let's start with Mr. Ruto. Do you know him?

2 A. Yes, I know him. I'm a Kalenjin. He's Kalenjin. Why not? He's
3 a leader in -- one of the MPs from Rift Valley. Why not? He's one of
4 the -- he's been a cabinet minister in the country. Why not? So I know
5 him to that extent.

6 Q. And you also said that he had been honoured by the community by
7 being made a Kalenjin elder in here his own time; is that right?

8 A. By being honoured by Kalenjin elders. Yes, given that honour.

9 Q. What does that mean?

10 A. It means he's given acceptance as a young person to listen, to
11 participate any time elders would like to have a community, a concern, or
12 a discussion basically.

13 Q. How was he selected for this honour?

14 A. Usually -- in this case it was not the community that selected
15 the occasion. It was a political occasion which -- but then it was not
16 even exclusively by Kalenjins. It was by the party ODM, Madam President,
17 because the day he was given the honour, it was in the presence of
18 everybody. It was not a Kalenjin affair. I would say what Ruto received
19 at that time was honour politically, like the other people were asking
20 the Kalenjin leaders -- elders to recognise him as one of the leaders and
21 one of being accepted to be one of the leaders is to be honoured as a --
22 as an elder. And in that presence, the day it was done, it was not
23 exclusively Kalenjin. It was a party affair. We had Raila Odinga
24 present, Kimama, and several others because it was in the public domain.
25 You can get the pictures of that, yes.

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1 Q. So then was he being honoured as a Kalenjin leader or as a
2 political leader?

3 A. As a party leader in Rift Valley in -- among the Kalenjins, just
4 party leader.

5 Q. And what party was this?

6 A. That was ODM.

7 Q. When did this take place?

8 A. I don't remember the date, but sometimes in 2007. I don't
9 remember the date. It was not part of my special diary, but I saw it as
10 a political campaign.

11 Q. So that's not in your diary?

12 A. It's not in my diary.

13 Q. Okay. Was that the first time that you met Mr. Ruto?

14 A. I said Mr. Ruto is a Kalenjin. Kalenjin community has been there
15 all the time, and leaders as they come out you see them, and Ruto became
16 a leader of Eldoret North, that's when I knew about him, because it was
17 announced he won the election sometimes in the 1990s, was at late 1990s,
18 Madam President - that's what I knew - as a member of Eldoret North, and
19 then from then on he became active in government and so on.

20 Q. Did you come to know him outside of politics at all?

21 A. He's been a politician and has remained politician to this date.
22 We meet in church. He's a Christian. Occasionally, when we have prayers
23 we meet in churches or in that denominational prayers meetings, whenever
24 those prayers are held, but everybody is on his own. We are meeting not
25 because the meeting is ours but everybody was in the meeting. So to that

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1 extent, yes. I also met him when I visited his home. I mean the home of
2 his father, when his father died, and we went to console the family along
3 with the bishop of his church.

4 Q. So do you know the members of his family?

5 A. Yes, a few of them. I know his wife. Maybe, you know, one son
6 maybe. I don't know any other person.

7 Q. And does he know any of the members of your family?

8 A. He does.

9 Q. Who does he know?

10 A. He knows me. He knows my wife. He knows my wife. I have a
11 singer, a daughter who sings, a gospel singer in the country and
12 everybody knows. She appears in the newspapers. So I guess he must have
13 seen her. Yeah.

14 Q. I want to go back to this meeting you said for Ruto when he was
15 made a political leader in 2007.

16 A. Yeah.

17 Q. This was an ODM event?

18 A. Yes, it was an ODM event done in the Kalenjin community, I mean,
19 in the -- in his constituency. It was like the party was seeking the
20 permission of the community to have him as one of their representative.

21 Q. Why did you attend the event?

22 A. I didn't attend myself.

23 Q. So how do you know what happened at the event?

24 A. It was in the newspaper. It was in the television. I heard it
25 in the news. I watched it.

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1 Q. Okay. Have you ever attended any political events related to
2 Ruto's campaign?

3 A. No.

4 Q. Have you ever supported him politically?

5 A. No. Which way? Be a campaigner or whatever?

6 Q. In any way.

7 A. No way.

8 Q. You were talking a bit about Ruto's position within ODM. In that
9 party does he -- to your knowledge has he ever held any senior positions?

10 A. I don't know. I know him as an active member of that party. I
11 know him as a Member of Parliament of the same party. Within the party,
12 I don't know the hierarchies, and I only know the political -- the party
13 leader. I know the chairman of the party. I know the secretary-general
14 of the party. As to other leaders, I don't know, because I had no
15 interest to that, Madam President. I guess -- I didn't have anything to
16 do with it.

17 Q. Are you familiar with an ODM structure called the Pentagon?

18 A. It was -- I understand they used to have a meeting of some
19 leaders, they -- which form the -- some of the cabinet ministers were in
20 that meeting. Occasionally, I would see some members who were -- they --
21 yes, there was something like -- was it a policy-making body of the
22 party. During the campaign, I heard about it.

23 Q. Do you have any recollection of who the members of the Pentagon
24 were during the 2007 campaigns?

25 A. I can recall a few as I have mentioned because they were vocal

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1 all the time. You could hear the party leader because he's in the
2 leadership, the secretary-general, the party chair. Ruto who had been
3 made a representative of the party on behalf of Rift Valley was there.
4 Joe Nyagah from -- who is our current minister of cooperative in Kenya
5 today was also a member. I don't remember others, yes. Just among
6 others.

7 Q. Have you ever run for political office yourself?

8 A. No.

9 Q. Have you ever considered it?

10 A. Not at the moment, but I have -- I have no reason at the moment,
11 but you can always talk about where you are. You can talk where you have
12 been. You don't know where you're going. I don't know what I will be.

13 Q. I want to ask you a bit now about the dates that you were
14 discussing before. You gave evidence about where you were on the 30th of
15 December, 2006; on the 2nd of November of 2007; on the 2nd of September
16 of 2007. Before coming to court today, had anyone asked you where you
17 were on those dates?

18 A. No. I guess the people I've been with all the way from Nairobi
19 up to here I've been with the Victims and Witness Unit, who have only
20 taken me to the hotel, brought me to this courtroom. So I didn't need
21 anyone to tell me anything about that. That is what I know. It's part
22 of me. It's part of my history in the past, yeah.

23 Q. So the first time anyone -- any of the lawyers that represent
24 Mr. Sang asked you questions about where you were on those dates was
25 today.

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1 A. It was today. But they had asked me whether you know about the
2 activities of Emo during that time. I said it includes so many. This
3 just talking about one. I have had many meetings in the past, so in my
4 calendar and the calendar of Emo, I went to the office, asked the
5 officers, can you will me the meetings, major meetings we had the year
6 2006 and 2007, because that's what I saw in the -- the structure of the
7 charges. I said it includes dates. What I was expecting was that a date
8 would be asked, "Where were you here," or whatever. So some of the
9 occasions mentioned there I am aware because I was part of the meetings
10 that was there, Madam President.

11 Q. Okay. I think I'm confused and I just want to make sure I
12 understand correctly. So before you said you hadn't really discussed the
13 substance of your testimony with Mr. Sang's lawyers at all.

14 A. Yes.

15 Q. But it's your testimony that they did tell you to think about
16 dates that you'd been doing Emo events or church-related events?

17 A. No, not the events, but "Are you aware about the activities of
18 Emo, whether it is related in anyway with this -- this case?" And I
19 said, "I know about the activities of Emo, and I'm ready to explain
20 that." That is what they said, and I don't know -- and I wonder whether
21 they knew about the dates, because they should have -- and I don't know
22 whether it was necessary then, because what they wanted was, "Are you
23 aware, and are you familiar --" this is the word. "Are you familiar with
24 Emo and Emo's activities very well?" That is the question.

25 Q. All right. So then are there any other Emo events? For example,

Witness: Kosgei Jackson Kipkemoi (Open Session)
Questioned by Ms. Corrie

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1 do you remember any events that you attended in March of 2007?

2 A. March? I don't remember, but there could have been meetings. I

3 don't remember unless I refer to the calendar. If -- if I knew, I would

4 have asked.

5 Q. Okay. Or what about December of 2007?

6 A. 2007?

7 Q. Yes.

8 A. Oh. 2007 I was at home. Nobody was -- I was voting also. I am

9 voter in my country. I was in my village. That is Kalenwa (* phon). I

10 was at home.

11 Q. Do you remember attending any events during that period in your

12 area?

13 A. There was no event at the time. I was at home. We were all in

14 what we call a holiday. We were -- I mean, resting period. After voting

15 I went back to be with the family at home, Madam President. We were just

16 waiting for the results.

17 Q. Okay.

18 A. Yeah.

19 Q. And just briefly, we haven't mentioned this person at all, but

20 the third suspect, Mr. Kosgey.

21 A. Sure.

22 Q. Do you know him at all?

23 A. Yes, I do. As a -- I know him as a politician, again as a

24 Kalenjin, member of our community. I know him, yes.

25 Q. Okay. And when did you first get to know him?

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1 A. I got to know him ever since he came to parliament.

2 Q. When was that if you recall?

3 A. Do I remember, really? 1979 or 1980. I don't -- I don't know.

4 I don't remember exactly, but he's been in parliament long enough. I
5 knew him when he came.

6 Q. And outside of politics, do you have any kind of relationship
7 with him?

8 A. No. No. Neither are we enemies.

9 MS. CORRIE: With the Court's indulgence, may I have one moment,
10 your Honour?

11 PRESIDING JUDGE TRENDAFILOVA: Yes.

12 MS. CORRIE: Thank you.

13 (Prosecution counsel confer)

14 MS. CORRIE: Thank you, your Honour that. Concludes my
15 questions.

16 THE WITNESS: Thank you.

17 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Ms. Corrie.

18 Now I turn to Madam Chana. You have the floor to ask your
19 questions as you requested in the beginning.

20 MS. CHANA: Thank you very much, Madam President.

21 Questioned by Ms. Chana:

22 Q. Good evening, Bishop.

23 A. Good evening to you, madam.

24 Q. I am the common Legal Representative of 327 victims who have been
25 recognised in this case.

Witness: Kosgei Jackson Kipkemoi (Open Session)
Questioned by Ms. Chana

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1 A. Sure.

2 Q. Now, I have listened to the evidence you have been giving in this
3 court with considerable evidence --

4 A. Sure.

5 Q. -- and it is obvious that you're someone who knows a lot about
6 events which happened in Kenya. You follow events. So I would like to
7 ask you, if I may, about the post-election violence after the -- in
8 2006/2007 in the Rift Valley. So if you would please confine your
9 answers to what happened in the Rift Valley.

10 When you were being questioned by the lawyer of Mr. Sang, you
11 were asked the question whether any crimes were committed, and your
12 answer, curiously, was: "It is difficult to say yes or no." Would you
13 like to elaborate --

14 A. Sure.

15 Q. -- on that, please?

16 A. Sure, I will. Madam President, my response is this: That such a
17 question needed explanation, because indeed violence and crimes were
18 committed. That is true. How and what happened is that it began
19 spontaneously, and it appeared that when the breakdown of law and order
20 some criminals took advantage of that, become looters, arsonists, and
21 acts of crimes were committed. I was hesitating to give a direct answer
22 because of the flow of questions as they were coming. So it was
23 spontaneous, and then in the process the violence pick up a life of its
24 own on people began to commit crimes. People be looting and there was a
25 short period when almost Kenya went into darkness in that area and the

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1 rest of the country, yes.

2 Q. Thank you, Bishop.

3 A. Yep.

4 Q. Spontaneous or not?

5 A. Spontaneous, yes.

6 Q. Or not, as the case may be?

7 A. Spontaneous. Oh, okay. Okay. I understand you now.

8 Q. Okay. Would you accept -- would you acknowledge that crimes were
9 committed?

10 A. Yes.

11 Q. Would you tell me typically what kind of crimes were committed?

12 I know you've just referred to some but the kind of crimes that were
13 committed on the ground in 2006, early 2007.

14 A. Crimes were committed in the sense that lives were lost. People
15 were -- killed each other and so on, property destroyed. I think that
16 one is -- is a given. It's a break of law and order.

17 Q. Property destroyed?

18 A. Yep.

19 Q. And I think you previously mentioned looting.

20 A. Yes, there was looting, yes.

21 Q. Would you say -- would you also say that people were injured
22 during this violence?

23 A. Oh, sure, yes, because, Madam President, as a Christian, I -- I
24 think spiritual leaders had a lot of work in comforting families and
25 comforting families who lost their people and participated and that one

Witness: Kosgei Jackson Kipkemoi (Open Session)
Questioned by Ms. Chana

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1 goes without saying, that people were injured, and we are first-hand as a
2 church.

3 Q. (* overlapping speakers) Yes, I understand now, Bishop, but if
4 you can just confine yourself to answering my questions. The next
5 question I want to ask you is that in your evidence you said that the Emo
6 Society looked after all the people in the Rift Valley?

7 A. Yes. It was -- it was -- it looked -- did I say?

8 Q. It looked after. You were concerned about. These -- that was
9 part of your brief, as it were, as the bishop.

10 A. I don't know unless you reframe it again, but if I --

11 Q. I think you said that -- that the Emo community society is for
12 the community as a whole.

13 A. Sure.

14 Q. And you mentioned certain tribes, and you said they were the
15 Maasai, the Turkana and other communities.

16 A. Sure.

17 Q. Would you include Kikuyu in that?

18 A. Sure. Why not?

19 Q. And did you -- do you know about the -- or have you ever been to
20 the camps where there are a lot of people at the moment living who have
21 had to flee their homes?

22 A. At that time when the -- when the -- when the violence broke out,
23 it needed people with capacity to work. I can't work myself. You can
24 see I'm on a wheelchair. So if you are to travel to several places and
25 needed people who are strong enough, but members of the churches and

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1 members of Emo went there, visited. And what I meant by the
2 participation of Emo at that time was restoring of peace in the
3 Rift Valley, Emo worked with all the agencies including the government
4 administration, American embassy who provided assistance through US aid
5 to even a tune of 10.2 million shillings to that, and that served to
6 restore peace among communities of Rift Valley.

7 Q. So is -- is -- to be clear, is the answer that you yourself have
8 not been to any of these camps to lend support and comfort?

9 A. I have sent people to send support, yes.

10 Q. The answer is you haven't then. All right. And then can you --
11 can you tell me any projects that this Emo Society has done for this --
12 these -- the people living in the camps?

13 A. They did what they call a Amani Rift Valley. Amani Rift Valley
14 was a peace programme where communities at conflict were brought together
15 through a process of peace-building that was done between 2008 and 2009.

16 Q. Yes. I don't understand the answer. I mean, any sort of
17 practical help that you gave to these people. Was there anything --

18 A. Apart --

19 Q. -- in the sense any projects the Emo Society put into place to
20 assist these people in the camps.

21 A. I have mentioned, yes, that there was a project called Amani
22 Rift Valley sponsored by the US aid, Madam President, that was towards
23 restoring the process of peace in Rift Valley. I think that is my
24 answer.

25 Q. Bishop, I understand the US aid has been helping a great amount

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1 in Kenya, but I was really concentrating on the Emo Society which is
2 acting for the benefit of everyone. Did you have any fundraising
3 activities, for instance, for the victims?

4 A. Apart from the -- because victims were all over, during that time
5 we could not organise any fundraising except working with the agencies
6 that came at that time. That includes, as I mentioned, the US aid, and
7 they said priority number one because the Red Cross have taken help, we
8 want you to participate in the peace-building and that's what we did and
9 worked together for it.

10 Q. Bishop, I just want to refer back to my notes here. I believe
11 when you gave your evidence earlier on you -- you said that you had
12 raised some 1.-some billion shillings -- or 10 million at the time,
13 anyway.

14 A. I'm sorry, I didn't say.

15 Q. Can you clarify that for me?

16 A. I'm sorry, Madam President, I never said 1.-something billion.
17 The money which was raised, 10 million, was towards the project of buying
18 Kruger farm, Stephanus Kruger farm, and that is Emo investment. It's not
19 foundation.

20 Q. I see. So --

21 A. And it was the company's money. It was not for charity.

22 Q. Yes.

23 MS. CHANA. If I may confer with myself, Madam President, for a
24 minute.

25 I think that will be all from this witness. Thank you very much

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1 indeed.

2 THE WITNESS: Thank you (* overlapping speakers).

3 MS. CHANA: (* Overlapping speakers)

4 PRESIDING JUDGE TRENDAFILOVA: Thank you, very much, Madam Chana.

5 Are you fine? Are you at ease --

6 THE WITNESS: Yes.

7 PRESIDING JUDGE TRENDAFILOVA: -- Mr. Kosgei?

8 THE WITNESS: Yes, I am, Madam President.

9 PRESIDING JUDGE TRENDAFILOVA: I wanted to ask you several
10 questions, but they have been exhausted by those before me. I have just
11 one question left.

12 Questioned by the Court:

13 PRESIDING JUDGE TRENDAFILOVA: When you have been questioned by
14 the counsellor for Mr. Sang, and when you have been discussing the
15 activities of Kass FM, you said - and I hope I'm not wrong - that Kass FM
16 was attended by other competitors apart from those with the president,
17 the current president of the country. Would you explain why?

18 A. I can't explain why, but it wasn't a must that you should go to
19 Kass, because the president, when he addresses the nation, all press do
20 go. He didn't go to Kass and he never went to any other as the
21 president, so -- but other candidates, Madam President, went to several
22 stations. They could come to Kass. They could go to other vernacular
23 stations, yes.

24 PRESIDING JUDGE TRENDAFILOVA: Thank you. This -- this is the
25 answer to my question. I was asking for your personal impression why

Witness: Kosgei Jackson Kipkemai (Open Session)
Questioned by Mr. Kigen-Katwa

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1 this could be that everyone else competing the current president could
2 attend some radio programmes where Mr. Sang was participating, but I
3 thank you very much for your explanation.

4 (The Trial Chamber confers)

5 PRESIDING JUDGE TRENDAFILOVA: On behalf the Bench, we do not
6 have questions for the moment. Now the floor is over to you. The
7 Defence has the last word, so you have some -- you have the chance to
8 pose some questions --

9 MR. KIGEN-KATWA: I request for --

10 PRESIDING JUDGE TRENDAFILOVA: -- to the witness.

11 MR. KIGEN-KATWA: I request for your permission to re-examine the
12 witness, your Honours.

13 PRESIDING JUDGE TRENDAFILOVA: Yes.

14 MR. KIGEN-KATWA: Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: Just to ask Mr. Kosgei. If you
16 would like to have a break?

17 THE WITNESS: I'm okay, Madam President.

18 PRESIDING JUDGE TRENDAFILOVA: Thank you.

19 So Mr. Katwa, you can proceed.

20 MR. KIGEN-KATWA: Most obliged, your Honours.

21 Questioned by Mr. Kigen-Katwa:

22 Q. Now I would like to start at the point in which you asked the
23 question to the extent which you are prepared to come and testify in
24 court today, and could you confirm whether your testimony -- what is the
25 basis of your testimony?

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1 A. I don't think I understand your question well. Basis of my
2 testimony as in what? Who I am or my knowledge about the case at The
3 Hague or about Emo or what? Yes.

4 Q. Did you mention anything to do with a document existing in the
5 web site about this case?

6 A. It is in public domain. There is a web site for ICC
7 indicating -- in the case of Kenya, I think.

8 Q. Yes. Now, that being the case, you said -- could you just, for
9 Court's records -- sorry I'm being fast. Could you just tell the Court
10 for Court's records the first outfit you have mentioned is
11 Emo Foundation?

12 A. Yes, I mentioned the outfit of Emo Foundation because the
13 Prosecution and investigation centred on that.

14 Q. Okay. Just answer my question, if you don't mind. What are you
15 in Emo Foundation?

16 A. I am the patron of Emo Foundation.

17 Q. Now, you've also told this Court something called Emo Community
18 Development Society.

19 A. Yes.

20 Q. Are you aware of it?

21 A. I am aware of it.

22 Q. Could you tell the Court what you were in that outfit?

23 A. I am again -- I am a patron of that.

24 Q. Thirdly, you said Emo Investment.

25 A. Yes.

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- 1 Q. What are you in that one?
- 2 A. I am a honorary member of the board of director.
- 3 Q. Are there any other Emos?
- 4 A. Their several Emos within the -- in other -- in other areas, in
- 5 other countries. We've seen you can open on the web site so many of
- 6 them.
- 7 Q. All right.
- 8 A. Yeah.
- 9 Q. And are you an official in all the others?
- 10 A. No.
- 11 Q. Could you confirm to the Court if you're an official in only
- 12 those three?
- 13 A. Yes.
- 14 Q. Not any other Emo.
- 15 A. Not any other Emo.
- 16 Q. Now, you said you already saw the document that was published in
- 17 the Emo remember site.
- 18 A. Yes.
- 19 Q. Sorry from, the ICC?
- 20 A. Yes.
- 21 Q. Could you tell the Court which of the three Emo he is that you
- 22 are an official was indicated in the charge document?
- 23 A. Emo Foundation.
- 24 Q. You saw only Emo Foundation?
- 25 A. Sure.

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1 Q. Did you see Emo Investment (* indiscernible)?

2 A. No.

3 Q. Emo Community Development Society?

4 A. No.

5 Q. Now, could you tell the Court are the three of them registered
6 under the same law from your knowledge as an official?

7 A. No.

8 Q. Are the memberships of the three Emo Foundation, Emo Community
9 Development Society, and Emo investment, is the membership the same?

10 A. To a charge extent, no. A few members who has an interest
11 because other Emos are specific. Investment just for business, and some
12 people who are interested in business are not members but shareholders.

13 Q. So membership is not necessarily the same?

14 A. Membership is not necessarily the same as the share holders.

15 Q. Now, I am not sure if you recall the exact dates of registration.
16 Could you tell the Court if you have any recollection in terms of the
17 month and the year of the registration of the three Emo outfits that
18 you're an official of?

19 A. I will not remember the other two, because I didn't prepare,
20 Madam President, for that. I think this court, the Prosecution had
21 limited the information to Emo Foundation which I have the exact date of
22 registration and with your permission I can answer the Defence to that
23 extent, that is --

24 Q. Please answer.

25 A. Emo Foundation was registered on the 9th December 2010.

Witness: Kosgei Jackson Kipkemai (Open Session)
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1 Q. Emo Foundation, which is in the charges you saw from the web
2 site --

3 A. Right.

4 Q. -- was registered in September 2010?

5 A. December.

6 Q. December 2010?

7 A. 2010. 9th of December, 2010.

8 Q. Could you confirm if it existed in December 2007 to facilitate
9 and be a vehicle of violence as is stated in the charges.

10 A. One, it never existed the second --

11 PRESIDING JUDGE TRENDAFILOVA: (Microphone not activated) ...

12 MR. KIGEN-KATWA: I'm sorry.

13 PRESIDING JUDGE TRENDAFILOVA: (Microphone not activated) ...

14 THE INTERPRETER: Please use your microphone, madam. Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: (Microphone not activated) ...

16 question, without further developing the purpose for which Emo was
17 established, allegedly, in 2007.

18 MR. KIGEN-KATWA: I am obliged and I apologise, Madam President.

19 Q. Was Emo foundation in existence in the year 2007?

20 A. No.

21 Q. Now, may I ask you questions in the (* indiscernible). Did you
22 as an official or, rather, first of all did Emo Community Development
23 Society exist in the year prior to the year 2007?

24 A. Emo Society.

25 Q. Yes.

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1 A. Yes.

2 Q. And you say you're a patron?

3 A. Yes.

4 Q. Could you confirm to the Court if you met my client Joshua Sang
5 for purposes of planning violence in the -- in -- in -- in within the
6 confines of that outfit?

7 A. Let me say no outrightly because I have repeatedly talked about
8 it, Madam President, that what was the purpose?

9 Q. Reverend.

10 A. Yep.

11 Q. My question is very specific.

12 A. Yep.

13 Q. Joshua Sang, you're witness to Joshua Sang; isn't it?

14 A. Yes.

15 Q. Did you meet him at any time?

16 A. I say no on -- on the subject you have clarified.

17 Q. Yes.

18 A. No.

19 Q. On the subject of planning any violence.

20 A. No. I have met Joshua as a journalist, Madam President, when
21 he's hosting a programme in the studio which we have requested and paid
22 for.

23 Q. May I ask in passing, then, if you have met either the first
24 suspect William Ruto or the second suspect Henry Kosgey on the same
25 subject of violence?

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1 A. I have stated before, Madam President, and I still want to do so,
2 that the issue of politics and leadership about politics in Kenya is not
3 my issue. I am a clergyman. We've never met with him on that subject.

4 Q. Now, whenever you went to Kass FM station, was it exclusively
5 Joshua Sang who was hosting you in all the programmes that you went for?

6 A. No.

7 Q. Could you tell the Court, could you give the Court any dichotomy
8 in terms of what subjects you went to discuss at Kass FM?

9 A. Mostly promoting Christian values, issues that promotes morality,
10 issues that promotes family, promotes empowerment of the youth. In our
11 country, we have a problem of unemployment, ever increasing young people
12 in our communities that needs job opportunities. They need to be
13 encouraged to go to -- to form groups to take advantage of
14 micro-financing provided by the banks and corporates.

15 Q. Thank you, reverend.

16 A. We're encouraging them for that.

17 Q. You've come here in part as a Bishop as a clergy; isn't it?

18 A. Right.

19 Q. You have also confirmed to this Court that you are a functionary
20 in Emo Foundation, Emo Community Development Society, and Emo Investment.
21 You've also told this Court that you have other roles as a grandfather so
22 on and so forth, and I wanted to just understand: Do you go to Kass FM
23 for purposes of Emo Foundation or is there anything beyond there or why
24 you're not going at all about Emo.

25 A. Principally I am a pastor, so the big message I take through the

Witness: Kosgei Jackson Kipkemoi (Open Session)
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1 press is through the message of the church. The other one is when Emo is
2 talking about community service provided by the church through -- it's a
3 joint effort in social empowerment. That's once in a while, but most of
4 my messages is on preaching the word of God.

5 Q. And if the Prosecutor were to produce transcripts of all your
6 interviews at Kass FM, would it support the fact that you never talked
7 violence?

8 A. (* Inaudible)

9 Q. Now, do you go to Kass FM exclusively?

10 A. Exclusively?

11 Q. Do you go -- whenever you have something to publicise in the
12 media, is it only Kass FM that you go to?

13 A. As I said before, Madam President, I head institutions. I don't
14 go as a person as a matter of personal issue. When there is a programme
15 to be carried out, it is arranged, my -- I have to be requested on time,
16 I have to be given time to prepare. They have to book for it and
17 arrangement is done. I don't just work to Kass FM because I don't
18 think -- I have other means and systems of communicating to the members
19 of my church. I don't have to use Kass FM. I go there when it is
20 planned for or it is necessarily arranged.

21 Q. Reverend, you haven't answered my question?

22 A. Mm-hmm.

23 Q. Is it only Kass FM media that you go to?

24 A. No.

25 Q. Could you tell the Court if you go to any other medias and which

Witness: Kosgei Jackson Kipkemoi (Open Session)
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1 ones?

2 A. Sure. I go to Citizen, Citizen Radios. I go to Chamgei, I
3 provided -- go to Nation Television as main televisions in Kenya. I go
4 to K24. I appear in them. I appear also -- and in other radio stations
5 which include Bibloosema Studio.

6 Q. (* Overlapping speakers) broadcasts are public or --

7 A. Public, public, public.

8 Q. Now, I want to move on into the issue of funds.

9 A. Mm-hmm.

10 Q. How much by the year 2007 had Emo foundation, that is in the
11 charge sheet, how much had it raised?

12 A. Nothing.

13 Q. There was no money --

14 A. No money.

15 Q. -- in the account of Emo Foundation?

16 A. Right.

17 Q. Does Emo Foundation after the year 2007 or even as of now
18 maintain any funds in its accounts?

19 A. No. It's just registered itself last year. It is beginning to
20 open accounts and structures now. We -- they don't -- we have not
21 started fundraising now. The money I mentioned before was for -- from
22 investment and other things, yes.

23 Q. Now, may I ask you Emo Community Development Society, did it have
24 an account as -- by December 2007?

25 A. Yes.

Witness: Kosgei Jackson Kipkemoi (Open Session)
Questioned by Mr. Kigen-Katwa

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1 Q. Could you tell the Court what was its resources?

2 A. It was only one what had been raised in terms of membership --

3 Q. Yes.

4 A. -- and that's it. They didn't have any money.

5 Q. The Prosecution have specifically said that by December 2007, you
6 had a sum of 1.2 billion shillings, Kenya shillings. Could you confirm
7 that is what you had in the account by December 2007?

8 A. No, and I wish we had such money. We would have brought Kruger
9 farm straight.

10 Q. Could you be more specific: How much - even if it's roughly an
11 estimate - how much did you have by December 2007?

12 A. Are you talking about investment?

13 Q. Emo Community Development Society.

14 A. I don't remember. It must have been below -- below 10 million.

15 Q. Below 10 million?

16 A. Because it was just membership fund.

17 Q. And are those bank accounts available?

18 A. Sure.

19 Q. And was Emo investments in existence then?

20 A. Yes, it was.

21 Q. Did it have any money.

22 A. Ten million with the -- paid to Kruger straight in December.

23 Q. Please clarify: As at December 2007, you said it had raised 10
24 million?

25 A. It had raised 10 million.

Witness: Kosgei Jackson Kipkemai (Open Session)
Questioned by Mr. Kigen-Katwa

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1 Q. And it passed it over to --

2 A. To Kruger and the cheques are there and it's clear. The
3 transaction is clear in the bank. It was by cheques, yes.

4 Q. Now, it is specifically said that there is an outfit called Emo
5 Bank. Do you know of anything like that?

6 A. No.

7 Q. Would you know if it was there?

8 A. Would I know? Yes. Why not? Because banks are there. They're
9 there to sell and market themselves.

10 Q. So if there was an Emo Bank, you'd know of it?

11 A. Sure.

12 Q. Does all the three Emos, Emo Foundation, Emo Community
13 Development Society, and Emo investment have web sites?

14 A. I'm not aware -- I'm aware of the Emo in -- I'm aware about Emo
15 society. It has a web site. I'm aware about Emo Investment, it has a
16 web site. It was our management and administrative matters, Mr. Defence,
17 with your permission, Madam President. I don't have details. I don't
18 think even -- I'm not informed whether Emo Foundation has one.

19 Q. Now, it is said that the Emo was using its outfit to incite and
20 particularly to seek the eviction of Kikuyus, Kisiis, Kambas, and to
21 punish if PNU were succeed and that it had a preference for ODM?

22 A. I'm not aware about that. We are not -- Emo is not a political
23 outfit. Neither is it a wing of any political party.

24 Q. Just a minute.

25 A. Yeah.

Witness: Kosgei Jackson Kipkemai (Open Session)
Questioned by Mr. Kigen-Katwa

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1 Q. First of all, did you endeavour for the eviction of the people

2 I've said or punish them?

3 A. The answer is no, Madam President, and further on why should we
4 have done that.

5 Q. And would that be confirmed from your web site?

6 A. Sure.

7 Q. Did you have any preference for a political party?

8 A. How could I? I -- membership of my church comes from different
9 parties and it comes from different communities. I had no preference for
10 any party, but because the parties in Kenya, for example,
11 Madam President, are not necessarily driven by ideology or philosophy.
12 It is driven by who leads at the moment. It is personalities.

13 Q. Thank you.

14 A. Yeah.

15 Q. Now, I will come to that issue of the parties in a second, but
16 could you tell us, the Prosecution very pointedly asked you where you
17 were on 30th of December, 2006, and you said you were preparing for a
18 Thanksgiving event on 31st?

19 A. That's correct.

20 Q. The Thanksgiving event that you said you had on 31st in Eldoret,
21 did it have media present?

22 A. I don't remember, but it had because it was a public meeting.

23 Q. It was open?

24 A. It was open, it was in the stadium, and it was organised by
25 bishops, not as -- as an organisation but it was interdenominational

Witness: Kosgei Jackson Kipkemai (Open Session)
Questioned by Mr. Kigen-Katwa

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1 prayers organised by spiritual leaders in Eldoret.

2 Q. Now, you've just mentioned the question that you were not
3 supporting any political party and that it is not necessarily driven by
4 any agenda. Do you know if my client Joshua Sang belongs to any
5 political party? Do you know?

6 A. I am aware that it could be belonging to a political party, but
7 I -- I have never asked him which party he belongs, so I have no -- I
8 have no interest to that.

9 Q. More generally, do you know if he has -- if he's a politician?

10 A. I know him as a journalist. As to being a politician, I guess
11 everyone is a politician. I don't know. Because -- because if everybody
12 votes in my country, it is because of politics. Every citizen is a
13 political individual, defends the role.

14 Q. Thank you. May I ask you firstly, are you aware of him
15 contesting for any political office?

16 A. No.

17 Q. You're not aware of it?

18 A. I'm not aware.

19 Q. What of the first suspect in this case?

20 A. Can you ask the question?

21 Q. Are you aware -- do you know him as a politician?

22 A. Yes, I do.

23 Q. You said you've known him for a while as leader?

24 A. Yes.

25 Q. Has he been in one political party all that time?

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Questioned by Mr. Kigen-Katwa

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1 A. No. He was in KANU and then he came to ODM and that's the
2 community shifting. I think like anybody else.

3 Q. What of the second suspect.

4 A. Are you talking about Henry Kosgey?

5 Q. Yes?

6 A. Yes. He was in KANU one time and he joined ODM late.

7 Q. Let's move on to the top of Kenya government's political
8 leadership. Has the president been in one party throughout the history
9 of his politics?

10 A. No, he's been a -- and I'm sure he's a life member of KANU. He's
11 been a leader of Democratic Party in Kenya. He's been in several
12 parties. Today he's in PNU.

13 Q. What about the prime minister?

14 A. The same. He is been in different parties too.

15 Q. Now, you said you saw the document containing charges or, rather,
16 the charge sheet against the three suspects. Did you?

17 A. Yes.

18 Q. Did you see any mention of a political party called the PNU and a
19 political party called ODM?

20 A. Yes. Yes, I've seen that.

21 Q. Could you say there's any ideology that can be a fuel to say that
22 people should be evicted to create an ODM area?

23 A. No. I guess Madam President it's illegal in our country to
24 develop a party that is exclusive, and I -- I believe when it was
25 accepted by the government, and that's why Kenyans join, that particular

Witness: Kosgei Jackson Kipkemoi (Open Session)
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1 interest has been taken care of.

2 Q. But in any event, it is your testimony - and probably correct me
3 if I'm wrong - that the nature of Kenyan politicians are very nomadic and
4 do not plan their future on a given political party?

5 A. I wouldn't comment on that. I don't think I can comment on that,
6 Madam President, unless --

7 PRESIDING JUDGE TRENDAFILOVA: Counsel Katwa, would I like to
8 make a comment. Did you start a new examining your witness, because
9 normally when you have the last word, it is given for the purpose of
10 asking questions that follow the questioning of the Prosecutor and the
11 Legal Representative, as if you started anew in addition to your
12 colleague.

13 MR. KIGEN-KATWA: I was confining myself, Madam President, within
14 my understanding of what the Prosecution had asked, being in part the
15 political life, especially of the first suspect and his relation with the
16 first suspect, but I can abandon that line of questions, Madam President,
17 if it looks like it's outside what the Prosecution had asked.

18 PRESIDING JUDGE TRENDAFILOVA: The Defence should have all the
19 opportunities to properly prepare and lead its case, but still --

20 MR. KIGEN-KATWA: (* Overlapping speakers)

21 PRESIDING JUDGE TRENDAFILOVA: -- within the legal parameters
22 established.

23 MR. KIGEN-KATWA: I appreciate that, Madam President. I will not
24 offer it then.

25 Q. You have been asked in cross-examination by Prosecution if you

Witness: Kosgei Jackson Kipkemai (Open Session)
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1 are aware of the first suspect being made a political leader or an elder.

2 Do you recall that?

3 A. Yes, I do.

4 Q. May I ask you specifically in respect to my client Joshua Sang,

5 are you aware of any incident where he has been made an elder of one or

6 (* indiscernible)?

7 A. No, I'm not aware of.

8 Q. You're not aware?

9 A. Not aware.

10 Q. Are you aware of any accolades that my client Joshua Sang may

11 have been given by the community to give him any leadership status?

12 A. I'm not aware. I'm not aware.

13 Q. You're not aware.

14 A. Yeah.

15 Q. You were also asked questions about the hierarchies elders. In

16 your understanding from what the Prosecution asked you, would the second

17 suspect be answerable to the first suspect?

18 A. As I stated before, Madam President, is that eldership is a

19 source of authority in Kalenjin community, and it is associated with age.

20 The first suspect cannot be over the second suspect in terms of cultural

21 leadership, because Henry Kosgey is an elder enough to be the father to

22 some extent or elder brother of Honourable Ruto, so he cannot be in that

23 context of eldership.

24 Q. And the last question I want to ask --

25 PRESIDING JUDGE TRENDAFILOVA: While you were examined by the

Witness: Kosgei Jackson Kipkemai (Open Session)
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1 first lawyer of the Defence team of Mr. Sang.

2 THE WITNESS: Yes.

3 PRESIDING JUDGE TRENDAFILOVA: You gave a very thorough
4 explanation of this.

5 THE WITNESS: Absolutely, your Honour.

6 PRESIDING JUDGE TRENDAFILOVA: So --

7 MR. KIGEN-KATWA: I'm sorry if I seem to be repeating myself,
8 Madam President.

9 Q. My last question on that issue, Bishop, is --

10 PRESIDING JUDGE TRENDAFILOVA: Mr. Katwa, the Chamber just wants
11 to remind you that there are four minutes left.

12 MR. KIGEN-KATWA: I'm obliged, Madam President.

13 PRESIDING JUDGE TRENDAFILOVA: And that you, following the
14 schedule, you have half an hour for questions --

15 MR. KIGEN-KATWA: I recall --

16 PRESIDING JUDGE TRENDAFILOVA: -- following the Prosecutor's
17 questioning.

18 MR. KIGEN-KATWA: I recall that, Madam President.

19 PRESIDING JUDGE TRENDAFILOVA: So how much time do you need to
20 finish your questioning?

21 MR. KIGEN-KATWA: Could you accommodate me ten minutes,
22 Madam President?

23 PRESIDING JUDGE TRENDAFILOVA: I have to ask the interpreters.

24 THE INTERPRETER: Yes, madam.

25 PRESIDING JUDGE TRENDAFILOVA: Thank you truly very much. I

Witness: Kosgei Jackson Kipkemai (Open Session)
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1 shall following strictly the timing.

2 Mr. Katwa, please just keep close to the purpose of you having
3 the floor now.

4 MR. KIGEN-KATWA: I'm most grateful to your Honours.

5 Q. Bishop, as a build-up, to the best of your recollection from
6 political scenery in Kenya, do you recall if the first suspect and the
7 second suspects were necessarily in the same political ideology and
8 views?

9 A. I cannot --

10 Q. You don't recall that?

11 A. -- I can't recall. I can't recall. And as I said,
12 Madam President, run-up to 2007 election Ruto was not so much and
13 strongly for the ODM party. He was forced into it by the community and
14 his followers -- I mean the constituent, yes.

15 Q. Now, the Prosecution asked you whether or not Emo was
16 accommodating other people from Rift Valley in its membership. Do you
17 recall that?

18 A. Yes, I do.

19 Q. You were also specifically asked whether Emo is a Kalenjin
20 language and whether it could accommodate them; isn't it?

21 A. Sure.

22 Q. Does the fact that it is called Emo mean that the language used
23 is Kalenjin?

24 A. Laws governing societies in Kenya is that any time any name
25 becomes acceptable if you divine it and it is appears it is not offensive

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1 to anybody in the country and it is in interest of the national identity
2 of our country. So Emo went through that process, Madam President, and
3 it was explained to mean that -- thank you.

4 Q. Now, this -- you've told the Court a couple of things. There is
5 the question of whether Emo was used in the violence, whether Emo has a
6 bank, if it has a web site, it is has registration status; all the three
7 of them. You already said that you were never asked questions about the
8 play -- the role of Emo. Are you aware of anybody who was asked?

9 A. No.

10 Q. Now, outside yourself and your officials, is it possible to get
11 the details of all these issues from Kenya government?

12 A. Yes.

13 Q. In the meetings that you said you had with Joshua Sang which the
14 Prosecutor asked you, did you invite anybody else or it was limited in
15 terms of the media inviting Joshua Sang?

16 A. Media houses are invited to our meetings, so Joshua was one of
17 them.

18 Q. He was one out of others?

19 A. Out of others.

20 Q. You told the counsel for the victims asked you the question what
21 role you played in the times when there was violence, and you said as
22 clergy you are busy. Did you say that?

23 A. Yes, we do.

24 Q. You also say that US aid assisted in funding movement towards
25 peace?

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1 A. Sure.

2 Q. Could you tell the Court, first of all, could confirm that it is
3 a funding from the American government?

4 A. I've said that.

5 Q. Prior to your being engaged for peace, was Emo vetted in terms of
6 whether or not it played any role?

7 A. I guess an agency before they work with any organisation, they
8 have to check on the status, they have to check with the intelligence
9 service, and that's exactly what happened, because we have to apply and
10 the process of being accepted include the presence -- the process of
11 vetting, to know who your state is and so on.

12 Q. Could you kindly answer my question? Was it more
13 (* overlapping speakers) --

14 A. Yes.

15 Q. It was vetted. Okay. Lastly, as a general question, you have
16 been said to have been specifically in a meeting of 30th December, 2006,
17 when violence was planned. You were in a meeting of 15th April, 2007,
18 when oathing was done using a dog's blood, and you were in a meeting 2nd
19 of November, 2007, when guns were distributed for purposes of violence.
20 Could you confirm to the Court and that those meetings, the first meeting
21 was in the first suspect's home William Ruto, the second one on 15th of
22 April was in Molo, and the third one again was at the first suspect's
23 home. Do you have an answer to those --

24 A. I say no. No. And I don't think it is done in my country. That
25 must be somewhere else.

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1 Q. They have said here Reverend Kosgei?

2 A. No.

3 Q. They have also said Emo sent a representative. Could you tell
4 the Court if there was any representative in any such meetings?

5 A. No, no, no. No.

6 Q. And have you been to the home of the first suspect?

7 A. Home of the first suspect? I said we visited -- I don't know
8 whether it was the home -- his home, but we went to console him the day
9 he lost his father. I don't know whether that is his home, but I went to
10 the field where the funeral service was held because there were thousands
11 of people there.

12 Q. Okay. Apart from concerning his father, did you engage in any
13 other subject of agenda?

14 A. No, no.

15 MR. KIGEN-KATWA: Madam President and your Honours, thank you so
16 much. That's all I could possibly ask.

17 PRESIDING JUDGE TRENDAFILOVA: Thank you, Counsel Katwa for being
18 strict at this point in time.

19 Does someone present in the courtroom want to say -- to take the
20 floor?

21 THE WITNESS: Madam President, would I be allowed to say a
22 comment --

23 PRESIDING JUDGE TRENDAFILOVA: Yes, of course. Please --

24 THE WITNESS: -- finally?

25 PRESIDING JUDGE TRENDAFILOVA: -- Mr. Kosgei. Yes.

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1 THE WITNESS: Later or now?

2 PRESIDING JUDGE TRENDAFILOVA: Right now.

3 THE WITNESS: Right now.

4 First I want to thank this Court for giving me the opportunity to
5 express what I can recollect about what happened. Secondly, I am aware
6 that it is quite an issue of great magnitude that the indictment theory
7 in this particular case, Madam President, has pulled every social
8 connection, which is a natural connection of any society in the world;
9 the leadership of Kalenjin, the elders of Kalenjin, the athletes of
10 Kalenjin, the businessmen of Kalenjin, spiritual leaders of Kalenjin.
11 Today, as I give this witness, it is so emotional in that 5 million
12 people have been implicated by way of this indictment theory. It's not
13 about the three who are here. It's affecting a -- 12 per cent of the
14 total population of Kenya. It is interesting that this community at that
15 time, your Honour, were not under any threat. It is not marginalised
16 since independent. It is not a minority that is suffering. This
17 community had no reason whatsoever to organise themselves to fight for
18 the -- for themselves.

19 PRESIDING JUDGE TRENDAFILOVA: Mr. Kosgei --

20 THE WITNESS: That's major (* overlapping speakers) --

21 PRESIDING JUDGE TRENDAFILOVA: -- you are welcome to speak, but
22 still, you know, the role a witness has to play is just to present his or
23 her recollections --

24 THE WITNESS: (* overlapping speakers) Thank you.

25 PRESIDING JUDGE TRENDAFILOVA: -- about events that we are

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1 interested. I understand that maybe you are tempted by your role as a
2 bishop.

3 THE WITNESS: Right.

4 PRESIDING JUDGE TRENDAFILOVA: But still it goes far beyond --

5 THE WITNESS: Okay.

6 PRESIDING JUDGE TRENDAFILOVA: -- the role that you are invited
7 to play in this hearing. I thank you, still very much --

8 THE WITNESS: Thank you.

9 PRESIDING JUDGE TRENDAFILOVA: -- for coming to the court. The
10 Court is going to take its decision based only on the evidence and will
11 not be influenced by anything else, and on behalf of this Bench of the
12 Judges, Judge Kaul, Judge Tarfusser and myself, we thank you and we wish
13 you a safe trip back home.

14 Now, could you, Court Officer, proceed with the -- in a closed
15 session so that you can usher Mr. Kosgei.

16 (Closed session at 6.04 p.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 6.06 p.m.)

1 COURT OFFICER: Madam President, your Honours, for the record
2 we're back in open session. Thank you.

3 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer.

4 I would like on behalf of the Bench to inform the parties and the
5 Legal Representative that we are not going to proceed with the third
6 session for today in order for the parties to relax to have time to
7 reflect on the evidence presented, on the arguments also presented to the
8 analysis made so that tomorrow at 2.30 we commence our last day with the
9 closing statements of the parties and of the Legal Representative. So I
10 thank very much the parties, Madam Chana, the interpreters, as always,
11 heartily thank you for your generosity to us. I would like to thank you
12 everyone who is present, the Court Officers, of course the security
13 officers, the stenographers, the court reporters, thank you very much for
14 assisting us diligently and highly professionally and, of course, the
15 public in the public gallery, those who are present there. Have a good
16 evening.

17 I adjourn the hearing, and we shall meet tomorrow.

18 COURT USHER: All rise.

19 The hearing ends at 6.06 p.m.

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