

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-01/09-02/11
6 In the case of the Prosecutor versus Francis Kirimi Muthaura,
7 Uhuru Muigai Kenyatta, and Mohammed Hussein Ali
8 Confirmation of Charges Hearing
9 Monday, 26 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, everyone.
16 Court Officer, would you please call the case.
17 COURT OFFICER: Yes, Madam President. Good afternoon, your
18 Honours. This is the Situation in the Republic of Kenya, in the case of
19 the Prosecutor versus in the case of the Prosecutor v.
20 Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali,
21 case reference ICC-01/09-02/11. Thank you, Your Honours.
22 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer.
23 Just for the record, do you have some -- someone new?
24 Ms. Adeboyejo, please.
25 MS. ADEBOYEJO: Good afternoon, Madam President, your Honours.

1 Yes, indeed. We have one new person, and the return of Mr. Alex Whiting,
2 and we have one of our legal reviewers, Ms. Yulia Nuzban. Thank you.

3 PRESIDING JUDGE TRENDABILOVA: Thank you very much.

4 And the Defence team. Mr. Khan.

5 MR. KHAN: Madam President, no, the team is unchanged.

6 PRESIDING JUDGE TRENDABILOVA: No one.

7 Mr. Kay.

8 MR. KAY: No changes, your Honour.

9 PRESIDING JUDGE TRENDABILOVA: And Mr. Monari.

10 MR. MONARI: Madam President, your Honours, we have a new member.

11 Her name is Caitlin Stapleton. She's a legal assistant on our team, and
12 for this segment she will be joining us. She's over to my right, here.

13 PRESIDING JUDGE TRENDABILOVA: Yes, I've seen her face. Thank
14 you very much.

15 On behalf of the Chamber we have with us legal assistant
16 Thomas Koerner, and you already know Ms. Eva Maria Witschnig, that is
17 what I wanted to say before we go into our schedule. And what we have to
18 do today, we start already with the questioning of the witnesses and
19 today the Chamber is to proceed with the questioning of the first witness
20 and hopefully if we can proceed with the second witness that has been
21 called by the Defence team of Mr. Muthaura.

22 I would like just to make some clarifications regarding the
23 questioning before we start, and I'm going to make this on behalf of my
24 colleagues and myself.

25 Regarding first of all the order of the questioning of each

1 witness, the law is very clear on this. The Defence calling the witness
2 will put its questions first. Of course, this is Rule 114(2)(a). Then
3 it is the turn of the Prosecutor, the Legal Representative of Victims as
4 provided for in Article 68(3) and as decided in the decision regarding
5 victims' participation in the confirmation hearings and all related
6 proceedings. The Chamber will decide on a case-by-case basis if the
7 personal interest of victims are affected by some issue that has been
8 discussed in the questioning of the witnesses being raised. The Chamber
9 can ask questions also to the witness, and of course finally it will be
10 the Defence that has called the respective witness to ask questions if it
11 finds it necessary, of course.

12 Second, the parties may question witnesses only on issues that
13 are relevant to the subject matter of the case and that are touching upon
14 the reliability or credibility of the witness testimony or other relevant
15 matters. This is provided in Rule 140, paragraph (2)(b). Thus we hope
16 that all questions will be relevant to the subject matter of the case.

17 Third, I would very shortly address the matter of the so-called
18 leading questions.

19 As the parties are well aware, the subject of the leading
20 questions is perceived sometimes as controversial. Given that the
21 Statute is a unique combination of the two major legal systems of the
22 world, the Chamber decided not to enter into any debate on the
23 interpretation of this word -- this wording, but, rather, to explain to
24 the parties that the questioning party should refrain from formulating
25 its questions in such a way as to actually provide the answer to the

1 witness or, said in simple terms, to put the answer into the mouth of the
2 witness.

3 The Chamber is duty-bound by law to establish the truth for the
4 purposes of its decision pursuant to Article 61(7) of the Rome Statute to
5 confirm or to decline to confirm the charges. In order for the Chamber
6 to fulfil this duty assigned by law, the Bench wants to hear the
7 witness's own recollections of the events under consideration of the
8 current case. Thus counsels on behalf of the Prosecutor, on behalf of
9 the Defence, please do refrain from phrase your questions in a way that
10 they contain the answer.

11 Finally, as clarified in paragraph 11 of the decision on the
12 schedule for the confirmation hearing, the defence of the other two
13 suspects who have not called the witness could be granted to ask
14 questions if the testimony will touch upon issues implicating on their
15 clients.

16 After these clarifications and without further ado, I would ask
17 the Court Officer to please usher the first witness into the courtroom.

18 MR. KHAN: Madam President, with your leave, whilst that's being
19 done, I think it only right to pass on some very sad news to the Chamber.
20 On Saturday, I mentioned a very notable lady, Wangari Maathai, who had
21 been slandered by, we say, Prosecution witnesses. She is the founder of
22 the greenbelt movement and was, as I mentioned, the first African woman
23 to be awarded the Nobel Peace Prize and the Nobel Laureate in 2004. She
24 also served in President Kibaki's government as minister for the
25 environment between 2003 and 2005. It's our very sad news, she was a

1 very close friend of the ambassador, she passed away yesterday, and she
2 is a great loss to Kenya and her many friends there, to Africa, and
3 indeed humanity.

4 Your Honours, because she was mentioned by myself in court on
5 Saturday, I thought it only right to acknowledge the contribution this
6 lady has made to the cause of peace and to raise this acknowledgement in
7 court today. I'm most grateful.

8 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Khan. Actually,
9 this very sad news was in the news all over the world, so everyone should
10 express his or her grief about such a loss. So thank you for mentioning
11 this in the court today.

12 Good afternoon, Witness.

13 (The witness entered court)

14 THE WITNESS: Good afternoon, Madam President.

15 PRESIDING JUDGE TRENDAFILOVA: You are before
16 Pre-Trial Chamber II of the International Criminal Court. You're called
17 to give your testimony in the case of the Prosecutor versus Mr. Muthaura.
18 You're going to be questioned first by the Defence of Mr. Muthaura that
19 is calling you, then by the Prosecutor. The Judges may also put
20 questions to you. The Legal Representative for the 233 victims that are
21 granted participatory rights in this case could question you if anything
22 that you would say could cause any issue with regard to the interests,
23 would affect the interests of those victims, and subject to the
24 authorisation of the Chamber. The last to question you, if need be, will
25 be again the Defence of Mr. Muthaura.

1 The Chamber has received the familiarisation report regarding all
2 the witnesses, and you in particular, so we know that the Victims and
3 Witnesses Unit, (* indiscernible) with regard to clarifying the
4 proceedings before the court, explaining to you some of your rights and
5 obligations pursuant to the statutory provisions. The Bench, however,
6 will still on its own explain the following: First, according to Article
7 69(1) of the Statute and Rule 66 of the Rules of Procedure and Evidence,
8 you shall make a solemn undertaking as to the truthfulness of the
9 evidence that you will provide. In this regard, I also remind you that
10 in accordance with Article 70(1)(a) of the Rome Statute, the court has
11 jurisdiction over the offence of giving false testimony before it. The
12 court has also jurisdiction for misconduct before the court, Article 71,
13 and Rules 170 and 71, which we strongly hope we're not going to apply.

14 Next, the statutory documents of the International Criminal Court
15 provide the witness the right against self-incrimination. Pursuant to
16 Rule 74, you may, first, object to make any statement that might tend to
17 incriminate you, and second, the Bench also assures you that the evidence
18 you're going to provide in response to the questions asked in this
19 courtroom will not be used directly or indirectly against you in any
20 subsequent proceedings before the court.

21 Have you understood, Mr. Witness, your rights, but also the
22 seriousness of your undertaking and of your procedural behaviour?

23 THE WITNESS: Yes, Madam President.

24 WITNESS: WITNESS KEN-D12-PPP-0025

25 PRESIDING JUDGE TRENDAFILOVA: Of course, I had to ask you was

1 your trip an easy one? Are you settled fine? Do you need something? Do
2 you feel at ease being in this courtroom?

3 THE WITNESS: My trip was okay. It was effectively arranged, and
4 I had an easy travel to this place. Thank you.

5 PRESIDING JUDGE TRENDAFILOVA: Yes. So we can proceed further
6 on.

7 I would ask you now, please, to stand up, of course not for the
8 whole of the testimony, only that you swear in and you will be assisted
9 by the Court Officer in doing this.

10 Please, Court Officer.

11 THE WITNESS: I solemnly declare that I will speak the truth, the
12 whole truth and nothing but the truth.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you very much. Now please
14 be seated.

15 THE WITNESS: Thank you.

16 PRESIDING JUDGE TRENDAFILOVA: And identify yourself by stating
17 your full name, your date and place of birth, your education, marital
18 status, and your current occupation.

19 THE WITNESS: Thank you Madam President and the Honourable Court.
20 My name is Lucas Katee Mwanza. I was born in Kitui District in 15th of
21 January, 1965. I'm married with a wife and two children. I went to
22 school in a Muslim primary school in Kitui District. Secondary school, I
23 attended Kitui High School in the same district. I went for my A-levels
24 education in Mbooni (* phon) High School in Machakos District, and I
25 proceeded to the University of Nairobi in 1987 up 1991, I graduated. I'm

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1 currently the district commissioner Kilifi. I joined the civil service
2 in Kenya on 17th June 1991 as a district officer and assistant secretary,
3 and I've risen through the ranks up to the post that I'm holding
4 currently of district commissioner.

5 PRESIDING JUDGE TRENDAFILOVA: You just didn't mention your
6 birthplace.

7 THE WITNESS: Sorry.

8 PRESIDING JUDGE TRENDAFILOVA: Your birth place. Place of birth.

9 THE WITNESS: Yes. I was born in Kitui District in Kenya, that
10 is eastern province of Kenya.

11 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

12 THE WITNESS: Thank you, Your Honour.

13 PRESIDING JUDGE TRENDAFILOVA: I would ask you when you answer
14 the questions that you speak slowly enough so that the interpreters could
15 do their job.

16 THE WITNESS: Thank you, Madam President.

17 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Mwanza.
18 Now, who is going to start the questioning of the witness? Mr. Faal, you
19 have the floor.

20 MR. FAAL: Madam President, your Honours. I'll be leading this
21 witness on behalf of the Muthaura Defence team.

22 Questioned by Mr. Faal:

23 Q. Mr. Witness, my name is Essa Faal, so I'll be questioning you to
24 help you provide your testimony to the court. Just before I start, I
25 just wish to advise you to speak up and also to speak slowly. And when

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1 you answer questions, please address the Judges. I would also implore
2 you to give very succinct answers to the questions asked. When you
3 use -- in the event you use a word which you believe you're (* sic) not
4 familiar with, or a name, for that matter, it would be helpful if you
5 would spell out the name or the place. Is that -- is that clear?

6 A. It is clear, your Honour.

7 Q. Thank you very much. You just told the Court that you're a
8 district commissioner. When did you first become a district
9 commissioner?

10 A. Your Honour, I became a district commissioner in -- in 2006. I
11 was then working in Kiambu District of Central Province, and I was posted
12 to the office of the provincial commissioner of Rift Valley as a personal
13 assistant, and the personal assistant is also equivalent of a district
14 commissioner.

15 Q. Do you still hold that position?

16 A. I still hold that position, your Honour.

17 Q. At the present moment, you said you are in Kilifi district.
18 Before you moved to Kilifi district, which district were you posted?

19 THE INTERPRETER: Message from the interpreters: Apologies for
20 interrupting, could we please mark a pause between question and answer
21 session. Thank you very much.

22 PRESIDING JUDGE TRENDABILOVA: Mr. Faal, could there be a pause
23 between questions and answers so that the interpreters are not --

24 MR. FAAL: Much obliged, your Honours.

25 PRESIDING JUDGE TRENDABILOVA: Okay.

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1 MR. FAAL:

2 Q. May I repeat the question, please. Before Kilifi District, where
3 were you posed?

4 A. Your Honour, before Kilifi District I was the district
5 commissioner Meru District.

6 Q. In January 2007, where did you work?

7 A. Your Honour, in January 2007 I was working in Naivasha District
8 as the district commissioner.

9 Q. And when did you leave Naivasha District?

10 A. I left Naivasha District, your Honour, in March 2008.

11 Q. Would it be fair to say that you were at Naivasha during the time
12 of the 2007 elections?

13 A. Yes, your Honour. I was the district commissioner during that
14 time of post-election violence.

15 Q. You -- could you remind us again when were you actually posted to
16 Naivasha?

17 A. Your Honour, I was posted to Naivasha in January 2007.

18 Q. (* indiscernible)

19 A. Yes, your Honour. But during that time, I was attending a
20 conference in Uganda, the neighbouring country, on peace initiatives, but
21 I reported in Naivasha around that same month.

22 Q. So you are district commissioner in Naivasha for about a year; is
23 that correct?

24 A. Yes, your Honour. I was district commissioner for about a year
25 and a month, or thereabout.

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1 Q. Now, I want you to tell us about Naivasha. What is its principal
2 economic activity?

3 A. Naivasha as a district has a number of economic activities,
4 your Honour, and the principal economic activity is flower growing. It
5 accounts for almost 72 per cent of all the flower-growing activities in
6 the country. Besides that -- if I may continue, your Honour. Besides
7 that, the other activities, like cattle keeping, small-scale businesses
8 in various places within the district. As I've said, the flower growing
9 is concentrated around Lake Naivasha, which is a few kilometres from the
10 town centre because of the waters that the flower farms use to get the
11 flower farms. A number of other small-scale businesses, quite a lot of
12 them in -- in the town municipality area. I may not be able,
13 your Honour, to describe all of them, but they are quite assorted
14 businesses within the municipality area of Naivasha District and also
15 outside the municipality area. The source of farming in some parts of
16 the district, the farming is in the areas bordering Narok District, that
17 is to the west, south-west. We also have other areas bordering Molo, my
18 previous station where we have also a lot of farming going on there. And
19 generally other small activities and businesses around Naivasha.

20 Q. What is -- what was the population size of Naivasha while you
21 were district commissioner there?

22 A. Around -- your Honour, around the time I was the district
23 commissioner there, the population was about 350.000. That was the
24 projected population at the time.

25 Q. Could you tell us what ethnic groups lived in Naivasha at the

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1 time?

2 A. Your Honour, Naivasha District is highly cosmopolitan, but there
3 are principal ethnic groups which live in Naivasha. The Kikuyu occupy
4 almost -- account for almost about 75 to 80 per cent of the population.
5 We have the Maasai. We have the Luo, we have the Luhya, we have Kisiis,
6 we have Kalenjin, and we have other tribes from within Kenya, and also
7 other nationals from the communities which have invested in Naivasha,
8 some from Europe, others from Asia. We also have others from --
9 within -- from various parts of Africa, either as workers or doing
10 some -- one business or the other.

11 Q. I would now want to talk to you about the office of the district
12 commissioner. What were your functions as district commissioner?

13 A. Your Honour, my functions as a district commissioner principally
14 was to coordinate government business; that is, to coordinate the
15 activities of the government business within the district. But
16 specifically, Udando (* phon) issues like, there are core functions who
17 would include peace-building and conflict management. Other functions
18 would include law and order. We also had functions to do with provision
19 of alternative dispute resolution mechanism. Generally, also to mobilise
20 the communities for development. In brief those were the functions.

21 Q. As district commissioner, do you know whether there were any
22 structures in place in Naivasha to deal with security.

23 A. Your Honour, yes. I'm aware that there were structures to deal
24 with the security in Naivasha.

25 Q. Could you tell us what those structures were?

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1 A. The structure included the district security and intelligence
2 committee to which I was the chairman. We also have -- had individual
3 departments, state agents dealing with the security, provision of
4 security in the district.

5 Q. And which agencies are these?

6 A. These agencies included the Kenya police, the administration of
7 police. We also had a Anti-Stock Theft Unit. We had the prisons
8 department which was dealing with the convicts, and we also had the Kenya
9 wildlife service because we have two national parks in Naivasha District,
10 and we have the western command of the Kenyan, which is based in Gilgil,
11 a town which is within Naivasha district.

12 Q. Earlier on you mentioned District Security Intelligence
13 Committee. Can you kindly tell the Court what are the functions of this
14 committee?

15 A. Your Honour, the functions of the district security and
16 intelligence committee is basically to provide security to the people of
17 that particular administrative area, and we do so through collection of
18 information, sharing of information, analysis of situations, and then we
19 take action on -- as it may be appropriate.

20 Q. What was the composition of this committee in 2007?

21 A. Your Honour, as I have mentioned earlier, I was the chairman of
22 the district security and intelligence committee. I had the Officer
23 Commanding Police Division who was Kenya police officer, otherwise known
24 as OCPD, that is the Officer Commanding Police Division. We also had the
25 national security and intelligence service officer in charge of the

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1 district as a member, and the District Criminal Investigations Officer
2 which is from one unit of the Kenya police was also a member of the
3 committee. Occasionally, we would include the services of other armed --
4 other uniformed officers. We would invite them to the meeting as the
5 case may be where there are issues to -- to discuss with them and seek
6 their professional advice on specific issues like if it is wide life to,
7 do with -- anything to do with the management of the national parks would
8 seek the services of such officers.

9 Q. Do you know the ethnicities of the members of the District
10 Security Intelligence Committee as at the time of the post-election
11 violence?

12 A. Your Honour, yes, indeed I knew them and I knew their ethnic
13 composition. Your Honour, I knew myself as a Kamba, and the OCPD, the
14 Officer Commanding Police Division, was Mr. Willy Lugusa was a Luhya.
15 The officer in charge of the CID was Mr. Martin Saroni (* phon). He was
16 a Kalenjin. The officer in charge of the national security and
17 intelligence service was Mr. John Mutua, who was a Kamba like myself.
18 That was the composition. My deputy was the secretary -- sorry,
19 your Honour, I didn't mention that. My deputy was the secretary. He was
20 Mr. Gedeon Ngugi. He was a Kisii by trait. That's it, your Honour.

21 Q. Could you kindly explain to the Court how decisions are made at
22 the District Security Intelligence Committee?

23 A. Sorry, your Honour. Maybe I need to get that question.

24 Q. I would be happy to repeat the question.

25 A. Thank you.

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1 Q. Could you kindly tell the Court how decisions are made at the
2 District Security Intelligence Committee?

3 A. Thank you. Thank you, Your Honour. Decisions at the security
4 and intelligence committee are made after deliberations by the members on
5 the items of the agenda. We come to a consensus and agree on the way
6 forward as it -- as it may be appropriate concerning a particular issue.
7 So they are collective decisions.

8 Q. Can you tell the Court what is the nature and character of the
9 decisions made by the DSIC?

10 A. Your Honour, maybe I need some bit of clarification on that
11 question. The nature and the character?

12 Q. I would rephrase the question. And could the District Security
13 Intelligence Committee take a decision to compel another institution to
14 take a particular action?

15 A. Your Honour, the decisions of the District Security and
16 Intelligence Committee are based on existing laws. So basically what we
17 discuss is what is the situation on the ground, and it has to be applied
18 according to the law. So that is the way decisions are made at the
19 District Security and Intelligence Committee, in line with the law.

20 Q. You make decisions and convey those decisions to the consumers,
21 how would you normally frame them?

22 A. Your Honour, the decisions we make, again executed by -- mainly,
23 mainly -- I would say mainly by the same members of the District Security
24 and Intelligence Committee and -- but largely the Officer Commanding
25 Police Division, is usually the leader of operations of the District

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1 Security and Intelligence Committee. He's usually the one who leads the
2 operations.

3 Q. As chairman of the District Security Intelligence Committee, did
4 you have the power to impose your will on members of the committee?

5 A. Your Honour, it may be -- it would be out of the law for me to
6 impose any decisions. As I've already explained, once we take decisions,
7 we leave it to the officer in charge of a particular department to carry
8 out the action that the District Security and Intelligence Committee has
9 arrived at in accordance with the law. So in short, I cannot impose my
10 will on any other officer, because there are laws governing the work that
11 they do.

12 Q. Earlier on you indicated that the Officer Commanding Police
13 Division was in charge of operations. As district commissioner, did you
14 have the power to issue orders to the OCPD, Officer Commanding Police
15 Division?

16 A. No, your Honour. I didn't have such powers.

17 Q. Above -- is there any similar structure above the District
18 Security Intelligence Committee?

19 A. Yes, your Honour. We have a structure that we call Provincial
20 Security and Intelligence Committee, which is to the provincial level.

21 Q. Can you tell the Court what is the relationship between the
22 District Security Intelligence Committee and the Provincial Security
23 Intelligence Committee?

24 A. Your Honour, the Provincial Security and Intelligence Committee
25 supervises District Security and Intelligence Committee. We report to

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1 the provincial structure.

2 Q. Are you familiar with a body called NSAC, meaning National
3 Security Advisory Committee?

4 A. Your Honour, I'm aware of the National Security and Intelligence
5 Council, but, your Honour, I may not comment on -- familiar meaning?

6 Q. Do you know of a body in the Kenyan structure called National
7 Security Advisory Committee?

8 A. Your Honour, I am aware of the National Security Advisory Council
9 at the national level.

10 Q. Do you know whether there is a relationship between the National
11 Security Advisory Council, as you call it, and the District Security
12 Advisory Committee?

13 A. There's no direct relationship between the two, your Honour.

14 Q. You indicated earlier that you cannot give orders to the Officer
15 Commanding Police Division. Could you tell us what was his line of
16 reporting?

17 A. Your Honour, the -- the Officer Commanding Police Division
18 reports to the provincial police officer who is in charge of the
19 province.

20 Q. How about the other members of the District Security Intelligence
21 Committee? Who do they report to?

22 A. The district commissioner, your Honour, reports to the provincial
23 commissioner, while the officer -- that is the DCIO, the District
24 Criminal Investigations Officer, reports to the provincial boss. Then we
25 have the national security and intelligence service officer who also

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1 reports to the provincial. That is the regional intelligence
2 coordinator.

3 Q. And who does the provincial commissioner report to?

4 A. The provincial -- your Honour, the provincial commissioner
5 reports to the Permanent Secretary in charge of internal security, that
6 is in charge of provincial administration and internal security.

7 Q. Did you have any superior/subordinate relationship with any of
8 these officers who served at the District Security Intelligence
9 Committee?

10 A. Your Honour, as I already pointed out earlier, we are usually
11 equal members in the District Security and Intelligence Committee. In
12 fact, I could maybe explain that. While chairing the District Security
13 and Intelligence Committee, I have to move from my chair and the seat
14 with him at that level because we are usually equal. So symbolically the
15 chairman has to move from the seat of the district commissioner and join
16 them where they are seated. So we are equal.

17 Q. Kindly tell the Court what arrangements you had in place with
18 regards to sharing of information.

19 A. Your Honour, as I pointed out also earlier, we -- we usually
20 conducted the meeting so that we can share information that has come to
21 any -- either of our members in the course of their duties. We will
22 discuss that information, and after that we do take a decision, at least
23 the best decision that we can make on how to go about a particular issue
24 that will have arisen.

25 Q. You were in Naivasha during the election period of 2007. Can you

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1 tell the Chamber what the political mood was like in Naivasha during the
2 campaign period?

3 A. Your Honour, during the campaign period in 2007, Naivasha was a
4 very calm place, very calm indeed; although, there was a tension between
5 the two candidates, particularly -- it's two specific candidates, the one
6 who eventually emerged the winner and the one who -- who was a runner-up.
7 But it was only at individual level. The rest of the -- they were from
8 the same community, the two of them, but the rest of the district was
9 very, very peaceful. The campaign period was also very peaceful, and it
10 went on very peacefully up to the time of voting and thereafter.

11 Q. You said they belonged to the same communities. Which community
12 are you referring to?

13 A. Your Honour, they belonged to the Kikuyu community.

14 Q. Could you kindly indicate which political parties they -- they
15 represented during this election?

16 A. Your Honour, the then-Member of Parliament was from the PNU,
17 Party of National Unity. Then the current Member of Parliament who
18 eventually -- that is the one who eventually one was from KANU party,
19 Kenya African National Union I believe that -- yeah, Kenya African
20 National Union, KANU, but KANU was also allied to the PNU.

21 Q. Can you tell the Court from which communities, if you know, that
22 is, from which communities these two individuals, without mentioning
23 their names, of course, from which communities did they draw their
24 support?

25 A. Yes, your Honour. One of the candidates had basically support

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1 from the tribe that the candidate came from, but one seemed to enjoy part
2 of the multi-ethnic support; that is, because of the very many tribes you
3 find in Naivasha, one candidate enjoyed from his own tribe, and -- as
4 well as the other, the other tribes that were represented in Naivasha.

5 Q. What was the situation in Naivasha after the announcement of the
6 election results?

7 A. Your Honour, may I kindly know which results? There were two --
8 actually three. There was the presidential, there was the parliamentary,
9 and there was the civic.

10 Q. I'm sorry for not having been so specific. Thank you. I'm
11 referring to after the announcement of the presidency results.

12 A. Thank you, your Honour. After the announcement of presidential
13 elections on 30th December 2007, there was jubilation and generally the
14 situation was okay in Naivasha, although -- basically the mood was okay.
15 The mood was okay, although the other parts we could hear stories of
16 other areas having erupted into violence within the same province that I
17 was working.

18 MR. FAAL: Madam President, your Honours, with your permission, I
19 can, for the purposes of the completeness of the record, get the witness
20 to name the individuals he was talking about, because they are already in
21 the -- it's publicly known who these individuals are. So -- but, of
22 course, I stand guided by your Honours. It's not a big issue for us, but
23 just for the completion of the record.

24 PRESIDING JUDGE TRENDAFILOVA: You're referring to which
25 individuals? Not by names.

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1 MR. FAAL: Much obliged, your Honour. I'll move on and -- he
2 didn't mention names. We wanted him to mention names, but that's why I
3 asked for your guidance, but it's all right, we will proceed.

4 PRESIDING JUDGE TRENDAFILOVA: Unless there are no issues related
5 to our concerns as expressed on Saturday, you can proceed naming them.

6 THE WITNESS: Your Honour, I may kindly request that I don't name
7 anybody.

8 PRESIDING JUDGE TRENDAFILOVA: You don't -- you don't feel
9 yourself at ease naming anyone?

10 THE WITNESS: I don't feel comfortable doing so.

11 PRESIDING JUDGE TRENDAFILOVA: Would you like that we go into a
12 closed session, that you address only the Court and not the public?

13 Closed session means that only those who are in the courtroom are going
14 to follow your answers. It's the way you feel, Mr. Mwanza.

15 THE WITNESS: Your Honour, I was making that in reference to the
16 request he was making that I name individuals. So the rest of the
17 session can be just open. I -- I am comfortable with that, except when
18 it comes to naming names.

19 PRESIDING JUDGE TRENDAFILOVA: So if we are in closed or private
20 session, which means that the public wouldn't follow, then you will name
21 the persons.

22 THE WITNESS: Yes, your Honour.

23 PRESIDING JUDGE TRENDAFILOVA: Court Officer, could we switch
24 into a private session. Yes.

25 (Private session at 3.16 p.m.)

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12 Page 22 expunged – Private session.

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1 (Expunged)

2 (Open session at 3.18 p.m.)

3 COURT OFFICER: Madam President, your Honours, we're back in open
4 session. Thank you.

5 PRESIDING JUDGE TRENDAFILOVA: Yes. You can proceed, Mr. Faal.

6 MR. FAAL: Thank you very much, Madam President.

7 Q. Earlier on before we moved into closed session you were
8 describing the situation in Naivasha after the announcement of the
9 electoral results, and you said you were hearing things from other areas.
10 Can you kindly tell the Court with a these things were?

11 A. Your Honour, as I said, we received information about the
12 eruption of violence in other parts of the country, and as well as other
13 parts of the province that I was severing. That was Rift Valley. There
14 was violence in Kisumu, that was in Nyanza Province, and then there was
15 some parts of Rift Valley where eruption had -- I mean, violence had
16 erupted.

17 Q. Did this violence have any impact on the situation in Naivasha at
18 the time?

19 A. Your Honour, from -- around that week of first week of January,
20 we started receiving people who had been displaced from other parts of
21 the country. They started coming to Naivasha District. Some went into
22 churches, others went to -- were integrated to the community, others went
23 to schools, and others went to open grounds. There were quite a lot of
24 people who were streaming in from other parts which had been affected by
25 violence. Naivasha was then safe, very safe indeed, so they found refuge

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1 in Naivasha.

2 Q. Do you know what was the ethnic composition of those IDPs that
3 streamed into Naivasha?

4 A. Your Honour, I would say that they were largely Kikuyus, almost
5 99 per cent from the Kikuyu community.

6 Q. In the first two weeks after the announcement of the results, do
7 you have an idea how many IDPs streamed into Naivasha?

8 A. Your Honour, we could only estimate. There were many people
9 coming into Naivasha. Very many. I must say there were very many
10 people, very many, but we had close to about 10- to 15.000 or thereabout,
11 because some were coming to stay. Others were coming and then they
12 stayed a few days before they found their way to other parts, that was
13 Central Province, others would proceed to Nairobi. But I must say there
14 were many people. Naivasha is on an international highway, that is the
15 Trans-Africa Highway, so there were very many people who arrived from
16 different parts of the country.

17 Q. Do you have an idea or do you know why they chose Naivasha?

18 A. Yes, your Honour. Already I learned that. I said they chose
19 Naivasha because Naivasha was very safe. It was very safe. It was very
20 secure for everyone. But besides that, of course I said the largest
21 number of population of the people of Naivasha includes Kikuyus, so they
22 sought refuge where they felt their tribesmen were.

23 Q. Did you have a chance at that time to meet with any of these
24 IDPs?

25 A. Yes, your Honour. I met the IDPs with the other leaders that I

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1 had in the district, and we would go visiting the various areas where
2 they -- they temporarily settled, and generally we met them.

3 Q. Did the IDPs tell you the reasons why they -- why they came to
4 Naivasha?

5 A. Your Honour, they narrated the stories, yes, to us about where
6 they had come from, the -- the kind of situations they had passed,
7 violence that had been meted on them in other parts of the country, those
8 areas affected by violence. Actually, they did, they did.

9 Q. Can you give us a brief account of some of the stories that they
10 mentioned?

11 A. Your Honour, they -- they -- they talked about having lost some
12 of their relatives. They also talked about having lost their property,
13 which was burned. They described how their houses were burned. There
14 were quite a lot of stories, but it was a very big crisis for us. Our
15 main concern was to find ways of managing the IDPs who were streaming
16 into the district so that we could alleviate their suffering.

17 Q. I would come to that issue in a moment, but before then can you
18 clarify what you meant when you said they lost relatives. Did they say
19 how?

20 A. Your Honour, they said that their relatives had been killed in
21 those certain areas where violence had erupted. Others -- others had
22 physical injuries. We could see injuries in some of the -- actually,
23 most of the IDPs and others really had nothing, because they said
24 everything had been burned where they were coming from.

25 Q. Did they indicate the areas they came from?

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1 A. Your Honours, we took records of the people who were coming in
2 who initially indicated where they were coming from, indeed. We would
3 ask them which district they had come from and they would let us know.
4 Yes, they would give us the districts that they come from.

5 Q. Are there any particular districts that stand out from the list
6 that you prepared?

7 A. Yes, your Honour. There -- there are some districts which stand
8 out. Molo where I went later was one of them, Molo. There was Eldoret.
9 There was Kisumu, and they was Kipkelion District, and there was Koibatek
10 District. Then there was -- was -- sorry, not was -- Uasin Gishu, the
11 same as Eldoret. Then we had Kitale, that is Trans-Nzoia District.
12 There were two districts in Trans-Nzoia, east and west. There are others
13 who came from Narok, others from Bomet, same as Kericho. They are
14 basically -- largely they are from those districts, your Honour.

15 Q. What impact, if any, did the stream of IDPs have on the
16 population in Naivasha?

17 A. They -- I would say, first, we had now to compete for resources.
18 Number two, there was emotional aspect of it. Really, the accounts that
19 they narrated were very touching to the local population in Naivasha,
20 quite touching indeed. So it really appealed to the emotions of the
21 local community.

22 Q. As at the third week of January 2007 -- sorry, 2008, the third
23 week of January 2008, what was the situation like in Naivasha?

24 A. The third week of January 2008, I'd say now at that time we had
25 about 20 or thereabout -- 20.000 internally displaced persons in Naivasha

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1 from other parts of the country, and indeed they were still streaming in,
2 and it was quite a challenging situation for us who managed the IDPs. It
3 was quite challenging. Of course, we got a lot of support from the Kenya
4 Red Cross and other agencies, including the religious bodies. They gave
5 us quite support in addition to what the government was providing in
6 terms of food and shelter, that is, temporary shelter. It was -- it was
7 quite a challenge, but at the same time, it was also a major -- an issue
8 of major security concern because of the increased number of persons
9 within the township. You know, a very small area now -- with an already
10 large population, now with so many others now coming in. It was quite a
11 challenge, I must say.

12 Q. At the time, what was the mood of the residents of Naivasha, if
13 you know?

14 A. Your Honour, do you mean the third week?

15 Q. Yes, the third week.

16 A. Really there was nothing much about that apart from the concern,
17 of course, of those IDPs who were arriving and the challenge of managing
18 them within the township. There was nothing much, really. It was still
19 okay. We had taken some measures to provide security in the area.

20 Q. What measures were those?

21 A. We had -- your Honour, we had now intensified our patrols within
22 the municipality area because of the increased population. We -- we
23 intensified the patrols. Generally, we made some plans for executing
24 security patrols within the township area, which was mainly the one which
25 was affected, apart from another town which was almost about 20

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1 kilometres away, where we had another group of IDPs who had come from
2 Bomet and Narok districts. The town is known as Mai-Mahui.

3 Q. You said earlier that you intensified patrols. Could you first
4 tell us which security agencies or which agency was responsible for doing
5 this?

6 A. As I said, we have Kenya police and the administration police
7 who -- who have the large numbers of officers, and those are the officers
8 we deployed to do that in addition to the -- the -- the CID officers. We
9 also took some measures to include some prison officers in the patrols,
10 our patrols at night.

11 Q. During the time you intensified patrols in Naivasha, what was the
12 mood of the people at this time, if you know?

13 A. Generally there was a tension in the entire country. Generally
14 there was that. Because of the fighting, there was a lot politics and
15 talking here, and a lot of protests here and there, so there was a lot of
16 tension in the country. In fact, I must admit it was the darkest time
17 that this -- our country went through. It was a situation which was
18 very, very bad, a lot of tension in that area. It was widespread all
19 over the districts.

20 Q. And what was this tension all about? Can you tell us more?

21 A. It was tension about disputed election results which were --
22 presidential results. The parliamentary results really did not have a
23 lot of problems once they were announced in individual constituencies,
24 but the presidential elections gave rise to a lot of issues which we went
25 through and I think which culminated into violence itself in the country.

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1 Q. What I'm trying to get from you is how the people of Naivasha
2 were responding to the situation at the time. Could you tell us, if you
3 know?

4 A. As I said, your Honour, there was a lot of sad stories told by
5 the IDPs who were coming from -- IDPs, I mean internally displaced
6 persons, who are coming from other parts, and generally it was sad. They
7 were sad stories that they told, and there was sympathy, widespread
8 sympathy for those people.

9 Q. Did the situation remain like that or did it change?

10 A. Your Honour, the situation remained -- it remained that situation
11 up to 27th when it erupted. It erupted into violence.

12 Q. Prior to the 27th, did you hear or received information about
13 anything which may have been an early warning, say, for the DSIC?

14 A. Your Honour, there was nothing really directly pointing towards
15 any eruption of any violence, but as I have said, we -- we -- we were
16 aware of what was happening in other parts of the country, and we were
17 aware of the tension that was in the country. That's why we intensified
18 the security patrols in the -- in the entire township area of Naivasha.

19 Q. You said earlier that Naivasha is rather cosmopolitan, and in
20 January 2008, you received up to more than 20.000 IDPs. Do you know what
21 was the relationship, if any, between the IDPs, who were largely Kikuyus,
22 and the rest of the non-Kikuyu population in Naivasha?

23 A. Your Honour, I may not have known the relationship. How they
24 related or -- I'm not getting the question properly.

25 Q. Did they live harmoniously?

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1 A. Your Honour, up to 27th, at least there wasn't -- there were
2 really no large indications of anything by the -- between the two
3 communities or --

4 MR. FAAL: Madam President, please, with your indulgence, I need
5 one minute to just consult with my colleagues.

6 PRESIDING JUDGE TRENDAFILOVA: Please do, Mr. Faal.

7 MR. FAAL: Thank you very much.

8 (Defence counsel confer)

9 MR. FAAL:

10 Q. Mr. Witness, what information, if any, did you have at the time
11 about what was going on in the country which may impact on Naivasha?

12 A. Your Honour, the information that we had was there were -- there
13 was that violence in other parts of the country where largely it was --
14 the target was the Kikuyu community, I must say. It was the one which
15 was being evicted from various parts of the country, and so we had that
16 information, and we knew that we were working with a largely Kikuyu
17 community in Naivasha, so we had to take precautions in Naivasha.

18 Q. During that period, I imagine you may have been in contact with a
19 good number of Kikuyus, weren't you?

20 A. Your Honour, from where?

21 Q. From Naivasha.

22 A. Your Honour, I was in contact with everybody in the district.
23 Rather, I would not -- I would not confine myself to a specific tribe. I
24 was in contact -- generally my office was open to all the tribes.

25 Q. Of course, Mr. Witness. That was to be expected, but are you

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1 telling the Court that you did not hear anything during that period that
2 caused some concern to you as the District Security Intelligence
3 Committee?

4 A. Your Honour, there was no indication. There was nothing that I
5 heard from any specific person or group of persons that there was
6 anything that I was supposed to prepare for.

7 MR. FAAL: Madam President, I want to put a particular statement
8 to the witness. It's not his statement. It is a state from the
9 statement -- an excerpt from the statement of a witness of the
10 Prosecution, and I will put it to him and ask him follow-up questions,
11 with your permission, of course.

12 PRESIDING JUDGE TRENDAFILOVA: Do we need to go into private
13 session? Of course, then it's up to you.

14 MR. FAAL: Thank you very much, Madam President.

15 Q. I will read out a paragraph from the statement of a Prosecution
16 witness, and I will then ask you follow-up questions. It is contained in
17 EVD-PT-OTP-00236-0010, at line 282, and it reads as follows:

18 "Before the violence there were ... before the 27th January,
19 there were many rumours that the Luos and the Kalenjin would attack the
20 Kikuyus. They were also saying that there was an army that had been seen
21 marching towards Naivasha, an army of Kalenjin warriors, and also there
22 were other rumours that Mungiki people from Central Province would come
23 to Naivasha and beat up the Naivasha Kikuyu people who were -- who were
24 just co-existing with the Luos and the Kalenjins while the Luos and the
25 Kalenjins were killing their people in the North Rift. And also, we

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1 could see many lorries ferrying people, the displaced people from the
2 North Rift region. So there was a lot of rumours, and also now people
3 are talking badly about the Luos. And because I," then redacted, "is
4 very tense. It just needs a mad person to light a match and everything
5 would blow."

6 In your view, would this describe the situation in Naivasha at
7 the time?

8 A. In -- I wouldn't say it describes Naivasha at the time. Those
9 rumours were not brought to my attention, but what I know is that in the
10 neighbouring districts of Molo and Nakuru there were attacks within just
11 about three to four days before 27th January 2008. There were attacks on
12 Kikuyus in -- in Naivasha -- in Nakuru town.

13 Your Honour, I might also mention here that at the time I was --
14 my family was living in that town called Nakuru. That is where I had
15 lived from 1998 up to 2008. I had been in that town of Nakuru. That's
16 where I resided with my family. And, your Honour, there was an attack in
17 one area called Kaptembwa. There was an attack in another area called
18 Githima. And there was an attack in the neighbouring district of Molo in
19 an area called Kiambogo.

20 Q. Could you spell Kiambogo, please?

21 A. Your Honour, K-i-a-m-b-o-g-o, Kiambogo. So there were those
22 attacks, your Honour, on the Kikuyus in those areas, and generally I
23 think there was clashes in those particular towns, and therefore the
24 tension was now increasing in -- in our neighbourhood there. That was
25 more on the Nakuru, who are our neighbours. So there was a -- increased

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1 clashes within our neighbourhood.

2 Q. You were telling us about Nakuru, and if I am right, you said
3 that the attacks were on the Kikuyus; is that correct?

4 A. Yes, your Honour. There was an attack on an area called Githima.
5 There was an attack in areas of Kaptembwa, and as I've said Kiambogo.
6 Kiambogo now borders Molo.

7 Q. How far is Nakuru from Naivasha?

8 A. Your Honour, it is -- from Naivasha town it is about 7 -- 7 to 8
9 kilometres, but, your Honour, the districts border about 9 kilometres
10 from Nakuru town. Naivasha District, it starts 9 kilometres from Nakuru
11 town centre. Although Naivasha District was carved out of Nakuru, it is
12 larger than Nakuru. So it -- the district is started just about 9
13 kilometres from Nakuru town centre.

14 Q. So they're very, very close. Would you say that?

15 A. Yes, your Honour. They are very close. They're very, very
16 close, and generally there's a lot of activity between Nakuru and
17 Naivasha. You find that quite a lot of people have interests in Nakuru
18 and they also have interests in Naivasha. Actually, if I may, it would
19 be right to say that some of the business communities say -- rather,
20 business say that -- people in Naivasha may also own businesses in
21 Nakuru. They have invested in both the two -- two towns. So there's
22 quite a lot of interaction between those two towns.

23 Q. Could you tell if you recall exactly when was this attack on the
24 Kikuyu in Githima?

25 A. Your Honour, if I may remember, it could have been either 24th or

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1 25th of January. It was just about three -- three to four days toward
2 the 27th, and, in fact, that was partly why I went on 26th to Nakuru to
3 move my family out of Nakuru to Naivasha, because Nakuru's becoming very
4 insecure for them.

5 Q. We will come back to that in a moment. You mentioned that
6 another place called Molo was attacked. Could you kindly tell us what
7 you know about that.

8 A. Your Honour, as I've explained, I was later moved to Molo, and
9 Molo there were a lot of towns and villages, town centres and villages
10 which were abandoned during the time. In total, Molo may have had over
11 127.000 people who were displaced in Molo alone. A hundred and
12 twenty-seven thousand. I was the one handling those figures, and I was
13 the one doing -- leading the resettlement programme in that district, so
14 I know there were -- quite a lot of people were displaced from Molo
15 itself.

16 Q. Do you know what is the ethnic distribution of those who were
17 displaced?

18 A. Your Honour, the larger majority were Kikuyus. We also had a
19 number of Kisiis who were displaced in Molo and we had a few -- a few Luo
20 as well who were also displaced in the same Molo. And again, a small
21 fraction of the Kalenjin community.

22 Q. As at this day, say 24th of January or thereabout, do I
23 understand your testimony to say that Kikuyus had been displaced from
24 various places in Rift Valley, Molo had been attacked and Kikuyus were
25 displaced?

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1 A. Yes, your Honour.

2 Q. Kikuyus were also attacked in Githima in Nakuru. Did this have
3 any impact on Naivasha?

4 A. Yes, your Honour. As I have said, the majority of those who were
5 attacked from Molo and Nakuru ran to the nearest place where they felt
6 was safest which was Naivasha, and therefore it had a very big impact in
7 terms of increased numbers of -- of the Kikuyus who were uprooted from
8 Molo and Nakuru, and they came to Naivasha to live in Naivasha
9 temporarily, and it is in this Naivasha which I have already explained
10 that it was highly cosmopolitan, and some of the members of these
11 communities where the Kikuyus were uprooted from, that was in Molo and
12 Nakuru, were also living in Naivasha. The same case had also happened in
13 Kisumu. Basically the issues revolved around tribes.

14 MS. ADEBOYEJO: Madam President, your Honours. I'm sorry to
15 interrupt my learned friend. I'm loathed to. But I see even from the
16 answers of the witness that my learned friend has put this question on
17 about three different occasion and we've been very patient. I just
18 wondered if we're going to move from this point.

19 PRESIDING JUDGE TRENDAFILOVA: Well, Ms. Adeboyejo, this could be
20 the strategic approach by any of the teams. If they're repetitive, they
21 have to have good reasons for this, if not, it's in the transcripts and
22 it will be assessed accordingly. So thank you for mentioning this, but
23 let us leave Mr. Faal to proceed.

24 MR. FAAL: Thank you very much, Madam President, and indeed we
25 shall proceed.

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1 Q. You did say that on 26th of January, 2008, you had to go to
2 Nakuru to bring out your family because Nakuru was becoming unsafe for
3 them. When did you return to Naivasha, if at all?

4 A. Your Honour, I returned on the 27th of January, 2008.

5 Q. When you returned, did anything happen in Naivasha on that day?

6 A. Yes, your Honour. Before I reached Naivasha, I got a call from
7 my deputy telling me that there were demonstrations all over the town and
8 that I had to hurry to go and help in addressing the issues that they
9 were raising. Rather, containing the demonstrators.

10 Q. And what is the name of this deputy of yours?

11 A. Your Honour, as I indicated earlier, my deputy was Gedeon.

12 Q. Of what ethnicity, if may I ask?

13 A. Your Honour, he was a Kisii.

14 Q. On your way back from Naivasha, did you have reason to contact
15 any people?

16 A. Yes, your Honour. I did contact the other members of the
17 District Security and Intelligence Committee, and the officer told me
18 that he was -- I had left him in Nakuru, he was attending a meeting
19 there, and therefore I contacted the deputy who was in Naivasha. I also
20 contacted superintendent Doudin Mohammed (* phon), who was in charge of
21 the demonstration police. At the same time, I asked Mr. Ngugi to look
22 for the number for the officer in charge of the STU, that is, the Stock
23 Theft Unit, and I contacted those officers and requested for -- that they
24 provide more officers in the township.

25 Q. Let's -- let's go to the details of each of these officers. You

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1 said you contacted the OCPD who was at that time in Nakuru and you
2 thereafter contacted his deputy. Could you tell us the name of this
3 person, please?

4 A. Your Honour, the deputy was Grace Kakai. Grace Kakai, K-a-k-a-i.

5 Q. Do you know what's her ethnic group?

6 A. Your Honour, she was also a Luhya like the OCPD.

7 Q. You also contacted the commandant or someone at the
8 administration police. Who did you contact?

9 A. Your Honour, I contacted the district administration police
10 commander who was Doudin Mohammed, and he was by ethnicity -- his
11 ethnic -- his ethnic group was Somali.

12 Q. You said that you told the Commandant of administration police
13 that you needed more officers. Why did you do that?

14 A. Your Honour, my deputy Mr. Gedeon earlier had already informed me
15 that there were a lot of people demonstrating, and your Honour, to
16 contain demonstrators in Kenya it is required that you have adequate
17 officers; that is, administration police and the Kenya police.

18 Q. Did they send the officers you asked for?

19 A. Yes, your Honour. Indeed, they said the officers were already
20 there.

21 Q. You also mentioned Anti-Stock Theft Unit. Who in that unit did
22 you call?

23 A. Your Honour, I called Mr. Saire (* phon). I do not have any
24 other name, but he was the commandant, the commandant national of the
25 Anti-Stock Theft Unit, but it was based within my district at the time.

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1 It is still based there. So the head of that unit is based in a town
2 called Gilgil.

3 Q. And what is his ethnicity, if you know?

4 A. Your Honour, I may not know, but he may you Luhya or -- I'm not
5 very sure, not very sure, your Honour.

6 Q. Would you say he's Kikuyu?

7 A. No, your Honour, he's not. He's not. I'm sure he's not Kikuyu.

8 PRESIDING JUDGE TRENDAFILOVA: There is a comment on behalf of
9 the Bench that if the witness doesn't know the ethnicity, he doesn't know
10 and that's it. So, Mr. Faal, you're not supposed to lead the witness to
11 an answer.

12 MR. FAAL: Much obliged, Madam President. I'll try not to offend
13 any more.

14 Q. You said you were told that there were demonstrations in many
15 places in the town. Can you tell us what information they provided you
16 with about these demonstrations?

17 A. Your Honour, there was really not much more information that was
18 provided. I set for my journey to go to Naivasha, so indeed I left with
19 my family to go to Naivasha, and I -- it was myself driving. So I drove
20 very fast to the town, but on arriving there, your Honour, it was also
21 very difficult to access even my house. The demonstrations were really
22 widespread around the town. So I had to get officers from the Anti-Stock
23 Theft Unit to escort me to the -- to the house. Then I dropped my
24 family, then I went back to the town itself now to start handling the
25 demonstrators.

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1 Q. And how did you go about doing that?

2 A. Your Honour, this time I called my driver who came, and I went to
3 the first area where I found a large crowd. The area was a few metres
4 from my office, and generally as I've said -- as I said earlier, part of
5 my work is to resolve conflicts, so I started addressing the
6 demonstrators in that particular area near my office. It was the
7 junction between my office, the hospital, and the stage. That's where I
8 addressed the first group of demonstrators, and I was asking them what
9 they are demonstrating about.

10 Q. What time of the day did you arrive there?

11 A. Your Honour, it could have been between 10.00 to 10.30,
12 thereabout, in the morning.

13 Q. Did the demonstrators --

14 PRESIDING JUDGE TRENDAFILOVA: Mr. Faal, just a moment. It's
15 approaching 4.00 when we have to make the break. Do you think it would
16 be very much damaging your strategy to proceed after the break? You have
17 half an hour more.

18 MR. FAAL: No, Madam President.

19 PRESIDING JUDGE TRENDAFILOVA: So, Court Officer, would you usher
20 the witness.

21 And you will proceed after half an hour break.

22 (The witness stands down)

23 PRESIDING JUDGE TRENDAFILOVA: We shall resume our -- we shall
24 resume the hearing at 4.30. Now we have a break.

25 COURT USHER: All rise.

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1 Recess taken at 3.59 p.m.

2 On resuming at 4.32 p.m.

3 (Open session)

4 COURT USHER: All rise.

5 PRESIDING JUDGE TRENDAFILOVA: Please be seated. We reconvene
6 the hearing. Could I ask the Court Officer to usher the witness into the
7 courtroom.

8 (The witness takes the stand)

9 PRESIDING JUDGE TRENDAFILOVA: Please be seated, Mr. Mwanza. Are
10 you at ease? Do you feel fine to proceed with the questions of the
11 Defence for half an hour more, and thereafter we shall proceed with the
12 Prosecutor.

13 THE WITNESS: I feel okay, Madam President.

14 PRESIDING JUDGE TRENDAFILOVA: You're still under oath, just to
15 remind you.

16 And now the floor is over to you, Mr. Faal.

17 MR. FAAL: Thank you very much, Madam President.

18 Q. Mr. Mwanza, I have 30 minutes to help guide you through your
19 story, so we will try to be more precise and more concise in the rest of
20 your testimony.

21 Before we went out on break, you told the Court that you arrived
22 and you went near the hospital on the stage where you addressed the first
23 group of demonstrators. Could you tell the Court what happened when you
24 arrived there.

25 A. Yes, your Honours. When I arrived there, I found quite a lot of

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1 people, to the range of about 5.000 people. I -- first thing I did was
2 to calm them down so that they could listen to me, and I identified
3 myself, because at the time I was not in uniform. So I started
4 addressing them, and I was asking them what the issues -- the issues that
5 they had. And a lot of people were talking. Everybody wanted to say
6 something. And besides me, I noticed that there was the Catholic Bishop
7 of Nakuru diocese, so he was helping me to calm the crowds, and we calmed
8 the crowds, and we asked them what they heard. They said they were
9 demonstrating against the government and, in particular, the prison
10 officers whom they said were harassing them. And some, of course, also
11 complained that they had lost their property to robberies or -- which
12 they suspected were attributed to the prison officers. So after people
13 talked and they talked and talked, there were quite a lot of others who
14 wanted to talk. Eventually, I told them that they write their grievances
15 and I would be able to get back to them, but meanwhile they should get
16 out of the streets which they had already barricaded with a lot of
17 stones, and I'm happy that -- after I told them that they started
18 removing the stones from the road.

19 Then we proceeded to another area. As we were proceeding,
20 somebody told us that - I was in my official Land Rover - told us that,
21 Look, there are some who are putting back the stones after one group
22 removes the other one is trying to put. I said, Let's proceed. And I
23 left now the security officers there, then I proceeded to another section
24 of the town.

25 Q. Which section of the town did you proceed to?

1 A. Your Honours, I went to the lower road of Naivasha. The lower
2 road. The upper road is on from Limuru to Nakuru through Naivasha. The
3 other one is from Mai-Mahui to Nakuru through Naivasha again, so I went
4 to the lower town -- the lower road, where I also found another group of
5 demonstrators, and I went on also to address them, and I was generally
6 trying to calm the crowds down so that they could get out of the roads
7 and stop the demonstrations and get back to their businesses and their
8 houses.

9 So -- and from there, then, I went to a third -- a third place
10 where I addressed another crowd. This time it was around Site and
11 Service (* phon), and I went for a fourth meeting to the highway. Now
12 the highway -- the upper highway, the one I've just described, I went to
13 address another group there. I found another large group there. They
14 had also barricaded the highway, and as I said, that is the trans-Africa
15 highway. It's a road that leads from Mombasa through Kenya, that is
16 through Naivasha, Nakuru, into -- it serves the Great Lakes region. That
17 is Trans-Uganda, Southern Sudan, then DRC. Those areas are served by
18 that road. So there are a lot of stones now barricading that road and
19 there were other demonstrators there, but we realised some of them had --
20 were very agitated, so basically I changed the style of managing them. I
21 told them now I was giving them an order to get out of roads, otherwise
22 we'll use force to get them out of there, and from there now we -- we --
23 we -- that was the fourth point is where now the OPCD found me, and we
24 said, Now, let's get these people out of the roads through -- through --
25 by -- by -- by dispersing them, using tear gas cannisters, clubs, and all

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1 that. And the police swung into action and they started clearing those
2 people. All of the -- they were battling it now with the crowds. They
3 are throwing stones at the police. The police is battling them with tear
4 gas canisters, clubs.

5 Then I went to -- I was called by somebody, a chief in South Lake
6 Road. Now, this is an area where there almost is 72 per cent of the
7 flower farms are concentrated, and I was told there was another huge demo
8 there, so I rushed to that place now again to talk to the crowds. I
9 found them very agitated, and they were already in two groups, two
10 groups, one from a group of Kikuyus and another one from the group of
11 Luos and the Luhyas, but largely -- Kalenjins, but largely it was Luos,
12 and they're all on one side, and they're already armed with these stones
13 and they were throwing at each other. So I again also addressed those
14 grounds and I appealed for calm from them, and I asked them to be patient
15 as the government sorts out whatever grievances they may have, but the
16 crowds were very agitated. They started just throwing stones at each
17 other. So we had to put in some officers very quickly in between them to
18 club a few here and there and separate them.

19 And now we went on into action in various parts of the town. I
20 returned -- after some time I also returned to Naivasha township itself.
21 The area was -- the last area I was addressing the crowd,
22 Madam President, and your Honours, was about 5 kilometres from the main
23 town centre. So I returned from Naivasha town, and we went on with now
24 patrolling those areas of the town. There were people running all over
25 the place and it was just pandemonium all over the place, people running

1 different directions. They are battling it with the police all over the
2 place, and it was that time I was also informed of a very unfortunate
3 incident which had happened, and that was one house I learned had been
4 burned in -- just about a hundred metres from the highway. Some -- some
5 rowdy mob there had burned a house. We -- there were some people inside
6 there. So we swung into action and arrested several people. And some of
7 them, at least I was informed about two or three who were -- three or
8 four, I think, were shot by the police in the running battles, those who
9 were trying to attack others, and we arrested about 150 or thereabout
10 people and they were placed in cells on that particular day.

11 Q. Just some few clarifications. Earlier on you said there was a
12 huge demo. What do you mean by that?

13 A. Your Honours, I mean very many people, and I said there were
14 about -- to the range of about 5.000 people in that particular street
15 alone. The first contact with the crowds.

16 Q. The second crowd that you met, what was the size, if you know?

17 A. Your Honour, it was slightly smaller. I could estimate that it
18 was maybe about 2.000 or thereabout. It was smaller than the first one,
19 but I must also say that it was comprised of fellows who appeared more
20 violent or rather aggressive than the first group I'd met.

21 Q. And the third group that you met, what was the size?

22 A. Your Honours, it was also smaller. It was smaller. It was about
23 a thousand to the range of 1.500. It was slightly smaller than that.
24 Then the one that I found at the road was also to the range of about
25 2.000 thereabout. That one -- that one was, in particular, was -- was

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1 also very aggressive, very aggressive in that it was like they wanted
2 to -- they were shouting. They wanted to challenge everything that we
3 said. We are saying, "You get out of there." They say, "No, we are
4 fighting for our rights. We have been robbed by prison officers. We
5 have lost our property. We have been beaten up." So there were a lot of
6 (* indiscernible) people were saying all sorts of things, and some we
7 could get, others we couldn't get.

8 Q. Earlier on you said that when you told the crowd that they should
9 disperse and they didn't, you swung into action. Could you explain how
10 that happened?

11 A. Yes. We told the police officers, Madam President and your
12 Honours -- we asked now the police officers to clear the people out of
13 the streets, that everybody should go back to their houses and arrest
14 those who resist to do that.

15 Q. Was that an order to the police?

16 A. Really it was a decision we took ourselves. I've said,
17 Madam President and your Honours, I was already with the OCPD at the spot
18 now where we have decided that we can't go on addressing people, and it's
19 like the -- some of them are interested in just to stay in the streets,
20 and we also realised that we had quite a large number of IDPs in -- in
21 the town. So really, we had to make an order so that everybody goes to
22 their houses and we can -- could manage the situation. So indeed it was
23 that they go, but I was not ordering anybody. Nobody was ordering
24 another. So the decision reached by us that let's clear these people out
25 of the place. Sorry.

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1 Q. Who had operational command of the police at this stage?

2 A. Your Honour, it was the OCPD in the district -- at the district
3 level.

4 Q. You also mentioned that the Anti-Stock Theft Unit was involved;
5 is that right?

6 A. Yes, your Honour.

7 Q. Who had operational control over the Anti-Stock Theft Unit?

8 A. Your Honour, when we realised that the situation was really
9 overwhelming, we requested assistance from the state security agents that
10 we had. So we requested, and we placed them under of the operations
11 commander who was the OCPD.

12 Q. How about the administration police? Under whose command were
13 they?

14 A. Your Honour, they were under the command of the administration
15 police commander at the district level.

16 Q. And who would that person report to in the district?

17 A. Your Honour, he would report to the district commissioner.

18 Q. Who would be you in that instance?

19 A. Yes, your Honour. You're right.

20 Q. So would it be correct, therefore, to say that the only force
21 over which you had control or command was the administration police?

22 A. Yes, your Honour, in a sense it would be -- it would be correct
23 to say so.

24 Q. After all those running battles, what else happened in Naivasha?

25 A. Your Honour, after the running battles, as I've explained, we

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1 arrested quite a number of youth who were involved in the violence, about
2 150, and they were placed in cells. Then they were -- as I have also
3 explained, there was quite a lot of IDPs coming and -- who had come from
4 other districts, and at the particular time now we have others who have
5 also been affected. They started running away from their rented houses
6 to the police station. So we generally gave them protection from the
7 houses where they were staying to the police station. Others ran into
8 the prison grounds. We also protected them there. And generally, some
9 would they say they would want to pick something from their house and all
10 that and would escort them, and a lot of them now went to the police
11 station and the prison area, and there were quite some big crowds there.
12 Then we have the other ones who are also coming. They were still coming
13 also from other districts, from Rift Valley and Nyanza areas.

14 Q. Do I understand you to mean that while there was this
15 demonstration and running battles between police and the demonstrators,
16 IDPs were still coming from Nyanza, arriving in Naivasha; is that
17 correct?

18 A. Yes, your Honour. The IDPs were still arriving even on the same
19 date. They -- in fact, as I said, I was on the highway myself and some
20 of them were arriving as I was there. So there were still IDPs arriving
21 from other parts of Rift Valley.

22 Q. The people you saw in these various places, did they carry
23 anything with them?

24 A. The IDPs, your Honour?

25 Q. The people you saw on the highway, did they carry anything with

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1 them, be they demonstrators or IDPs?

2 A. Your Honour, at the time I was there, none of those people really
3 had any weapons, but as I've said later, there were some who started
4 throwing stones even to the police officers who were there with me there.
5 So that is the time now we changed tact and we said, Let's clear these
6 people out of the roads. So they didn't have any arms, but they picked
7 up stones, and they started throwing even at us.

8 Q. Later did the situation change?

9 A. The -- as I've said, after we had the now running battles with
10 them and several arrests here and there, then there were now people
11 running from their homes. People, I mean my fellow Kenyans from the Luo
12 community, from the Kalenjin community were now running to the police
13 station to seek refuge. Some were also going to my office and we
14 protected them from that place. Others also went to my house, my
15 official residence, and we kept them there.

16 Q. Why were these people running?

17 A. Sorry?

18 Q. Why were they running to seek refuge in the police or ...

19 A. Your Honours, I've explained now there was a turn of events. The
20 demonstrations became now violent, and this is the time now we started
21 seeing some people talking about now attacking others, trying to attack
22 others, and indeed saying things like, "Let them go. Let them go." Then
23 we started to inquire, who are these they are saying, "Let them go." So
24 it was a -- I think we understood it that they were targeting the other
25 communities which were living in Naivasha, and that is the time I've said

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1 now we intensified patrols, and that's when we arrested. All the people
2 that we arrested were from the Kikuyu community.

3 Q. You said it now turned violent. What do you mean by that?

4 Who -- violence was being meted out against who?

5 A. Your Honour, the violence which erupted was between the Kikuyus
6 and Luos, perhaps to a lesser extent the Kalenjins, who are not very many
7 there, the district headquarters around the municipality there. But
8 it -- it erupted some violence between the two or three or so
9 communities, and that's what I mean.

10 Q. And as district officer, do you know what actions were taken, if
11 any, to deal with the situation?

12 A. Your Honour, as district commissioner -- I was a district
13 commissioner. I'm aware -- aware that some of the fellows they were
14 arrested in the streets, those ones were attacking others, and as I
15 earlier mentioned, some were even -- three, four shot by the police.
16 It's unfortunate also because police don't aim to kill, they aim to
17 immobilise, but errors do occur and some of them unfortunately also died
18 of those bullet wounds. But the rest were put in cells, and they were
19 taken to court.

20 Q. Would it be correct to say from what you have just said that the
21 police went out to deal with the situation?

22 A. Yes, your Honour. Yes, your Honour. I was present there. We --
23 the police were there, and I was also there, so, yeah. We dealt with the
24 situation. It was a very bad situation, but I must say that we really
25 worked very hard to contain the situation given the -- the density of the

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1 population in Naivasha itself and the large population of the local
2 residents plus the IDPs who were to come. We did our best. We did our
3 very best to contain the situation in Naivasha. We did our best. I must
4 say that we did our best.

5 If we didn't, your Honour, we may have had a very bad situation
6 in Naivasha. Remembering that majority of the people from Nyanza did not
7 have -- and others from other parts of Rift Valley did not have houses of
8 their own. Majority were in rented houses. So really they were to the
9 mercy of an overwhelming Kikuyu population, but we did our best to
10 protect them, and we put them in the police stations, and later we put
11 some camps where -- we managed to put them nearer where they were
12 working, that is the flower farms, and they went on with their business,
13 but lives were lost, and unfortunately lost. And, you know, also lives
14 were disrupted. Normal lives were disrupted. But we tried our best to
15 contain the situation given the overwhelming numbers and the abruptness
16 of the way the issue erupted. We did our best.

17 Q. Apart from the police, the other forces that you mentioned, the
18 Anti-Stock Theft Unit, were they also involved in dealing with the
19 situation?

20 A. Yes, your Honour, they were involved in dealing with the
21 situation.

22 Q. How about the administration police? Were they also involved in
23 dealing with the situation?

24 A. Yes, your Honour, they were involved. They were involved in
25 quelling the situation. In fact, I remember one time where -- that was

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1 on the second day, not on the 27th, but I need some administration police
2 officers to a neighbouring district to rescue students of the Kalenjin
3 community in a college 15 kilometres away in another district, to rescue
4 them from there and bring them to Naivasha, then to Nairobi. And I did
5 exactly that with their (* indiscernible).

6 Q. What would you say to the suggestion that the police did nothing
7 because they were ordered to do so, because they were ordered not to do
8 anything?

9 A. Your Honour, that cannot be correct. We -- as I've explained, we
10 did a lot of work, and as I've explained, Naivasha was densely populated.
11 We have 72 per cent of the flower farms, and in total we had about 52
12 flower farms, different company, 52 different flower companies in
13 Naivasha at the time. There were a lot of people who were working in
14 those farms and others who were also coming into the town looking for
15 jobs, and they will be there hanging around there to wait for jobs from
16 those flower farms and other establishments.

17 Naivasha also has, I would say, some -- a lot of tourism
18 activities around the lake. There is quite a lot. And there are a lot
19 of people who come from other parts of the country to come and look for
20 jobs, so there were quite a lot of people.

21 Given the number of people at the time, your Honours, if the
22 police had stood aside even for one hour, the situation would have been
23 mass murder. It would have been mass murder if we had stood even for one
24 hour.

25 MR. FAAL: Madam President, please allow me to just take a look

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1 at --

2 PRESIDING JUDGE TRENDABILOVA: Yes, you have several minutes
3 only.

4 MR. FAAL: Thank you. But, Madam President, but may I just
5 indicate that I may probably take five more minutes over my time, and it
6 will be subtracted from our time for the examination. We may not even --

7 PRESIDING JUDGE TRENDABILOVA: Yes, of course. Yes, please.

8 MR. FAAL: Thank you very much. Thanks for indulging me.

9 Q. You said if you did not take any action there would have been
10 mass murder. Did you hear anything from anybody in Naivasha, or did you
11 hear what people said in Naivasha about police action?

12 A. Yes. Your Honour, later -- later we got congratulatory messages
13 from the business community there on the work that we had done, just
14 before the end of the tension period. We got quite a lot of support but
15 we also got threats from some people whom we did not know, anonymous
16 persons. I particularly also got one myself. But as being in like the
17 prison's orders by ordering the arrest of the youth there.

18 So I don't know whether I have answered your question, but, yes,
19 indeed we got -- we had got threats, and we had got some congratulatory
20 messages. It is normal in the public service. You must get
21 condemnation -- commendations from the other side, but I must say that we
22 really tried our best to maintain the situation. And we contained that
23 situation very quickly within a day, and we brought everything under
24 control within that particular day. Most of the activity was on 27th
25 during the day, and at night really there was nothing.

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1 Q. Apart from these -- besides these forces you mentioned, police,
2 administration police, Anti-Stock Theft Unit, did any other security
3 agency arrive in Naivasha during that time to assist to deal with the
4 violence?

5 A. Yes, your Honour. As I have said -- as I said earlier in the
6 session, we had secured the services of the prison officers, and at the
7 same time while we were dealing with the crowds on the 27th, the Kenya
8 Army was also clearing the roads along the international highway and
9 those two highways. They were doing a lot of clearing on the roads. We
10 had a lot of army lorries which were also escorting convoys of vehicles
11 from the border with Uganda into Nairobi and probably Mombasa.

12 Q. Did that have any impact on your work at the time?

13 A. Sorry?

14 Q. What the army was doing, did it have any impact on your work?

15 A. Yes, your Honour. They helped us at least to clear the roads
16 as -- it was a relief, because clearing those roads at the same time
17 managing the crowds there, it would have been quite difficult, but it was
18 a relief.

19 Q. How many IDPs did you have at the police station?

20 A. Madam President, we had about 8.000 or so IDPs at the police
21 station alone. Then we also had another of 10- to 12.000 at the prison
22 grounds. So we had quite a lot of -- that is now the IDPs from -- who
23 were disrupted from Naivasha itself. There were other IDPs who had come
24 from other districts who ranged to about 22.000, thereabout. So,
25 Madam President and your Honours, I had the two types of IDPs: Both the

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1 locally disrupted and the ones who had come from other districts.

2 Q. Besides the armed forces that were clearing the roads, did you
3 have any other army units in Naivasha at that time?

4 A. Your Honour, we -- the Kenyan Army was based at the -- at
5 three -- sorry, two barracks at Gilgil, Gilgil area, which was about 39
6 to 40 kilometres from Naivasha. There are barracks there, army barracks,
7 in that area, yes.

8 Q. How about the air force? Did they -- did they come to Naivasha,
9 by any chance?

10 A. Yes, your Honour. I also conducted -- at that time the officer
11 in charge of the western command of the Kenyan Army had requested for
12 assistance, and they brought one chopper from -- and it overflowed there
13 with officers, and they were firing into the air to scare the crowds, and
14 it helped us a lot in the lower part where we have now the flower farms.

15 Q. You said during the violence you were going up and down to
16 various places. You said earlier that you saw people carrying stones,
17 throwing at the police before the violence erupted. When the violence
18 erupted, did you see anything in the possession of those people who were
19 involved?

20 A. Your Honour, really not. Can't say I saw anything apart from the
21 stones, clubs, and those crude weapons, which I would describe as crude
22 weapons.

23 Q. Could you elaborate more what you mean by these crude weapons.
24 What kind of weapons were they?

25 A. Your Honour, crude weapons would be stones and clubs, sticks,

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1 anything. Sometimes you may not be able to discern what kind of weapons
2 they are carrying, but I could see stones being thrown at us and then the
3 sticks. A lot of people carrying sticks.

4 Q. Did you by any chance see anybody carrying brand new *pangas*?

5 A. Your Honour, I didn't.

6 Q. You were the commander of the administration police as such,
7 because the commander reported to you. Are you familiar or were you
8 familiar at the time with members of the administration police who were
9 stationed in Naivasha?

10 A. Yes, your Honour. I was -- I was their supervisor, but I must
11 say that I knew the ones at first two ranks and a few others. I even had
12 a driver who was -- who was also an administration police officer.

13 Q. Would you recognise how many -- or how many, say, in that group
14 would you recognise at that time?

15 A. Your Honour -- your Honour, I may not have known them by name,
16 but facially, yes. I would know this is one of my officers, because we
17 usually have what we call Timam parades. Timam parades are parades where
18 you address the police officers and you also get to hear the issues that
19 they may have. So certainly I knew the officers that I had in the
20 administration police, and there were not very many at the district
21 headquarters.

22 Q. Did you see any strange person wearing an administration police
23 uniform, someone who doesn't belong to that force?

24 A. No, your Honour, I didn't see any, and if I had I would have
25 arrested them. It would have been illegal.

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1 Q. Did you see any strange person not belonging to the
2 administration police carrying a gun?

3 A. No, your Honour, I didn't.

4 Q. How about Mungiki? Did you see Mungiki in Naivasha?

5 A. Your Honour, I can't say that I saw Mungiki. I don't know
6 Mungiki. They don't have labels. All I know, I've heard of the sect,
7 but really they have no labels, your Honour.

8 Q. As far as you know, who carried out violence in Naivasha?

9 A. Your Honour, as far as I know there was an eruption -- or,
10 rather, a turn of events from a demonstration. Like it was the case in
11 Kenya at that time. Most of the demonstrations ended up being very
12 violent in various parts. So I saw just a demonstration turn from mere
13 demonstration to one -- to violence, and this time violence took tribal
14 dimensions, where now the Kikuyu community decided now to attack the --
15 the -- the Luos, the Kalenjins, and then there was also retaliation from
16 the two tribes again. So basically it just erupted after -- it took
17 another turn after the demonstrations.

18 Q. What would you say to the suggestion that Mungiki were ferried
19 into Naivasha in order to carry out the attack?

20 A. Your Honour, I don't -- I don't think any Mungiki were ferried.
21 They would have -- we would have easily known because we have the
22 intelligence service in place and we would have really known that there
23 were -- people who had come in. From the local community, there would
24 certainly get information. We had the intelligence. As I've said, they
25 were members of our District Security and Intelligence Committee.

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1 Q. Who carried out the attack in Naivasha against the Luos and the
2 Kalenjins?

3 A. Your Honour, it was the Kikuyu community who actually fought the
4 Luos and Luhyas -- Kalenjins, sorry, in Naivasha. It was the Kikuyus.
5 And at one point, in fact, I had a -- some of the local leaders complain
6 that these people, meaning now IDPs, who had come from other parts have
7 come with those tendencies of fighting to Naivasha, now they are coming
8 to destroy the image of Naivasha. So it's a kind of -- they were a
9 (* indiscernible). The IDPs who had come from other parts of the country
10 as a people who are participating in the violence.

11 In fact, at a certain point I thought it may take that direction,
12 that the Kikuyus would attack their fellow Kikuyus who had come from
13 another area. In fact, there was that fear that they may attack them for
14 bringing in violence into Naivasha. We really feared for that and we had
15 to do everything to contain that situation.

16 Q. Did you receive any orders to stand aside and ensure that there
17 is a free zone so that Mungiki can attack the Luos and the Kalenjins?

18 A. Your Honour, I didn't receive any orders from anybody, and to the
19 best of my knowledge, none of my officers received any such information.
20 And your Honour let me say boldly here, before this Honourable Court,
21 that even if I had received such orders, to stand aside for one Kenyan to
22 kill another, no, I would not have done that.

23 Q. Do you know whether the OCPD received any similar orders?

24 A. Your Honour, I know he didn't receive any such orders because he
25 was actively involved in quelling the clashes in Naivasha.

1 Q. For how long did the clash in Naivasha last?

2 A. Your Honour, actively it was just one, the day on the 27th. On
3 the 28th there was a bit of tension -- a lot of tension, indeed, not a
4 bit of it. There was a lot of tension, but much of the violence took
5 place on 27th.

6 PRESIDING JUDGE TRENDAFILOVA: Mr. Faal, you're exhausting your
7 time. You said five minutes, but it's up to you. This is going to be
8 taken from the last half hour that you have.

9 MR. FAAL: Much obliged, Madam President.

10 (Defence counsel confer)

11 MR. FAAL: Perhaps, Madam President, this is a good point to
12 stop.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you Mr. Faal.

14 Mr. Mwanza, I hope you're not tired because now you will face the
15 representative --

16 MR. FAAL: Madam President.

17 PRESIDING JUDGE TRENDAFILOVA: Yes, what is the problem.

18 MR. FAAL: I am so terribly sorry for interrupting you. I didn't
19 have my earphones, I didn't hear. But perhaps I should wait until you
20 are finished. I just needed directions from, Madam President, whether,
21 as it was in the Ruto case, the Chamber would want the Defence to provide
22 the statement that was given to the witness to the Defence team. It's --

23 PRESIDING JUDGE TRENDAFILOVA: Of course you can provide it, yes.

24 And we have the transcripts. So this is very important as well.

25 MR. FAAL: Yes.

1 PRESIDING JUDGE TRENDAFILOVA: So I'm sorry, Ms. Adeboyejo, but
2 as the leader of the Prosecutor's team you have now the floor. You have
3 one hour to address with your questions Mr. Mwanza.

4 Mr. Mwanza, do you feel ready to -- to proceed with the questions
5 now on behalf of the party that has triggered this case?

6 THE WITNESS: Yes, Madam President and your Honours. I'm ready
7 to proceed.

8 PRESIDING JUDGE TRENDAFILOVA: Okay. So -- you have again a
9 question Mr. Faal? Why don't you exhaust all your questions whilst you
10 have the floor.

11 MR. FAAL: No, Madam President. I just wanted to be guided as to
12 how I put in the statement. Do I put it through the witness or do I just
13 provide a copy?

14 PRESIDING JUDGE TRENDAFILOVA: You provide by the Court Officer.

15 MR. FAAL: All right. Thank you very much, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: So sorry on behalf of the Defence
17 for interrupting you while you were ready to speak.

18 MS. ADEBOYEJO: Yes, Madam President, your Honours. We are ready
19 to proceed, but we wanted to also find out, if according to what you had
20 indicated before, whether the Defence teams would put their questions
21 before us or you would want us to proceed immediately.

22 PRESIDING JUDGE TRENDAFILOVA: No. It's your time now. It's
23 your turn.

24 MS. ADEBOYEJO: Okay. My friend Mr. Adeniran will be taking the
25 questions.

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1 PRESIDING JUDGE TRENDAFILOVA: Thereafter, maybe on behalf of the
2 Chamber, there could be some questions as I indicated to you, Mr. Mwanza,
3 and finally the Defence team again. The Defence has always the last
4 word. As far as I recall, you have legal education. Do you have legal
5 education yourself?

6 THE WITNESS: No, your Honour, I'm not trained in --

7 PRESIDING JUDGE TRENDAFILOVA: Oh, you're not trained in law.

8 THE WITNESS: Yes.

9 PRESIDING JUDGE TRENDAFILOVA: That is -- as a law enforcement,
10 maybe you know that the Defence always has the last word.

11 THE WITNESS: Thank you.

12 PRESIDING JUDGE TRENDAFILOVA: So now, Mr. Adeniran.

13 MR. ADENIRAN: That's very good, your Honour.

14 PRESIDING JUDGE TRENDAFILOVA: Please, the floor is over to you.

15 MR. ADENIRAN: Thank you, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: You have one hour. Of course, we
17 have stop at 6.00 and we will proceed if you need some more time
18 thereafter.

19 MR. ADENIRAN: Very well, Madam President.

20 Questioned by Mr. Adeniran:

21 Q. Is it okay if I just call you sir?

22 A. It's okay, your Honour.

23 Q. Thank you.

24 First question I have for you, can you tell me which economy --
25 which city in Kenya is the largest economy?

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- 1 A. Your Honour, it is Nairobi.
- 2 Q. Which city has the second largest economy?
- 3 A. Your Honour, that city's Mombasa.
- 4 Q. Which city has the third largest economy?
- 5 A. Your Honour, it is Kisumu.
- 6 Q. Which city has the fourth largest economy?
- 7 A. Your Honour, it is Eldoret.
- 8 Q. And which city has the fifth largest economy?
- 9 A. Your Honour, it is Nakuru.
- 10 Q. And which city has the sixth largest economy?
- 11 A. Your Honour, I may not know, but probably Nyuri (* phon) or --
- 12 Thika. Sorry, Thika.
- 13 Q. Are you guessing now, or --
- 14 A. No, I'm not guessing. It is Thika.
- 15 Q. Okay. Where would you put Naivasha on that list?
- 16 A. Oh, it would be, your Honour, to the range of the seventh or
- 17 thereabout.
- 18 Q. Thank you. You mentioned earlier that Naivasha has flower farms
- 19 and that 70 -- 70 per cent of the flower farm industry in Kenya comes
- 20 from Naivasha; is that correct?
- 21 A. Yes, your Honour. I mentioned that. I said 72 per cent.
- 22 Q. Pardon me. Thank you. And these flower farms, where -- what
- 23 type of business do they generate? Where are the flowers -- what is done
- 24 with the flowers after they're grown in Naivasha?
- 25 A. Madam President and your Honours, Naivasha flower farms

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1 concentrate on mainly cut flowers, and the flowers are mainly exported to
2 European and Asian and American markets, but Europe is the largest
3 importer of the flowers from Naivasha.

4 Q. Would you say that this is a lucrative business for people,
5 residents of Naivasha?

6 A. Your Honour, I would say so. In fact, I would also want to add
7 that this country's one of our largest -- it has some of the largest
8 investors in the flower industry, this particular country where we are,
9 and we're happy about that.

10 Q. And you had mentioned earlier that the Kikuyu community is the
11 majority of the locals that live in Naivasha; is that correct?

12 A. Yes, your Honour, it is the largest community.

13 Q. So again, would you say that the business in Naivasha or Naivasha
14 as a city is very important to the Kikuyu population there?

15 A. Your Honour, it is very important, and they are also part of that
16 large community of business, men and women.

17 Q. Would you say that Naivasha as a city is very important to Kenya
18 in the grand scheme of things?

19 A. Sorry?

20 Q. Would you say that Naivasha is important to Kenya, to the Kenyan
21 economy?

22 A. Yes, your Honour. Naivasha is very important to the Kenyan
23 economy both because of those flowers, and as I mentioned earlier,
24 because of the -- of the tourism industry and then the local trade which
25 takes place there.

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1 Q. Thank you. You mentioned earlier that you did not receive any
2 intelligence about an impending attack on Naivasha; is that correct?

3 A. Yes, your Honour, I didn't receive any information on that.

4 Q. You also told us previously that while you were in the District
5 Security and Intelligence Committee that you had people, members from
6 various security agencies.

7 A. Yes, your Honour. We had a composition of officers from various
8 ethnic communities.

9 Q. Okay. Can we go through them one by one?

10 A. Yes, your Honour.

11 Q. You mentioned that there is an OCPD; is that correct?

12 A. Yes, your Honour.

13 Q. And you also told us that the OCPD is of Luhya ethnicity?

14 A. Yes, your Honour.

15 Q. How is the information sharing? Do you share information -- is
16 there information sharing between you and the OCPD?

17 A. Yes, your Honour. We share information on major issues there in
18 the district.

19 Q. If, if the OCPD were to have information about an impending
20 attack, would he share that with you?

21 A. Your Honour, ordinarily he would. Ordinarily he would share with
22 me.

23 Q. Okay. Did he share any information about an impending attack
24 with you?

25 A. No, your Honour.

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1 Q. Would it surprise you to know that he had information about an
2 impending attack?

3 A. It would indeed. Madam President, it would indeed surprise me a
4 lot -- a lot that he had any information that he didn't share with me. I
5 would be very surprised.

6 MR. ADENIRAN: Madam President and your Honours, I would like to
7 read out a statement by the OPCD to the CIPEV, with your permission.

8 Q. In this statement it says, and I'll quote, and I'll provide the
9 EVD number. The ERN I have, but my colleagues will provide the EVD
10 number shortly.

11 "On the 9th of January, 2008," this is the OCPD speaking --

12 A. On?

13 Q. I'm quoting now.

14 "On the 9th of January, 2008, I received information that there
15 could and likely attack on people perceived to be up-country people,
16 foreigners in Naivasha. This category referred to the following tribes:
17 Luhyas, Luos, Kalenjins, and Kisii."

18 Was this ever brought to your attention?

19 A. Your Honour, as I said here, I said on the 9th we -- we got
20 officers from the prisons department into our patrols, and that followed
21 the arrival of the IDPs from various parts of the countries, and we found
22 the demonstration was really -- really warranted more officers, and that
23 was on the 9th when we arrived at that decision with the members of
24 the DSIC, but specifically that -- there was information given to that
25 effect that so-and-so will attack so-and-so, that information was not

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1 given, but we arrived at that decision on that day, Madam President, and
2 we actually started getting officers from that particular date on the 9th
3 of January.

4 Q. Thank you, sir, but next time you can just restrict yourself to
5 answering the specific questions I ask of you.

6 So did you or did you not get this information from the OCPD?

7 A. Your Honour, not in the form that you're asking, but we received
8 that -- we met, and we received information to the -- to the extent that
9 we required to have heightened patrols, and we did that.

10 Q. I take it that your answer is no, you did not receive the
11 information from the OCPD.

12 A. Your Honour, I don't know whether he wants me to put it directly
13 that -- I'm saying I didn't receive that information directly, but,
14 actually, we met on that 9th, and we agreed that we'll have intensified
15 patrols, and it was based perhaps on what he's calling direction or
16 mission to the OCPD. He may not share directly the way he had it, but he
17 may -- he may occasioned the meeting so that we could discuss the issue
18 and that is precisely perhaps what happened.

19 Q. You also mention that you have a NSIS representative amongst you;
20 is that correct?

21 A. That is correct, your Honour.

22 Q. What information about any, if any, impending attack did this
23 NSIS representative provide to you?

24 A. Your Honours, I've said we didn't receive any information on any
25 impending attack directly saying that there would be this attack, no.

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1 Q. If the NSIS had such information, would they normally provide it
2 to you at your level?

3 A. Your Honour, there's -- I must say that sometimes there's a way
4 the intelligence service and the services operate. Sometimes they may
5 get information on the ground here. They relay it to the top, then it
6 comes back. That is sometimes what happens. There is some information
7 that they may provide directly, but there is times intelligence services
8 work differently from perhaps the rest of us. It will be relayed up
9 there, then it will come back down after, perhaps, some assessment.

10 Q. If I were to ask you if this information was "up there," would
11 you be surprised that it wasn't relayed to you if it was critical
12 intelligence information?

13 A. Madam President, any critical information must be relayed to me
14 to take action on the ground as a person on ground.

15 Q. Was there any information of an impending attack relayed to you?

16 A. Madam President, as I have already said to that -- in answer to
17 that question, I'm saying we didn't get any direct information, but as I
18 said during my introductory remarks that we usually analyse the
19 situations on the ground and we take appropriate measures, and that is
20 precisely what we did on the 9th.

21 Q. If I were to tell you that on the 21st of January, 2008, the NSIS
22 was in possession of information suggesting an impending attack in
23 Naivasha, what would you say?

24 A. Madam President, I don't know whether that information was in
25 Naivasha or if it was elsewhere.

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1 Q. Did you understand my question?

2 A. I didn't understand it, Madam President. Perhaps you can repeat
3 that question.

4 Q. I will. I said if you were to learn that the NSIS, on the 21st
5 of January, 2008, was in possession of information suggesting that
6 Naivasha would be attacked, what would you say?

7 A. Madam President, if that information and they provide it to me,
8 then certainly I would have taken action immediately on -- on that
9 information.

10 Q. Are you saying it wasn't provided to you?

11 A. It wasn't, Madam President.

12 Q. Was it provided to any other member in your District Security and
13 Intelligence Committee?

14 A. Madam President, I'm not aware. As I said, we have different
15 lines of reporting.

16 MR. ADENIRAN: Madam President, your Honours, I will provide the
17 EVD number I had mentioned earlier. It's EVD-PT-OTP-00063, at 9907.

18 Q. Sir --

19 MR. KEHOE: Madam President, if I might just have one
20 interjection with apologies. I would ask counsel, with all due respect,
21 Madam President, that if counsel is going to refer to a NSIS report and
22 give witness information about it, that he do so accurately or give a
23 copy of that report to the witness.

24 I resisted making an interjection on the prior document, but this
25 was two in a row, and I thought I'd bring to to the Chamber's attention.

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1 PRESIDING JUDGE TRENDAFILOVA: Your point is that this refreshes
2 the memory of the witness?

3 MR. KEHOE: My point, Madam President, is that the way this
4 information was handed over was not what the NSIS report says.

5 PRESIDING JUDGE TRENDAFILOVA: Would you provide a copy of the
6 report?

7 MR. ADENIRAN: Very well, Madam President.

8 PRESIDING JUDGE TRENDAFILOVA: Because the point is that,
9 actually, you're incorrectly referring to this report, and the purpose is
10 not that the witness refreshes his memory about --

11 MR. KEHOE: No, Madam President.

12 PRESIDING JUDGE TRENDAFILOVA: Thank you. You have to provide
13 this report.

14 MR. ADENIRAN: Madam President, that report has been referenced
15 numerous times by the OTP. I will provide the EVD number in due course.

16 MR. KEHOE: Madam President, that's not the point. The point is
17 with regard to this particular witness, if we're asking questions of this
18 witness with regard to an NSIS report from 21 January, that's fine, but,
19 one, quote -- either give the report to the witness or, two, quote the
20 document accurately. It's either one or the other. And that's the only
21 point I'm trying to make. Not to refresh recollection, but if counsel is
22 going to refer to this document, let's do it with accuracy for the
23 record.

24 PRESIDING JUDGE TRENDAFILOVA: I understood your point, that you
25 are referring to the accurate -- to the accurate referral to this report,

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1 Counsel Kehoe. Yes, I understood you, so that's why we request the
2 submission of this report.

3 Proceed, Counsel.

4 MR. ADENIRAN: Thank you, Madam President.

5 Q. Sir, how often did the District Security and Intelligence
6 Committee sit in the month of January 2008?

7 MR. KEHOE: Excuse me Madam President. Just by way of accuracy.
8 I just checked the EVD number counsel gave, EVD-PT-OTP-0063. That's
9 Mr. Lugusa's statement not the NSIS report.

10 MR. ADENIRAN: Madam President, the first document I referred to
11 which I quoted, that was the EVD number I provided. I have informed the
12 Chamber that in due course I will provide the EVD number for the NSIS
13 report.

14 PRESIDING JUDGE TRENDAFILOVA: Yes. So let us -- let us proceed
15 with the questioning and let us not interrupt the counsel.

16 MR. ADENIRAN: Thank you, Madam President.

17 Q. Sir, I asked you the question: How often in the month of January
18 2008 did the District Security and Intelligence Committee sit?

19 A. Madam President, we -- usually the District Security and
20 Intelligence Committee -- usually the District Security and Intelligence
21 Committee sits once a month, but because of the events of Naivasha -- or
22 in Naivasha that time, we sat formally three times, but we also usually
23 have informal meetings. Informal that we don't keep on record, but we
24 have consultations.

25 Q. Do you remember the dates on which you sat in the month of

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1 January?

2 A. Yes, Madam President. I remember that we sat on the 28th, the
3 29th, 30th, and 31st.

4 Q. That's four times.

5 A. I'm pretty sure about the one of 28th, but I think in this --
6 yeah, I think we sat on the 28th, but we had frequent meetings. We had
7 to review the situation because it warranted us to sit and meet and make
8 decisions.

9 Q. These meetings, did you take minutes of these meetings?

10 A. Yes, Madam President. There are minutes. We usually take
11 minutes, and there were minutes in meetings of, I think, 28th, 29th,
12 30th -- no. It was 29th, 30th, and 31st. Sorry. I think I remember it
13 was.

14 Q. Do you remember what was discussed in these meetings?

15 A. Madam President, I would remember some of the issues that we
16 discussed, but basically it was security issues to do with the violence
17 in Naivasha and how to contain it, the measures that we needed to take to
18 handle the issues of IDPs. Sometimes we even started to handle rumours,
19 because there were lots of rumours doing rounds. So had to sit and
20 discuss rumours, how to manage rumours.

21 Q. Did you discuss at any point anything about those who are
22 responsible for the violence in Naivasha?

23 A. Madam President, during those meetings we would have a lot of
24 issues to discuss, but at the time, not so many issues arose. We were
25 focused on what we wanted to do, and in the course of the interaction

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1 with the IDPs, they gave us a bit of information. So we had some names
2 that were given to us, and we discussed them.

3 Q. Do you remember some of these names?

4 A. Yes, Madam President, I remember some of the names.

5 Q. Can you provide the Chamber with some of these names?

6 A. Madam President, I seek your guidance, because again I don't wish
7 to mention names.

8 PRESIDING JUDGE TRENDAFILOVA: So, Court Officer, let us shortly
9 switch into a private session so that the witness feels at ease
10 mentioning the required information.

11 (Private session at 5.34 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

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21 (Expunged)

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17 (Expunged)

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19 (Expunged)

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21 (Expunged)

22 (Open session at 5.48 p.m.)

23 COURT OFFICER: Madam President, your Honours, we're back in open

24 session. Thank you.

25 PRESIDING JUDGE TRENDABILOVA: Please proceed, Mr. Adeniran.

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1 MR. ADENIRAN: Thank you, Madam President.

2 Q. You told us that at the police station there were about 8.000
3 IDPs and that at the prisons there were between 10- to 12.000 IDPs; is
4 that correct?

5 A. Madam President, yes. That was the estimate I could give. We
6 didn't have the exact numbers, because really at the initial stages, when
7 the IDPs started arriving, we were recording, but after some time it
8 became very difficult because the numbers were really coming very many of
9 them. But that was the estimate I gave.

10 Q. Sir, please, if you could just restrict yourself to the questions
11 I ask. Thank you.

12 Can you tell me the ethnicity of these roughly between 18- to
13 20.000 IDPs?

14 A. Madam President, maybe I seek some clarification. Which IDPs?
15 I've already explained there are two types of IDPs in the district: The
16 ones who were disrupted internally, and the ones who were disrupted
17 elsewhere and they came to live in Naivasha. So which ones? Kindly let
18 me know.

19 Q. I will. If you see my pausing, it's because there is this five
20 seconds I have to wait before I ask you the question -- the next
21 question.

22 I was referring to IDPs that were displaced from within Naivasha,
23 and you told us earlier that those were the ones that went -- that were
24 housed or that were eventually accommodated in the police station and
25 prisons. Can you tell me what the ethnicity is?

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1 A. Thank you, Madam President. The IDPs who were in the police
2 station and the prisons were mainly from the Luo, Kalenjin, and some
3 extent some Kisiis and Luhyas. They from Lusa (* phon) ethnic community.

4 Q. Thank you. You told this Court that on the 27th of January, the
5 violence in Naivasha was very serious, and you said a lot of what
6 happened, happened on the 27th and there was a lot of tension on the
7 28th; is that correct?

8 A. Yes, Madam President. To the best of my knowledge, from what I
9 remember, a lot of violence occurred on the 27th, actually during the
10 day. On the 27th during the day. And from there onwards, we made every
11 effort to safeguard the lives.

12 Q. How many people were killed after the violence in Naivasha?

13 A. Madam President, we had -- we had --

14 MR. FAAL: Madam President, I wish to object to that question.
15 It's not relevant here. The purpose of this hearing is to determine the
16 people who have been killed during the violence, but to talk about --

17 PRESIDING JUDGE TRENDAFILOVA: Mr. Faal. Mr. Faal, when you were
18 making your presentation and thereafter you're examining the witness, I
19 was very firm that no one would ever intervene into your line of
20 reasoning or the line of arranging your questions, because this is the
21 best of your strategy how to build up your case. Let us proceed with
22 regard to the same understanding when we address the Prosecutor's
23 examination now.

24 MR. FAAL: Much obliged, Madam President.

25 MR. ADENIRAN:

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1 Q. Would you like me to rephrase the question? I asked you how many
2 people were killed in Naivasha after the violence.

3 A. Madam President, at the end of violence in Naivasha we had
4 between 42 and 50 people who were killed, to the best of my knowledge
5 there 50, I think, 50 people.

6 Q. Do you know the cause of death of these people?

7 A. Yes, Madam President. Some of the deaths, causes of deaths were
8 brought to my attention at the time, and as I pointed out, some 19
9 people, unfortunately, died in a case of arson fire incident where they
10 were burnt in a house, very sad indeed. The others, Madam President,
11 died of bullet wounds. There were some who were shot by our officers in
12 the course of quelling the -- the violence. Unfortunately, they also
13 died, as I said, it was as a result of errors. The purpose was to
14 immobilise those who were involved in the violence and arrest them.

15 Again, there were -- there were some cases of which were
16 reported, I think, when two people were shot with arrows. They had arrow
17 injuries. That is the best I can remember.

18 Q. I would like to remind you you're still under oath. Would you
19 like to answer that question again? How many -- what was the cause of
20 death of the 42 to 50 people that you heard about that were killed in
21 Naivasha?

22 A. Madam President, as I've said, I -- I have part of that
23 information, and the reason being that the nitty-gritty of those issues,
24 perhaps, are not brought to my attention sometimes, and there was also a
25 lot of human suffering at the time. I was more concerned with the people

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1 who were alive and the ones whom we were to take care of. There was
2 really a lot of suffering amongst those ones who were -- who -- whose
3 lives were disrupted, so I'm more concerned about that. I was personally
4 more concerned about that. But as I've said, I've said there was a case
5 where 19 people died of fire, isn't it? That was -- 19 people died in
6 one house. It was very unfortunate indeed.

7 Then I've said there were some who were shot by our officers, and
8 I have said again how it is also regrettable that the people died out of
9 shots which were not meant to kill them but to immobilise them. And I've
10 said there was a person who was shot with an arrow in -- in one of the
11 areas. In fact, that came to my attention as the officer said that they
12 needed a vehicle to go and collect the bodies that they had noticed. So
13 to the best of my knowledge, that's what I can remember at the moment.

14 Q. So you said one person was shot with an arrow, a number of people
15 were killed in the house which was burnt down. How many people were
16 killed with -- or died of gunshot wounds?

17 A. Madam President, to the best of my knowledge there was four.

18 Q. That still leaves a substantial number of people you haven't
19 accounted for. Do you know what their cause of death was?

20 A. Madam President, I wouldn't know. That basically did not lie
21 within my -- in my line of work. It was for the police and the doctors
22 to really say what the people died of, and as I've explained, I was very
23 concerned about the welfare of these ones who had been left alive.

24 Q. You've mentioned a couple of times -- you talked about the Kenyan
25 police presence in Naivasha, you've talked about the administration

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1 police presence, you've talked about the ASTU as well. And then you
2 talked about the prison officers. To the best of your knowledge, how
3 many Kenya police officers were in Naivasha before the attack?

4 A. Madam President, I don't have that answer.

5 Q. Do you have a rough estimate?

6 A. No, Madam President, I don't have it. As I said, the OCPD was
7 our operations officer so he was the one with such numbers.

8 Q. How many people from the administration police were present in
9 Naivasha before the attack?

10 A. At the district headquarters, there were about 49.

11 Q. Within Naivasha town?

12 A. That was -- within Naivasha town? Yeah, that was within Naivasha
13 town, but we had -- we have what we call outposts which are outside the
14 district headquarters and they're in different locations depending on
15 the --

16 Q. Forty-nine?

17 A. Yes. I think roughly that was the number.

18 Q. Were there more Kenya police officers than administration police
19 officers?

20 A. Madam President, I believe so, because Naivasha was already a
21 police division even before the creation of the district. It was already
22 a police division, so it must have had more officers than the
23 administration. And while the administration police were operating in --
24 we have two types of divisions. Police have a division which means a
25 district, and the Administration Police Division means an administrative

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1 division. So we only had the administrative divisions for Naivasha
2 before the creation of the district, but the police division existed.

3 MR. ADENIRAN: Madam President, on the opening day of this
4 hearing, Mr. Monari made reference to the fact that Naivasha was manned
5 by 30, 30 police officers.

6 MR. MONARI: I'm sorry to interrupt you.

7 PRESIDING JUDGE TRENDAFILOVA: Mr. Adeniran, it's 6.00. I would
8 suggest that we make a break now. Then you will proceed, and instead of
9 having 15 minutes, you will have 20 minutes because there were a lot of
10 discussions and you have been interrupted on many occasions, and then if
11 the Chamber has questions, and we will finish with 15 minutes for the
12 Defence.

13 So, Court Officer, would you usher the witness, Mr. Mwanza.

14 And you will be back in half an hour.

15 (The witness stands down)

16 PRESIDING JUDGE TRENDAFILOVA: We suspend now the hearing. We
17 will resume in half an hour.

18 COURT USHER: All rise.

19 Recess taken at 6.00 p.m.

20 On resuming at 6 .30 p.m.

21 (Open session)

22 COURT USHER: All rise.

23 PRESIDING JUDGE TRENDAFILOVA: Please be seated.

24 We resume our hearing, the last session, and you have the floor,
25 counsel from the Prosecution's office, to proceed.

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1 Yes, of course. Please, Court Officer, usher, the witness.

2 MR. KHAN: And, Madam President, with your leave whilst the
3 witness is being brought in, just one matter which hopefully will
4 expedite proceedings. We are alive to the injunction of the Bench not to
5 unnecessarily object, and we must confess, particularly those of us from
6 a common law background, that we're used to objecting to inappropriate
7 questions.

8 Your Honour, the key issue is questions must be asked at least in
9 a basic manner. My learned friend before the break sought to controvert
10 the witness through a submission of counsel. Such matters are open
11 invitations to objections, and we would ask that the Prosecution try
12 their utmost to follow a very basic and well-understood practice of
13 asking questions in a -- in an understandable and appropriate format
14 rather than seeking to controvert a witness through something counsel has
15 said.

16 Your Honours, I don't mean to belabour the point, but it's
17 established. You controvert a witness through a document, through a
18 statement, through a previously inconsistent statement. You do not, in
19 any court, seek to controvert a witness through something counsel has
20 said, and I'd ask that the Prosecution be advised to conduct themselves
21 appropriately and that will allow us to remain in our seats and not to
22 object unnecessarily. I'm most grateful.

23 (The witness takes the stand)

24 PRESIDING JUDGE TRENDABILOVA: Mr. Khan, thank you very much for
25 your point, but I would like to emphasise on the very specific nature of

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1 the Rome Statute. It's not only common law. It's really a combination
2 of the two major world systems, so we try to accommodate the two
3 approaches to the extent possible and to the approaches that counsels are
4 used to in the courtroom. So please have your understanding about
5 slightly different approach.

6 Mr. Mwanza, you're welcome again.

7 THE WITNESS: Thank you, Madam President.

8 PRESIDING JUDGE TRENDAFILOVA: And I hope you're not tired by
9 this questioning, examination, cross-examination, and we have a little
10 bit more to proceed, because the Chamber very much appreciates your trip
11 to -- to the -- to The Hague and your presence here in the courtroom,
12 because the Chamber would like to establish the truth with regard to
13 properly performing its functions assigned by law.

14 So the Prosecution's office, please go ahead.

15 MR. ADENIRAN: Thank you, Madam President, your Honours. I would
16 like to provide the EVD number for the NSIS report I referred to earlier.
17 It is EVD-PT-OTP-00013, at 0052, and the relevant paragraph is paragraph
18 219.

19 Q. Sir, is it okay if I continue?

20 A. Yes, Madam President, I'm ready to proceed.

21 Q. Okay. I don't think I'll take too long, but I'd now like to talk
22 about the prison officers. Do you remember how many prison officers
23 there were on that day before the Naivasha attack?

24 A. No, Madam President, I don't know.

25 Q. Do you have a rough estimate?

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1 A. No, Madam President. I don't have that information.

2 Q. We had talked about a meeting that you had in the
3 District Security and Intelligence Committee on the 31st of January,
4 2008. I'd like you to think again about that meeting. This is the
5 meeting which I had referenced earlier where you discussed certain people
6 allegedly involved in the violence. Okay? I'd like to ask you, do you
7 remember anything else that was discussed at that meeting?

8 A. Sorry. Madam President, I think I cannot remember specific
9 issues, but -- which we discussed in the three meetings, because there
10 were three consecutive meetings, but as I mentioned earlier, I said we
11 were discussing issues on how to deal with the IDPs. We were also
12 discussing issues on how to handle rumours, and generally we were also
13 discussing issues on how to -- to take care of the IDPs themselves, the
14 ones who had been now affected by the violence.

15 Q. Sir --

16 A. Perhaps the magic can remain (* indiscernible).

17 Q. Sir, do you remember any discussion about a shoot-to-kill order
18 basically given at that meeting?

19 A. Madam President, I wouldn't remember that, but I remember we
20 discussed and said that we could -- one of the issues we discussed was
21 let's use reasonable force on the ones who were perpetrating violence or
22 who were participating in the violence itself. We said let's use
23 reasonable force.

24 Q. Would anything appear in the minutes of your meeting if it wasn't
25 discussed?

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1 A. The minutes should just reflect what we discussed. As I've said
2 earlier, we had a lot in our hands that we were handling during that
3 period, a lot of it, a lot of it.

4 Q. Earlier you talked about people, I think you mentioned 150 people
5 being arrested after the violence; is that correct?

6 A. Yes, Madam President. I mentioned about 50 people arrested
7 during the violence. During, not after.

8 Q. Actually, though, you said 150, but you're saying it's 50?

9 A. Sorry. I mentioned about 150, but it is during the violence, not
10 after.

11 Q. Thank you. Do you know what happened to these people?

12 A. Sorry?

13 Q. The 150 people that were arrested by the police, do you know what
14 happened to them?

15 A. Yes, Madam President. I was informed that they were taken to
16 court. All of them were taken to court.

17 Q. Do you know the outcome of the court proceedings?

18 A. No, Madam President, I wouldn't know that. I don't know that
19 information.

20 Q. Thank you. You told us earlier as well that you went to Nakuru
21 to pick up your family members; is this correct?

22 A. Yes, Madam President. I went to pick my wife and children.

23 Q. What part of Nakuru did you pick them from?

24 A. It was -- Madam President, it was section 58.

25 Q. Can you enlighten us? Where is section 58?

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1 A. Yes, Madam President, I can enlighten the Honourable Court on
2 that. Section 58 is -- is the area as you get into Nakuru town. It's
3 just about 2 kilometres from Nakuru town centre on the way to Nairobi.

4 Q. And what day was this again?

5 A. Madam President, it was on the 26th of January, 2008.

6 Q. And you mentioned also that the Kikuyus were being killed in
7 Nakuru at this time; is that correct?

8 A. Madam President, I -- I used the word "attacked." I said that
9 they had been attacked in an area called Githima and Kaptembwa areas,
10 yeah.

11 Q. Were they killed?

12 A. Madam President, I didn't have those details. All I know is that
13 there was an attack and there were houses burned from the information
14 that I received from fellow residents of Nakuru.

15 Q. Did you receive any other information about any other attacks in
16 Nakuru?

17 A. Madam President, yes, I did. We got all the other information in
18 other parts of Nakuru. That is -- there was Kwa Rhonda. There were --
19 no, there were not small areas then. I do not know the -- I do not
20 remember the names of the -- the specific names, but there was a
21 generally, as I said earlier, widespread violence in all of that area.

22 Q. And when you say you had previous information about attacks, do
23 you -- did you have information about attacks in Nakuru town?

24 A. No, Madam President, I didn't have that. I didn't have that. As
25 I said, I only reacted to a situation when there was an attack. I rushed

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1 to get my family to put them to safety.

2 Q. So you're saying that the Kikuyus were not attacked in Nakuru
3 town?

4 A. I'm not saying that, Madam President.

5 Q. Then what are you saying?

6 A. I'm saying there was an attack in Githima and Kaptembwa areas.
7 That's what I'm saying. It is within the township.

8 Q. In relation to Nakuru town, you've told us that you -- you told
9 us about two areas. Actually, you mentioned three. You mentioned
10 Kaptembwa, you mentioned Githima, and you mentioned Kiambogo. Is this
11 correct?

12 A. The first two you've mentioned, Madam President, are correct.
13 Kiambogo is in Naivasha district, although it is nearer Nakuru town.

14 Q. So the only two that pertain to Nakuru town are Kaptembwa and
15 Githima?

16 A. Those are the areas referring to -- in relation to the attack
17 that occurred around the -- some three or four days to 27th.

18 Q. And you say your family members, and you specifically mentioned
19 your wife and children --

20 A. And two children, Madam President.

21 Q. Lived in -- or lived in Nakuru town?

22 A. Yes, Madam President. For close to ten years we were living in
23 Nakuru town.

24 Q. And you did not hear about any other attacks in Nakuru town.

25 A. Madam President, as I want to clarify that, I was not working in

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1 Nakuru. I was working in Naivasha, not in Nakuru. Nakuru is where my
2 family was living and I was working in Naivasha, and I was also living in
3 Naivasha. There was an official residency in Naivasha. So this other
4 issue about Nakuru was about where my family was. I was trying to
5 explain that I -- on that particular date of 26th I went to pick my
6 family because of those attacks which had happened and really I also felt
7 that they might be caught up in the crossfire.

8 Q. Thank you. When did the violence in Naivasha end?

9 A. Madam President, there was violence in Naivasha ended really on
10 the first day. On the second day, as I explained, there was very little
11 and it was about tensions here and there between the people. There were
12 attempts from people to -- to attack each other, but we stood very, very
13 firm there, and we managed -- we continued with the arrests of those ones
14 we thought were participating.

15 Q. When you told us earlier that between 42 to 50 people had been
16 killed in Naivasha, do you know when they were killed?

17 A. Madam President, most of those deaths I must say about -- say
18 that 95 per cent occurred on the 27th, during the day.

19 Q. And the remaining 5 per cent?

20 A. Sorry?

21 Q. The remaining 5 per cent, to your knowledge?

22 A. To my knowledge, the remaining 5 per cent could have occurred any
23 other time, because the bodies were collected on the 27th from -- that
24 area I was calling near the flower farms, that is it. It is called
25 Karagita. To be specific, it's called Karagita. That is where the

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1 bodies were being collected, so really we could not tell whether they
2 were killed on that same day or the previous day.

3 Q. Can you tell the Court the ethnicity of those that were killed?

4 A. Yes, Madam President. I think I can roughly remember, that as
5 I've said, there were the 19 people who died in one unfortunate incident
6 of arson, those were all Luo. Then there were about eight Kikuyus who
7 were -- eight to nine Kikuyus who killed also within Naivasha township.
8 Then I think there was one or two so -- two Luos, and perhaps one Kisii,
9 maybe a Kalenjin or two. Then there were no other -- I think about eight
10 or so Luos who were killed also again in -- in -- outside that particular
11 unfortunate incident of arson.

12 Q. You have a very good memory. You have a very good memory.

13 A. Thank you.

14 Q. But are you sure?

15 A. I said I could only give a rough estimate of what I can remember.
16 It is quite some time. It's four years now since that happened.

17 MR. ADENIRAN: Madam President, I would just like to confer with
18 my colleagues.

19 PRESIDING JUDGE TRENDAFILOVA: Please do.

20 (Prosecution counsel confer)

21 MR. ADENIRAN: Madam President, your Honours, no further
22 questions.

23 PRESIDING JUDGE TRENDAFILOVA: Thank you very much on behalf of
24 the Prosecutor's Office.

25 Before -- before I give the floor to the Defence, would you

1 like --

2 MR. ANYAH: Madam President.

3 PRESIDING JUDGE TRENDAFILOVA: Ah, the Legal Representative

4 Mr. Anyah.

5 MR. ANYAH: Yes, Madam President. I do have an application to

6 make at this time. I will bring the application pursuant to

7 Rule 91(3)(a), and it is an application to question the witness on behalf

8 of my victims. I make the application on the grounds that the personal

9 interests of my clients are affected directly by the testimony of this

10 witness.

11 The Amended Document Containing the Charges frames the issues

12 that are before your Honours, and your Honours will recall that that

13 document, in specific paragraphs, in particular paragraphs 64 through 75,

14 explicates the nature of the violence in Naivasha, which is what this

15 witness has testified to today.

16 Also in that document to be found at paragraph 75 is reference to

17 civilians, victims taking refuge at the police station in Naivasha. The

18 applications for participation of my client victims that are before the

19 Court which have been disclosed to the Defence in redacted form contain

20 information from the victims about some of them who took refuge in that

21 very police station. There is also reference to victims taken refuge at

22 the prison, which appears to be the same prison the witness has testified

23 to.

24 The witness testified about IDPs of two particular classes, some

25 within Naivasha and others who came from outside Naivasha. The

1 applications of my clients before the Court convey that many of them are
2 indeed internally displaced persons from the Naivasha area, including
3 Naivasha town.

4 For all of those reasons, Madam President, I respectfully submit
5 that in their totality they meet the requirement of Article 68(3)
6 *vis-à-vis* the personal interest of my client and I request to question
7 the witness.

8 PRESIDING JUDGE TRENDAFILOVA: Thank you. Just a moment, I have
9 to confer with my colleagues.

10 (Trial Chamber confers)

11 MR. KHAN: And, Madam President, if it assists there is no
12 objection from the Defence, if that's (* overlapping speakers)

13 PRESIDING JUDGE TRENDAFILOVA: Yes. Thank you very much.
14 What about from the Prosecutor?

15 MS. ADEBOYEJO: None from the Prosecution, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: So you Mr. Anyah, you can proceed
17 with your questions.

18 MR. KHAN: Madam President, before my learned friend rises, I
19 would be grateful for some clarification because I'm a little bit
20 confused. I wonder if the -- my learned friend from the Prosecution
21 would give me once again the EVD number for the 31st of January DSIC
22 minutes that he says that were put to the witness or mentioned to the
23 witness. The document, of course, wasn't put in which somebody -- an
24 individual was Dura Wariunge was mentioned. So I wonder if the EVD
25 number can be given because I've checked the one that's been given to me,

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1 so it's not there.

2 PRESIDING JUDGE TRENDAFILOVA: Yes. On behalf of the Prosecutor,
3 Mr. Adeniran, would you give clarification?

4 MR. ADENIRAN: Yeah, Madam President, I will --

5 PRESIDING JUDGE TRENDAFILOVA: Would you give the correct EVD
6 number?

7 MR. ADENIRAN: I will confer with my colleagues, shortly, and I
8 will provide it in due course.

9 PRESIDING JUDGE TRENDAFILOVA: Please do, yes, because you know
10 that you cannot rely on a piece of evidence that has not been disclosed.

11 Mr. Khan, in order not to delay the proceedings, let the members
12 of the Office of the Prosecutor just discuss the matter and by the end of
13 the hearing we're going to -- to sort it out.

14 MR. KHAN: I'm grateful.

15 PRESIDING JUDGE TRENDAFILOVA: Mr. Anyah, please do proceed.

16 Questioned by Mr. Anyah:

17 Q. Good evening, Mr. Mwanza.

18 A. Good evening.

19 Q. You've heard the Presiding Judge mention my name. I will
20 introduce myself to you. I am Morris Anyah. I represent the victims in
21 this case. I have a few questions for you.

22 When I ask you the questions, if at any time you do not
23 understand what I say, please ask me to repeat myself. You follow me?

24 A. Yes. Yes. Yes, Madam President, I'm -- I'm following you say.

25 Q. You've told us you were the district commissioner of Naivasha.

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1 Is that an elected office?

2 A. No, Madam President. I'm a civil servant.

3 Q. Are you appointed to that office?

4 A. Yes, Madam President, I'm appointed.

5 Q. Who appoints you to that office?

6 A. Madam President, it's the public service commission.

7 Q. Is that appointment made from Nairobi?

8 A. Yes, Madam President, it is made from -- the public service
9 commission only exists in Nairobi.

10 Q. At the time of your appointment, who was the head of the public
11 service commission?

12 A. Sorry?

13 Q. At the time of your appointment as district commissioner, who was
14 head of the public service commission?

15 A. At the time of my appointment 2006, it was -- it was
16 Ambassador Francis Muthaura. Was it the public service commission, or
17 was it public service?

18 Madam President, let me clarify so that we can understand each
19 other. There is public service commission. Then -- that is a body which
20 is independent which appoints public servants to various positions in the
21 country, including also the head of public service is subject to that
22 body. So the public service commission, and then there's also the office
23 of the head of public service. Those are two different -- separate
24 bodies.

25 Q. Let me -- let me understand you correctly. There is the public

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1 service commission, and then there is the head of the public service.

2 A. Correct. My -- Madam President.

3 Q. Is the public service commission under a ministry of government?

4 A. It is an independent commission, Madam President. It's a -- it's
5 an independent commission.

6 Q. That was not my question. My question is: Is it underneath a
7 ministry of government?

8 A. No, Madam President, it is not under any ministry at all. It
9 reports to the cabinet.

10 Q. Going back to the question I asked you a few minutes ago, at the
11 time of your appointment as district commissioner, who was the head of
12 the public service commission?

13 A. The head of public service commission, at the time I think the
14 gentleman was Mr. Gatari (* phon).

15 Q. What is the first name?

16 A. I really don't remember the first name, but I know him as
17 Mr. Gatari.

18 Q. Did Mr. Gatari report to anybody above him?

19 A. Really not. He -- he would report -- he would report to the
20 cabinet.

21 Q. Did the public service commission have any dealings with the
22 civil service of the Republic of Kenya?

23 A. Yes, Madam President. As I said, they were the appointing
24 authority. They are the ones who managed civil service in Kenya.

25 Q. The public service commission manages the civil service in Kenya?

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1 A. Yes, Madam President. That's correct.

2 Q. Who was the head of the civil service in Kenya at the time of
3 your appointment as district commissioner?

4 A. It was -- Madam President, it was Ambassador Francis Muthaura.

5 Q. Do you know Mr. Muthaura?

6 A. Yes, Madam President, I know Mr. Muthaura.

7 Q. How long have you known him?

8 A. Madam President, I've then him since he was appointed as the head
9 of public service?

10 Q. What year was that?

11 A. I can't remember, Madam President.

12 Q. Have you known him for longer than a decade, ten years?

13 A. No, Madam President, I have not known him longer than a decade.

14 And I wish to clarify that. I don't even know him personally.

15 Q. Are you sure you have not known him for longer than a decade?

16 A. Madam President, I've not known him more than a decade.

17 Q. In the discharge of your official duties, did you ever have any
18 interactions with Mr. Muthaura?

19 A. No, Madam President, not I'm aware that he interacted. The --
20 such situation cannot -- I don't think it can arise anywhere. I'm a very
21 junior officer.

22 Q. We will come back to this area of questioning in a bit because I
23 want to ask you some more questions about any relationship you might have
24 with the suspect, Mr. Muthaura, in this case. But the let me ask you
25 another question. You told us at the outset of your evidence that at

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1 some point during your tenure as district commissioner you went to
2 Uganda. What year and what month did you go to Uganda?

3 A. Madam President, it is correct that I went to Uganda, and I went
4 the year 2006, the end of -- in December. I had gone in my capacity as
5 the representative of the provincial commissioner. At that time, I was
6 working in the office of the provincial commission of Rift Valley.

7 Q. And how long did you stay in Uganda?

8 A. Madam President, we stayed about ten days, our delegation. It
9 was not me. We had a joint commissioner's meeting with our counterparts
10 from Uganda. The issues we were discussing were about issues about peace
11 at our common border.

12 Q. Very well. You responded to questions by the Prosecution about
13 the District Security and Intelligence Committee, the meetings that it
14 had, and you said meetings were held on the 29th, 30th, and 31st of
15 January 2008, yes?

16 A. Correct.

17 Q. You said minutes were kept of those meetings, yes?

18 A. Yes. There are minutes to that effect.

19 Q. Where are the minutes today?

20 A. Madam President, they are with the district commissioner of
21 Naivasha; that is, they are kept in the district where such meetings are
22 held.

23 Q. And is it the case that those minutes are still in existence as
24 of today, to your knowledge?

25 A. Yes, Madam President. I remember in 2008 there was a commission

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1 set up by -- by the government on post-election violence, and they
2 requested for the minutes and they were provided by the district
3 commission in Naivasha.

4 Q. The commission you're referring to, is that by Justice Waki?

5 A. Yes, it is the commission by Justice Philip Waki.

6 Q. Were copies of the minutes retained at the district level, the
7 same minutes that were provided to the Waki Commission?

8 A. I believe they are there because I have no access to those
9 minutes myself. Once you leave a station, you cannot access the
10 information there. It can only be requested from either a commission
11 with a legal authority or a court or perhaps the -- the -- the provincial
12 commissioner.

13 Q. Now, Mr. Mwanza, you yourself, do you take notes when you attend
14 meetings?

15 A. Madam President, I don't get -- (* indiscernible) in a meeting
16 because I really attend a lot of meetings. I'm a chairman of almost
17 every other committee in the district, not just that one. We also have
18 quite a lot of other committees related to other sectors, and I also
19 happen to be the chairman. So you're asking whether I take minutes when
20 I go to such meetings.

21 Q. Yes. Do you take notes?

22 A. Usually I provide the chairmanship, Madam President and your
23 Honours, I usually provide the chairmanship. There is usually a
24 secretary at every of those committees who takes notes.

25 Q. Yes, Mr. Mwanza, we understand that there is a secretary. We

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1 understand that you're the chairman. It's a simple question. Do you
2 yourself, Mr. Wanza, take notes during meetings?

3 A. I'm sorry, Madam President, I'm Mwanza. I said once you call me
4 Wanza, that is a lady's name. So I'm saying that I don't take minutes in
5 the meeting.

6 Q. Do you -- I apologise for interrupting. Please continue.

7 A. Yes. Madam President I said I don't take minutes. As I've
8 explained, if you are -- you are talking about taking minutes in that
9 particular -- in any given meeting, I don't.

10 Q. Do you maintain a diary where you write down things that have
11 importance to you?

12 A. Yes, Madam President. Sometimes I have notebooks, and there
13 is -- I also have a diary for -- for scheduling my meetings and events.

14 Q. Did you maintain a diary during the period November 2007 through
15 February 2008?

16 A. Yes, Madam President, I had a diary for my office.

17 Q. Do you still have that diary?

18 A. Madam President, I can't say where it is -- it is at the moment.

19 Q. You don't know where it is. Is that your answer?

20 A. Yes. I don't know where it is, Madam President. I've really
21 moved from one station to another. We are transferrable. So really I
22 don't have it.

23 Q. But --

24 MR. KHAN: Madam President, sorry. Before my learned friend
25 continues, I didn't object to victims, of course -- to the Legal

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1 Representative asking questions, and I did so because we're desirous also
2 that the truth comes out. Now, your Honours, it's for your Honours to
3 decide whether or not issues regarding notebooks really are advancing the
4 cause of the victims at all. Now time is precious, and I -- perhaps my
5 learned friend has a point to make, and if he does, in the precious time
6 that's been allotted to all the parties, and that we have not objected be
7 given to the voice of the victims, perhaps something relevant could be
8 asked.

9 PRESIDING JUDGE TRENDAFILOVA: Well, Mr. Anyah, would you go to
10 the core point that you would like to make.

11 MR. ANYAH: Very well.

12 PRESIDING JUDGE TRENDAFILOVA: But you have established, still,
13 your way, to achieve what you want. But let us advance a little bit
14 more.

15 MR. ANYAH: Very well, Madam President.

16 Q. You mentioned when you testified in chief that you and the other
17 members of the committee heard information about what was happening
18 elsewhere in the country as well as what was happening in Naivasha. From
19 where did you hear that information?

20 A. Madam President, I said it was common knowledge of what was
21 happening. It was in the news, in the media everywhere, whatever was
22 taking place in other parts of the country. It was common knowledge to
23 everybody. So really, that was it.

24 Q. You said there was an influx of IDPs into Naivasha. At a
25 particular point you said there were 10- to 15.000 IDPs somewhere about

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1 January 2008, yes?

2 A. Yes. Madam President, within the second week I said we had about
3 that number in Naivasha town alone.

4 Q. Before we outsiders came to Naivasha were there within Naivasha
5 displaced persons who were residents of Naivasha?

6 A. No, Madam President. There were none.

7 Q. So the IDPs who came at about the second week of January were the
8 first group of internally displaced persons to be found in Naivasha?

9 A. No, Madam President. The first group of IDPs came during the
10 first few days after the announcement of the presidential election. That
11 was the first week of January. Those were the first IDPs who started
12 coming other parts of the country.

13 Q. And before that group of IDPs came during the first week of
14 January, are you telling the Court that there were no IDPs within
15 Naivasha?

16 A. Madam President, there was none. There was none. There was no
17 IDPs.

18 Q. You told the Court you spoke personally to the IDPs, you
19 yourself. Yes?

20 A. Yes, Madam President. I was visiting the IDPs in various areas
21 where they were when we were giving humanitarian assistance, and I would
22 speak to the IDPs, first, to reassure them that we were doing everything
23 to help them, to alleviate the suffering, and then to provide the
24 assistance, to interact with them, generally to give them that assurance
25 that the government was concerned about their plight.

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1 Q. And the IDPs who came in the second week of January or the middle
2 part, the 15 or so thousand, you said about 99 per cent were Kikuyus,
3 yes?

4 A. Madam President, let me clarify that. The IDPs, they did not
5 come a particular time and then they stop. The IDPs kept coming to
6 Naivasha through and through every hour, every minute, and every day. So
7 they were really just coming every time. Whenever they got transport
8 wherever they were coming from, they would arrive there in Naivasha. So
9 they were coming continuously.

10 Q. Yes. We know that they were coming continuously, but the point
11 at issue is what percentage of the IDPs were Kikuyus? Can you tell us
12 what percentage were Kikuyus?

13 A. Madam President, as I said almost 99 per cent were Kikuyus.

14 Q. Did you speak to any IDP that was of the Luo ethnic group?

15 A. Yes, Madam President. I explained here earlier that I was
16 housing four of them, Luos, in my residence myself.

17 Q. The Luos, four of them that you housed, were they displaced
18 persons?

19 A. They were displaced from the -- Madam President, they were
20 displaced from the Naivasha 27th January violence.

21 Q. To your knowledge, did any Luo lose their property in Naivasha?

22 A. Yes, Madam President, it is true. They lost property.

23 Q. And how did they lose their property?

24 A. Madam President, as the violence broke out in Naivasha, some
25 fellows looted other people's property. They stole their property, and

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1 in that manner, some of the people, Luos, lost their property in that
2 manner.

3 Q. Besides looting and theft, were any properties burnt?

4 A. Yes, Madam President. There was -- in fact, as -- I want to
5 repeat this once more about that very unfortunate incident. There
6 were -- we lost 19 people in one incident, 19 in one incident. That
7 house belonged to a Luo, and the property which was there was all lost,
8 including the house it was so burnt.

9 Q. This was the house that was a hundred or so metres from the
10 highway, yes?

11 A. Yes, Madam President, it's correct.

12 Q. The 19 people that were burned, were children among them?

13 A. Yes, Madam President. It's true there were children there.

14 Q. Do you know how many children were among them?

15 A. No, really not.

16 Q. Were there women among them?

17 A. Yes, Madam President. I think there were people of either
18 gender.

19 Q. Were they all Luos?

20 A. Yes. To the best of my knowledge, they were all Luos.

21 Q. You said the persons who burnt the house, you referred to them at
22 page 42, lines 15 through 17 of the Transcend transcript. You said they
23 were a rowdy crowd. Do you recall telling us that in court today?

24 A. Sorry, you have -- Madam President, I think he has mentioned some
25 reference which I may not have.

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1 Q. I will repeat the question.

2 A. Yes.

3 Q. There is a transcript that records what you say in court, and I
4 made a note of what the transcript recorded, and you described the people
5 who burnt that house as being a "rowdy crowd." Do you remember telling
6 us that in court?

7 A. It was a mob, yes. It was the mob that I was talking about.

8 Q. What ethnicity were the members of that mob?

9 A. Madam President, I wouldn't -- I didn't -- I don't know the exact
10 people who burned it, but on suspicion they were Kikuyus, because really
11 I don't think the Luos would have burned their own houses.

12 Q. To your knowledge, were any of those mob members prosecuted?

13 A. Madam President, as I explained, we arrested about 150 people,
14 and probably among that gang there could have been members -- among its
15 members -- rather, in that crowd, there would have had some of the people
16 arrested and prosecuted, among the 150.

17 Q. You know what "prosecuted" means, yes?

18 A. Yes, Madam President. I know prosecution is somebody being
19 arraigned in court and facing charges.

20 Q. Do you know what sort of charges were brought against those taken
21 to court?

22 A. No, Madam President, I don't have those details. All that I know
23 is that they were taken to court for participating in that violence.

24 Q. Do you know whether any of those taken to court received any sort
25 of punishment?

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1 A. Madam President, as I explained, about a month -- about a month
2 later I left Naivasha. I was posted to another area which was also badly
3 affected by the clashes, and they were persistent. So I wouldn't know
4 the action which was taken, and as I said, we really had a very busy
5 schedule of trying to address the humanitarian crisis that had arisen.

6 Q. You said earlier in court today that the Kikuyu community were
7 fighting the Luos and the Kalenjins in Naivasha. You remember telling us
8 that?

9 A. Yes, they were fighting.

10 Q. At one point you said, and I quote -- this is at page 48, lines
11 13 to 20 of the transcript. You said:

12 "Majority of the people from Nyanza did not have houses of their
13 own. They rented houses. They were at the mercy of an overwhelming
14 Kikuyu population."

15 Do you remember telling us that?

16 A. Madam President, I said that -- I was explaining that if we had
17 stood aside to watch people being killed and that these people, to the
18 best of my knowledge, who are living in rented houses, they would have
19 been at the mercy of those ones who were killing them. If we really did
20 not stand there to protect them, then certainly there would have been
21 mass massacre of Kenyans massacring other Kenyans.

22 Q. Very well. The record will speak for itself, but my question is
23 something else. As you sit there now, do you know whether behind these
24 Kikuyus who attacked Luos and Kalenjins there was somebody instigating or
25 prodding them to attack the other tribes?

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1 A. Madam President, I'm not aware that.

2 Q. Have you read anything to that effect?

3 A. Madam President, I've not read. From where?

4 Q. Newspapers? Have you listened to television since the violence
5 ended?

6 A. Madam President, I have not heard about that, somebody being
7 behind them. As I said, we recommended certain people for investigation
8 whom the IDPs from the Luo community had given us, and that was all.

9 Q. Do you know what the suspects in this case are charged with?

10 A. Really, I get information from -- scanty information from the
11 media. Really, I don't have the specifics on what they are charged with.
12 I don't have the specifics, Madam President. I must be very honest, that
13 they --

14 Q. Do you have -- please continue.

15 A. I have not read any charges referred on to -- on the suspects.

16 Q. I'm not asking you if you've read the charges. You've travelled
17 thousands of miles from Kenya, brought here to testify. Are you saying
18 to us you do not know what the charges are in this case?

19 A. Madam President, I came to tell what I know happened here. I
20 didn't come here to defend somebody. I came simply to give the version
21 of the story that I know, the issues as they happened. And I want to
22 emphasise that I came here to speak honestly and I'm not coming here to
23 deny that there was any violence or somebody lost lives. I can't do
24 that. I have come here to speak what I know happened.

25 PRESIDING JUDGE TRENDABILOVA: Mr. Anyah, I wouldn't like to put

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1 any pressure on you. Would you tell me how much time you would need,
2 because the Chamber would have some questions, and thereafter we have to
3 give the final -- finally the floor to the Defence team of Mr. Muthaura.

4 MR. ANYAH: I don't have very much left, Madam President, and I
5 appreciate the indulgence of the Court to allow me to continue. I would
6 propose or suggest that with leave of your Honours if I could have five
7 to ten more minutes.

8 PRESIDING JUDGE TRENDAFILOVA: Five minutes would be better,
9 because the Chamber has questions as well.

10 MR. ANYAH: Yes, Madam President. Thank you.

11 Q. I want to talk about -- and I will leave the question about
12 whether you know the nature of the charges or the allegations. We
13 appreciate you're here, as you say, to tell the truth and so on, but
14 let's leave that for now. I want to ask you a few questions about the
15 police station where people took refuge and the prison.

16 The prison in question that you've testified to, is that a prison
17 called the GK prison in Naivasha?

18 A. Yes, Madam President. We have a GK prison, Naivasha. There's
19 maximum and there's medium.

20 Q. Listen to my question, please. It's very specific. The prison
21 you testified to in this court a few minutes ago, is it referred to
22 popularly as the GK prison in Naivasha?

23 A. Madam President, I think -- he should just wait, I tell him
24 because I know the place better than he does. I've said there are two
25 prisons in one; that is, the maximum prison and the medium.

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1 Q. Is it referred to, this one place where there are two prisons in
2 it, is it referred to as the GK prison in Naivasha?

3 A. Yes, Madam President.

4 Q. In December of 2007, specifically the 29th of December, 2007, was
5 there a directive from Nairobi to replace the head of that prison, who
6 was a Luo, with someone from the Meru tribe?

7 A. On which date, Madam President? I didn't get that.

8 Q. On the 29th of December, 2007, two days after the presidential
9 elections, the results were announced.

10 A. Was there -- Madam President? Kindly let him to repeat the
11 question because I'm not getting --

12 Q. Very well. The head of the prison in Naivasha, the GK prison,
13 was that person of the Luo ethnic tribe around December of 2007?

14 A. Yes, Madam President. This is correct.

15 Q. Was there an attempt to replace that person with someone from the
16 Meru tribe around December of 2007?

17 A. Madam President, I wouldn't know. I don't even know who was the
18 prison's officers. I don't know, and I also don't know who posted them.
19 The postings are perhaps done by their -- the commission of prisons. At
20 the time, I think he was also a Luo.

21 Q. Are you saying you do not know whether they tried to replace the
22 head of the prison?

23 A. Madam President, I'm not saying I -- I thought he was
24 transferred, actually, and not tried to remove. I thought he was
25 transferred.

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1 Q. Transferred around December 2007?

2 A. No, Madam President. I'm not aware of that. 2007? No. No. He
3 wasn't transferred by that time. Because I recall by 9th --
4 Madam President, by 9th January, he's the same officer that I spoke to to
5 request for the -- the prison officers to assist in the patrols.

6 Q. Are you aware of any protest by civilians against the removal of
7 the head of the prison?

8 A. No, I'm not aware, Madam President.

9 Q. There is a bridge in Naivasha called the Mai-Mahui flyover bridge
10 true?

11 A. I'm sorry, Madam President. Perhaps the pronunciation has not to
12 help me to understand where he is referring to.

13 Q. I will speak a little bit slower, and I will spell it. There is
14 bridge, we call it a flyover bridge, in Naivasha, called Mai-Mahui
15 flyover bridge; yes?

16 A. Madam President, Mai-Mahui, as I had explained earlier, is about
17 20 kilometres from Naivasha town. It's a town, where -- and there's a
18 junction to go to the neighbouring district which I called Narok. So it
19 is 20 kilometres, and I'm not aware of any bridge which is there.

20 Q. Are you aware of a bridge with that name?

21 A. No, Madam President, I'm not aware of any bridge by that name,
22 and I don't think there is one.

23 Q. To your knowledge, the persons who took refuge in the prison,
24 were they shot at by persons wearing police uniform?

25 A. Sorry, again.

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1 Q. The civilians who took refuge in the prison, were they at any
2 point in time shot at with guns by people wearing police uniform?

3 A. No, Madam President. That did not occur. It did not occur. I
4 said that we protected all the IDPs in Naivasha, and none of them was
5 harmed or even threatened wherever they were, wherever they took refuge.

6 Q. Did you learn of a teacher who was running to the prison for
7 refuge that was shot and killed?

8 A. I am not aware of a teacher who was shot as he ran to the police
9 station? No, I'm not aware -- I'm not aware that a teacher was shot as
10 he ran.

11 Q. Were you aware of shooting by persons wearing police uniform
12 directed towards civilians who were fleeing and running towards the
13 prison for refuge?

14 A. Madam President, I have explained that the people who were,
15 unfortunately, shot and died, who were shot by our police officers to
16 quell the clashes, their aim was not to kill them. Their aim was to
17 immobilise them, arrest them. But as I said, it's human error. It
18 occurs that while the officers is aiming at the foot the bullet may hit
19 any other part. So I am aware that our police officers shot some of the
20 people who were involved in the violence.

21 Q. And your testimony is that the shootings were not intentional?

22 A. Madam President, they were not intended to kill. They were
23 intended to immobilise the -- the persons involved in the violence.
24 Because of its intensity, really, we really had to use reasonable force
25 to -- to separate the two sides.

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1 MR. ANYAH: Madam President, I think I have a minute or so. I
2 will plead with your Honours for your indulgence just to address one more
3 issue.

4 PRESIDING JUDGE TRENDABILOVA: Just one, please. Just one issue.

5 MR. ANYAH: Yes.

6 Q. Mr. Mwanza, I want to understand what caused the violence in
7 Naivasha, because I have a document prepared by the Defence team that's a
8 summary of what you told them. I've listened to your evidence in court,
9 and you referred to an incident on the 24th of January in the environs of
10 Nakuru against Kikuyus, in particular in Githima. Do you remember
11 telling us about that? And you said a few days after that, on the 27th
12 in Naivasha, that's when the violence erupted, yes?

13 A. Madam President, I explained that in Naivasha there was a
14 demonstration, and the demonstration turned violent, and in the process I
15 believe to the best of my knowledge that some people took advantage of
16 the situation that obtained at the time, and they attacked their fellow
17 Kenyans, and really that was it. It was a reaction of some sort or an
18 eruption of emotions. As I explained, there were very many IDPs who had
19 come from various parts. Most of the people, we didn't know them because
20 they had come from other parts. And, Madam President, I think it should
21 be appreciated that even as the violence broke out, even criminals from
22 those areas also ran away alongside the other law abiding citizens. So
23 they were also among them in Naivasha as IDPs. So really it was a very
24 complex situation for us, but as I said, we did our best to manage that
25 complex situation.

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1 Q. Yes, Mr. Witness, I apologise, but you attempted to answer my
2 question. I want to read you what is summarised as being your views by
3 the Defence --

4 MR. KHAN: Your Honour, I do object to that. The witness has
5 given a statement and my learned friend has offered to give it to those
6 that are entitled to it. He offered at the end of examination-in-chief.
7 The summary is not the statement of the witness.

8 MR. ANYAH: Madam President, that is entirely correct, but to the
9 extent I can explain to the witness the nature of the information
10 conveyed here accurately, and my learned friends are in court to object
11 should I misstate what is summarised here, I think I can proceed without
12 the statement. I'll be happy to receive the statement, but it would not
13 be of great use to me for this examination at this point, because I would
14 be receiving it in court. But I want to put a proposition to the witness
15 which he can deny or accept, and it's a proposition that's contained in
16 the summary.

17 PRESIDING JUDGE TRENDAFILOVA: Go ahead, very shortly, because,
18 Mr. Anyah, we have agreed with you about five minutes, and you took your
19 ten minutes.

20 MR. ANYAH: Thank you, Madam President.

21 Q. Mr. Mwanza, was it the indent in Githima or protestations by
22 people against the prison officers for harassment which, in your view,
23 triggered the violence in Naivasha? Which of those two things?

24 A. Madam President, I don't think I can confine myself to any of the
25 two, because I've said it was a very complex situation in Naivasha. Here

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1 there are demonstrations which are being carried out and there are rowdy
2 youths and the mobs and there are a lot of people in the streets all over
3 the place, and eventually it turns violent. And I also explained that
4 in -- in our country during that period, Madam President, I stand to be
5 corrected by anybody with contrary information, there was no
6 demonstration that took place without ending being violent in that
7 country. Most of them would end up violently because people want to
8 recruit -- want to have others in the demonstration who don't understand
9 their agenda. They just wanted the numbers. So the situation really
10 was -- was really complex, and please understand that is the bit I know,
11 that the demonstration turned violent and some people took advantage and
12 they started giving it a tribal dimension.

13 Q. And the people who took refuge at the prison were Luos, Kalenjin,
14 and Kisii, yes?

15 A. Yes, Madam President. They were from among these tribes.

16 MR. ANYAH: Thank you, Madam President.

17 PRESIDING JUDGE TRENDAFILOVA: So thank you, Mr. Anyah.

18 Questioned by the Court:

19 PRESIDING JUDGE TRENDAFILOVA: I would like to ask you some
20 questions, Mr. Mwanza. You have testified before the so-called
21 Waki Commission.

22 A. Yes, Madam President, I have.

23 PRESIDING JUDGE TRENDAFILOVA: The commission that was
24 established to inquire into the post-election violence, and the Judges
25 are reading all pieces of evidence, information, in order for us to take

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1 the -- the decision that is going to reflect the truth to the extent of
2 our responsibilities, of course, the decision that we have to take, and I
3 would like to ask you three questions.

4 The first one is related to your statement during today's
5 testimony that "prior to the 27th of January, 2008, we received no
6 information about anything which may have been an early warning. There
7 was nothing, no indication of anything. It was common knowledge what was
8 going on."

9 I'm referring to the transcripts of the so-called Waki
10 Commission, and in particular, to page 961 where to the -- to the
11 question put by Justice Philip Waki, and the question is:

12 "Did you receive any security intelligence about who was
13 organising the demonstration as a security agency?"

14 Your reply is:

15 "My Lord, let me say that we received some intelligence
16 information concerning a planned demonstration by certain persons."

17 As a Judge, I was listening very carefully, and I was very
18 diligently studying all the evidence, and I just want to ask you why
19 before this commission on the post-election violence you made this
20 assertion which quite extensively differs from what we heard today on
21 many occasions.

22 A. Thank you, Madam President. Let me explain that the intelligence
23 that I would refer to would be in two manner. There is the official
24 intelligence which will come from the national security and -- security
25 and intelligence service in Kenya. That is one form of intelligence.

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1 The other one is information, Madam President, which comes from the --
2 our interaction with the members of the public and the residents of a
3 particular place. So some of it is not formal. It's not formal
4 intelligence, and that would make the -- the difference. That do I not
5 want to tell this Honourable Court that I received formal intelligence
6 when really I did not. But as I said earlier today, there was some
7 information that led us to hold a meeting on the 9th so that we could --
8 where we came up with a decision to intensify patrols. So that was the
9 information, and really we also call it intelligence, but it is -- may
10 not be the formal intelligence where notes are written by the
11 intelligence service.

12 PRESIDING JUDGE TRENDABILOVA: Well, if this is your answer, I
13 will pass on to the second question that I have. The second question is
14 regarding the assertion of the Prosecutor that:

15 "The police was instructed not to do anything."

16 And you replied today:

17 "That cannot be correct."

18 In the same report, at page 962, you answered to Justice Philip
19 Waki as follows:

20 "My Lord, the other issue is that what came out slightly later is
21 what we would discuss perhaps not in the open."

22 So there was a closed session, and we do not have access to the
23 transcript of the closed session.

24 "That as somebody was engaging us in a demonstration here,
25 another one was committing a crime somewhere. So somebody was talking to

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1 demonstrators while somebody else was committing a crime elsewhere."

2 My question is, Mr. Mwanza, who was engaging you somewhere to
3 talk to demonstrators while at the same time crimes were committed
4 elsewhere?

5 A. Madam President, let me also explain that, because I think it's a
6 use of language. What I'm saying is -- what I -- what I meant during
7 that -- the answer to -- to that question was that as we were -- I was
8 busy addressing the members of the public who were demonstrating. As I
9 was busy doing that, somebody else here is telling other people no, and I
10 think I've also mentioned that -- earlier that there was a group which
11 appeared really rowdy and they didn't want to listen to us, and it was
12 the one which was throwing stones. This is the group I was referring to,
13 Madam President, because here we are, we meant very good. We want to
14 talk to some people, and in fact they were listening to us.

15 And in fact I did mention that when I spoke to the first group,
16 the members of public who were there accepted that they go and remove the
17 stones from the roads, and indeed they went and started doing that. As
18 we were leaving somebody told me, who was sitting at the back of my
19 official vehicle, that it looks like there's somebody now telling others
20 let's go and return the stones. I did mention that, Madam President.

21 PRESIDING JUDGE TRENDAFILOVA: Thank you. We heard this
22 explanation already. So this is your answer to my second question.

23 And my third question is regarding your principal explanation
24 today regarding the violence, that it was spontaneous, and I would refer
25 to the following pages -- on page 961, Justice Philip Waki says:

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1 "We only see the demonstrations, but as you said there, there is
2 some under hand, some hand under there."

3 And your answer:

4 "Yes, My Lord."

5 Then on page 938 of the same transcript, Mr. Evans Monari was
6 asking you:

7 "What caused the violence following the elections of 2007?"

8 You replied that it was largely a spontaneous reaction. Then the
9 question was:

10 "Now, this spontaneous reaction, who was (* indiscernible) it?
11 Would you say that politicians were partly responsible in their speeches
12 they were making to the people?"

13 And you asked:

14 "Here in Naivasha or elsewhere generally?"

15 I'm sorry. Let me just find -- yes. So you answered:

16 "Generally, nationally, we would see tribal statements being made
17 by some politicians."

18 Mr. Monari:

19 "So you will accept with me that politicians made inflammatory
20 statements in the media."

21 And your answer:

22 "Some of them."

23 And finally Justice Philip Waki asked you at the end of your
24 testimony what recommendations, as a very key officer in the
25 administration, you could make in order that such violence be prevented

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1 in the future, and you spoke extensively. And the two main issues were:
2 First of all, that politicians are involved and that there should be
3 laws, tough laws, and you spoke about the poverty issue. I shall very
4 shortly read your answer.

5 "If, My Lord, we could have some laws in place preventing
6 politicians from engaging in certain inflammatory statements and those
7 with some forms of incitement, I believe, My Lord, we would not have
8 clashes in this country. Unfortunately, they are the ones to make those
9 laws, and they would not make laws against themselves."

10 Then you proceeded:

11 "So, My Lord, if we have some laws in place, but tough laws, we
12 can -- which can be implemented for persons who whip tribal animosity,
13 then, My Lord, I think we will have peace in this country. As we talk to
14 the people, you would hear somebody saying, 'We were only told to do
15 this. We were only told to do this by our leaders.' So, My Lord, let's
16 have responsible leadership, particularly on the political front."

17 And lastly, you were referring to the poverty, especially with
18 regard to the poverty that youths are facing.

19 "Most of the youth who participate in the violence participate
20 because they earn something from those who sponsor them, and that is why
21 they participate in the skirmishes. Those are some of the causes of the
22 youth participating in that kind of violence: unemployment, idleness, and
23 also poverty. One is given 10 shillings, 20 shillings, 50 shillings.
24 That is enough for one to engage in violence."

25 I would kindly ask you for your comments.

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1 A. Madam President, let me first start by saying I'm happy that as a
2 country we have a new constitution in place, and some of those issues
3 that I -- most of these issues I raised at that time have now been
4 addressed. We have a commission which is permanent one, which -- which
5 would prevent any hate speeches and other from politicians and from
6 Kenyans. We have that commission in place, and it is called the National
7 Coalition and Integration Commission. We also have a Bill of Rights now
8 which is very, very strong in the constitution, and I feel that some of
9 those issues have been addressed, but still the issue of -- of youth and
10 unemployment is being addressed by the government. Currently we have
11 some programmes in the country which are addressing youth issues.

12 And, Madam President, as I spoke about those things, I was
13 speaking from experience. I had had a lot of experience, and let me say
14 some of those comments which you have read - it was the end of my
15 statement - came not in reference to specifically Naivasha. It was in
16 reference to the -- my experience in various places, particularly the
17 issue where the youth were saying, 'We were only told by our leaders.'
18 That happened in -- that information came to me in Molo, not in Naivasha
19 itself. That was in Molo where they told me that, "We were only taught."
20 And I would ask them some more questions, and they will give gave a
21 little bit more details which perhaps might not be appropriate to mention
22 here because they may be subject to further investigation and prosecution
23 locally in our country.

24 So, Madam President, I was really concerned that we had had
25 violence in 1992 in our country, during the elections in 1992. We had

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1 had violence in 1997 during a -- again during another election year. And
2 during the referendum in 2005, at the end of 2005, we again had some
3 violence again in some parts of the country. But the worst now was this
4 one of 2007/2008.

5 But, Madam President, let me say that the district that I went to
6 after Naivasha, the violence started -- could not be called post-election
7 violence. It started before the elections. In fact, that is a place
8 where we had some of the mobile polling station established by the
9 electoral commission that time, because violence had already started in
10 those places. And looking at the issues, the violence there started
11 between sub-tribes. Again, it took another dimension of the same
12 sub-tribes gang up again -- against another tribe.

13 Madam President, the issues have been very complex in our
14 country, and I believe that with the new constitution and with the
15 firmness of implementing that, and I'm seeing lot of citizens in our
16 country dictating and demanding that the constitution be implemented to
17 the letter. Then, Madam President, I believe most of those reasons why
18 we have had that violence, that recurrent violence, would be addressed.
19 I believe that all of us in our country should have the goodwill to
20 maintain peace with each other.

21 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Mwanza. I wouldn't
22 like -- is this the answer to my question for -- for a comment that you
23 were asked with regard to the post-election violence, to make
24 recommendations?

25 A. Yes, Madam President. That -- that was --

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1 PRESIDING JUDGE TRENDAFILOVA: Thank you very much. So we really
2 took advantage of your kindness to be with us for so many hours. Thank
3 you very much for this answer.

4 I would give the floor to the Defence now for the last 15 minutes
5 if you would like to put questions to the witness before we adjourn the
6 hearing.

7 MR. ADENIRAN: Madam President, with are permission I would like
8 to provide the EVD number for the Naivasha District Intelligence
9 Committee minutes of the 31st of January.

10 PRESIDING JUDGE TRENDAFILOVA: This would have -- I wouldn't have
11 forgotten this at the end. I appreciate it. So would you provide the
12 EVD number.

13 MR. ADENIRAN: Yes, Madam President. It is EVD-PT-OTP-00093, at
14 0197. Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.
16 The floor is over to you for last 15 minutes.

17 MR. KHAN: And, Madam President, before my friend does that, it
18 would be remiss of me not to thank my learned friend for giving me the
19 EVD number. It is, of course, different to the EVD number that was given
20 earlier, and that's, of course, the rationale for the request for
21 clarification. It is important, of course, to get the evidence right at
22 the right time.

23 PRESIDING JUDGE TRENDAFILOVA: Without any doubt, Mr. Khan.
24 You're right.

25 Mr. Faal, please.

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1 MR. FAAL: Thank you, Madam President.

2 Further questioned by Mr. Faal:

3 Q. I have a few questions for you, Mr. Mwanza, on re-examination.

4 We have talked extensively about the farms in Naivasha. Do you know who
5 owned those farms?

6 A. (* Indiscrible) Madam President and Honourable Judges, I -- I
7 know some of them who owned them, but as I've said, they were 52 -- about
8 52 in number that time, and I wouldn't know some, but I know some. Some
9 of the investors indeed are from this country. And I said we are very
10 happy. I'm also happy to be here, although for very bad reasons to be
11 here, but indeed, I'm happy that I'm here where some of the investors
12 came from. Others from other countries in Europe. Others are owned by
13 Kenyans themselves. Other investors come from -- one or two from
14 Australia, some from Asia, so -- and others from Middle East, that is in
15 particular Israel, which mainly also deals with greenhouses construction.

16 Q. Would you say that the great majority of those farms are owned by
17 foreigners?

18 A. Madam President, as I said, because they are 52 in number and I
19 only know the ownership of a few, I wouldn't really know whether it would
20 be right to say that the majority of foreigners.

21 Q. Have you ever had any personal dealings with Ambassador Muthaura?

22 A. Madam President, I have never had any dealings, and as I said,
23 I'm a very junior officer in Jove (* phon) District down there, so really
24 there would be no situation where I will have any dealings with the --
25 the head of public service.

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1 Q. Have you ever met him personally?

2 A. Madam President, I never met him personally. In fact, the
3 closest I came to the head of public service was during the resettlement
4 programme in Molo when he was leading other permanent secretaries for
5 resettlement programme in Molo. That was the nearest we came to the head
6 of public service.

7 Q. You talked about bodies having been collected from Karagita and
8 other estates. Could you tell this Court when these bodies were
9 collected.

10 A. Madam President, some of the bodies were collected on the 27th,
11 others on the 28th. I was saying I wouldn't know whether they died on
12 the 27th or the 28th. I wouldn't really say specifically to which date,
13 but I know there were bodies on the 27th and the 28th.

14 Q. In reference to a question by the Presiding Judge regarding your
15 statements to Waki, and you tried to explain that when you referred to
16 intelligence, you were talking about a different kind of intelligence
17 than the one you referred to in court. Why is that? Why is that?

18 A. Madam President, I've explained that what we commonly refer to as
19 intelligence is in two forms. It's the intelligence emanating from
20 national intelligence service, and I believe every country has got its
21 own intelligence service. But there's intelligence which we may collect,
22 information that -- so to speak, which we collect from the member of the
23 public. So I've said I'm a public officer, and much of my interaction is
24 with the people directly, with the people directly. I coordinate a
25 government business in the field, at the grassroots level, so really that

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1 is the intelligence I'm talking about.

2 Q. Whatever information you may have had in Naivasha at the time --

3 A. Sorry?

4 Q. Whatever information you may have had at the time, did you at any
5 point in time ignore, deliberately ignore, relevant information and fail
6 to take action?

7 A. Madam President, I want to emphasise that I'm a very patriotic
8 Kenyan, and at no time when I if get information and fail to act on it.

9 Q. The prison officers, do you know which ministry is responsible
10 for them?

11 A. Madam President, currently they are under the Ministry of Home
12 Affairs, who's -- the minister is also the vice-president.

13 Q. How about in 2007 during -- 2008, during the time of
14 post-election violence?

15 THE INTERPRETER: Message from the English booth: Could a pause
16 please be observed between question and answer for the purposes of
17 interpretation. Thank you.

18 PRESIDING JUDGE TRENDABILOVA: Observe the pause, please. Do
19 observe the pause between the questions and answers.

20 MR. FAAL: My sincere apologies.

21 Q. How about during the post-election violence? Which ministry was
22 responsible for prison officers?

23 A. Madam President, it was still the Ministry of Home Affairs.
24 Again, the vice-president was also the minister in charge of -- at the
25 time was also the minister in charge of that ministry.

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1 Q. You -- in reference to the District Security and Intelligence
2 Committee meeting of the 31st January, you said earlier that most of the
3 things you discussed were just rumours; is that correct?
4 A. No, Madam President. What I said is we held a meeting and one of
5 the agenda that we were to discuss was about -- was it how to manage
6 rumours. There were a lot of rumours doing rounds there, and in fact
7 one -- some of them looked like they were meant to incite Kenyans there,
8 and some of them were referring to a bus or two buses which had been
9 hijacked by Kikuyus in Naivasha, put into a bush there, and they -- they
10 were with the people from Western Kenya. That was what was alleged, but
11 on checking, there was not such a bus. So really, we had to know how to
12 manage rumours, because we had to call the ownership of that bus to speak
13 the truth, to say whether any of their buses hijacked by anybody within
14 Naivasha. So looked like some of those rumours were meant to -- to have
15 the clashes continue.

16 MR. FAAL: No further questions.

17 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Faal.

18 There no -- any questions from the Chamber? No.

19 So, Mr. Mwanza, it was maybe a little bit difficult afternoon for
20 you having to recollect events going back to 2007/2008, but we thank you
21 very much for coming all this way to the court to give your testimony,
22 and we wish you a safe trip back to Kenya.

23 So, court usher, could you -- Court Officer, could you usher
24 Mr. Mwanza out of the courtroom.

25 THE WITNESS: Thank you, Madam President.

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1 (The witness withdrew)

2 PRESIDING JUDGE TRENDAFILOVA: We're at the end of our -- the
3 third session of the hearing today. Tomorrow we shall proceed with the
4 questioning of the second witness called by the Defence team of
5 Mr. Muthaura. We again start at 2.30.

6 I would like very much to thank the parties, Mr. Anyah, the
7 public that was present here. Of course my general thankfulness goes to
8 the interpreters, to the stenographers, to the court officers, to the
9 reporters, to the security officers, to everyone. On behalf of the
10 Chamber, my colleagues, I wish you a pleasant evening. So tomorrow we
11 shall start at 2.30.

12 The hearing is adjourned.

13 The hearing ends at 7.55 p.m.

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