

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom 1
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul,
4 and 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 Thursday, 29 September 2011
10 The hearing starts at 2.31 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 I welcome everyone who is in the courtroom today, everyone who is
16 in the public gallery. Of course I see that there are new faces, in
17 particular I see Mr. Ocampo. So after the Court Officer would call the
18 case, I would like that the teams present the new faces that are with
19 them.
20 COURT OFFICER: Good afternoon, Madam President, your Honours.
21 This is the situation in the Republic of Kenya in the case of the
22 Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and
23 Mohammed Hussein Ali, case reference ICC-01/09-02/11. Thank you,
24 your Honours.
25 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer.

1 Now the team of the Prosecutor, for the record in addition to the
2 Prosecutor himself, is there some new faces? No.

3 The Defence team of Mr. Muthaura?

4 MR. KHAN: Madam President, your Honours, good afternoon, no new
5 faces.

6 PRESIDING JUDGE TRENDAFILOVA: Maybe not. The Defence team of
7 Mr. Kay?

8 MR. KAY: We remain the same. Thank you.

9 PRESIDING JUDGE TRENDAFILOVA: You remain the same. And finally,
10 Mr. Monari, do you have some new faces, the other Defence teams?

11 MR. MONARI: Madam President, your Honours, we have a new team
12 member who has been upstairs all the time. His name is Paul Bradfield.
13 He is joining us this afternoon.

14 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Monari. You are
15 welcome to the courtroom.

16 Mr. Anyah.

17 MR. ANYAH: Good afternoon, Madam President. Good afternoon,
18 your Honours, there are no new faces for us. Thank you.

19 PRESIDING JUDGE TRENDAFILOVA: On behalf of the Chamber, we just
20 have with us Mr. Anderson Carvalho. He is a legal assistant and he is
21 working with us. This is his first attendance here in the courtroom. We
22 are already approaching the questioning of Mr. Kenyatta.

23 Mr. Kay, you would like to address the Chamber?

24 MR. KAY: No, I was going to call Mr. Kenyatta --

25 PRESIDING JUDGE TRENDAFILOVA: Yes.

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1 MR. KAY: -- on behalf of your Honour, if that was permissible.

2 PRESIDING JUDGE TRENDABILOVA: Yes, please.

3 MR. KAY: Mr. Kenyatta, please.

4 (The witness takes the stand)

5 PRESIDING JUDGE TRENDABILOVA: Yesterday, we proceeded with the
6 swearing-in, so now we directly continue with the questioning. First it
7 will be Mr. Kay, thereafter the Prosecutor's team, and finally Mr. Kay.

8 MR. KAY: Thank you, your Honour.

9 WITNESS: WITNESS KEN-D13-PPPP-0001 (Resumed)
10 Questioned by Mr. Kay:

11 Q. Good afternoon, Mr. Kenyatta.

12 A. Good afternoon.

13 Q. The first questions that I ask you today are going to concern the
14 early stages of your political career and it has been a fact in this
15 courtroom that your first election campaign that you fought to become a
16 Member of Parliament was 1997; is that right?

17 A. That is correct, your Honours.

18 Q. The party that you joined and on whose behalf you fought that
19 election was the KANU party; is that right?

20 A. That is correct, your Honours.

21 Q. I'd like you now, if you would, if you could tell the Court about
22 the ethnic structure or political alliances that made up the KANU party.
23 Was it a party that represented one ethnic group? How would you describe
24 it?

25 A. I would describe KANU as a national party, a party that included

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1 most of the communities, especially the smaller communities in Kenya.
2 But the major, let's say, ethnic groups in the country during the 1997
3 election were not really in KANU. They belonged to other parties. So I
4 would call KANU a national party, but at the time of the 1997 election it
5 was composed mainly of members of the smaller or minority communities in
6 Kenya.

7 Q. At that stage, in 1997, who was the leader of the KANU party?

8 A. Your Honours, the leader of KANU at the time was the former
9 president, President Daniel Arap Moi.

10 Q. I've referred you to the 1997 election. Did you win a
11 parliamentary seat at that election?

12 A. No, your Honours, I did not win my parliamentary seat at that
13 particular election.

14 Q. After 1997 did you remain in the KANU party?

15 A. Yes, I did, since I was at the time the party chairman for Thika
16 district. So I remained a member of the party though I had not won my
17 parliamentary seat.

18 Q. Now, before we get to the next election at 2002, and keeping the
19 chronology, I'd like you to watch a very short video, EVD-PT-D13-00530.
20 If we go back, I don't think the screen is on for -- thank you. If that
21 could be now played.

22 (Video-clip played)

23 "Members of the Mungiki sect are petitioning the government to
24 stop what they call illegal harassment of its members. In a statement
25 issued shortly after they marched through city streets, they complained

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1 that their members have been arrested and tortured by police. Outside
2 Jomo Kenyatta's mausoleum, the group burnt an effigy of Uhuru Kenyatta
3 claiming that Uhuru had betrayed the ideals his father stood for. But in
4 a quick rejoinder, the Nairobi KANU youth accused the sect of fronting
5 for an unnamed politician in Central Province."

6 MR. KAY: Thank you.

7 Q. Did you recollect that particular event we saw there, which was
8 the 8th of August, 2000?

9 A. Yes, I do.

10 Q. Did you witness it yourself?

11 A. Your Honours, I didn't witness it myself, since I wasn't present.
12 But I did see the TV because it was on news on TV. So I saw it on TV.

13 Q. Perhaps you could explain to us what that particular issue was
14 about, what was going on on that day and why were these people known as
15 the Mungiki burning an effigy of you?

16 A. Well, your Honours, at the time there was a crackdown, again on
17 this particular sect, and they blame that crackdown on the government,
18 and me being a member of the ruling party at the time they associated
19 myself with the problems that they were experiencing. And I was the
20 target, therefore, of their anger against the government at the time.

21 Q. Thank you. I'd now like to move to the 2002 election. Is it
22 correct that you stood as the presidential candidate for KANU against
23 Mwai Kibaki?

24 A. Yes, your Honours, that is correct.

25 Q. Just taking the politics then at that 2002 election, can you

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1 inform the Court the policies on which KANU fought that election upon?

2 A. Your Honours, the key platform of our election at the time was
3 one united Kenya which was basically the founding principles of the
4 Kenya African National Union of which now I was their presidential
5 candidate and also the drive and initiative now towards dealing with a
6 major problem at the time which was youth and youth unemployment in the
7 country. So our campaign was based on a youth platform and the need to
8 unify the country going forward.

9 Q. As the presidential candidate, were you also the leader of KANU?

10 A. No, at that time, your Honours, the party chairman remained as
11 the president who was then Daniel Arap Moi, but I was one of the four
12 vice chairman of the party.

13 Q. We've heard in Court over the past few days that
14 President Mwai Kibaki is a Kikuyu and you are also a Kikuyu. Perhaps you
15 could describe to the Court particular issues arising for you at that
16 stage being a Kikuyu standing against President Kibaki as he now is.

17 A. Well, your Honours, at the time there was a strong feeling that
18 maybe I was out to divide the Kikuyu vote and there was also a build-up
19 at the same time, a mood for change, given the fact that also
20 President Moi had been in power at that stage for 24 years and the mood
21 was developing that there was a need in certain quarters, that was the
22 argument, to replace KANU. And many felt at the time that Moi was using
23 me to continue his -- his rule. And largely, especially within my own
24 community of the Kikuyu, it was felt that I was really, as they called it
25 at the time, a project of the former president. And there was a mood

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1 that I should not be elected because that would be a continuation of the
2 rule of Moi. That was the perception and that was the attitude that was
3 being pushed from certain quarters.

4 Q. Perhaps you can describe then what your politics stood for at
5 that time in 2002, what you were campaigning upon, and what you
6 personally believed in.

7 A. Your Honours, my politics at the time and still is today, is that
8 we need a united Kenya. We need a country where all communities in Kenya
9 could feel that they were accommodated, could feel that they were part
10 and parcel, not just of the government but of the entire socio-economic
11 structure. And that was my key platform. Coupled with that, as I said
12 earlier, I was also very keen on seeing a new order -- a younger
13 generation participating in politics because I did feel that that would
14 also help in dealing with some of the key social problems that we were
15 having, which were largely related to youth unemployment. And that was
16 throughout the country and that was a major problem that I felt needed to
17 be dealt with and I still feel needs to be dealt with.

18 Q. As we know, President Kibaki won that election. How did you
19 accept defeat in that election by him?

20 A. Your Honours, after the campaign period was over and the
21 elections were concluded, when the tallying began of the votes after some
22 time it did become apparent to myself that the direction of the voting
23 was leading to a win by my opponent in the election who was then
24 Mwai Kibaki who was the leader of the NARC party, and at the same time
25 given that it was a transitional election, that we were moving from a

1 president who had been there over 24 years and a party that had been in
2 power since independence. There was growing tensions because there were
3 rumours around that the ruling party would not give in or would not
4 accept, concede, defeat. And I felt in order to lower the tensions that
5 were prevailing in the country because at the same time there was talk
6 that there was going to be a mobilisation of people to march to State
7 House and to take over by force. So I felt that there was really no need
8 for us to head in that direction and in order to reduce the tensions and
9 after consulting with my colleagues we felt it necessary to announce that
10 myself as the candidate who was following Mwai Kibaki, I should announce
11 that I had accepted and conceded defeat in that particular election. And
12 we went ahead organised for a press conference, where I announced that I
13 had conceded defeat, despite the fact that the election tallying was not
14 over in order to reduce the tensions that were beginning to build in the
15 country.

16 Q. That concession of defeat in 2002 to avoid those tensions that
17 you speak about, how was that received by your own party, KANU?

18 A. Well, at first there were those who felt that we should wait for
19 the election results to fully come in, but like I said, your Honours, it
20 was quite clear to me at that stage that President Kibaki was actually
21 going to win. So I didn't feel the need to wait, as was being suggested
22 by some, and at the same time we did not want to see those particular
23 tensions that were beginning to rise. Like I said, there had been
24 statements of a march towards State House, et cetera. And I didn't think
25 that it was necessary for us to get into that. So I felt that the right

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1 thing to do at the time was to concede because the direction that the
2 vote tallying was going was clearly indicating that President Kibaki was
3 going to win that particular election. So I didn't feel that it was
4 necessary for us to wait until the final results had come in.

5 Q. I would like to ask you some general questions now about clashes
6 and tensions at the time of election results in Kenya. From your
7 political experience, have or did each of those elections, 1997 and 2002,
8 was there any post-election violence or violence at the time of the
9 elections that marked those two campaigns?

10 A. Your Honours, since the advent of multi-party politics in Kenya,
11 the first election was in 1992, and in 1992 there was witnessed in
12 certain parts of the country a violence between communities and the same
13 also occurred in 1997. And it was like I'm saying, those fears that I
14 had, given the fact as I said in the 2002 elections similar tensions were
15 also beginning to build up. And that is why I felt in order to avoid the
16 kind of scenario that we had seen in 1992 and 1997, there was need to
17 concede and to allow the country to calm down so that we could begin with
18 a new government and basically that is what I did. Because election
19 violence has been seen in Kenya, like I said, since the advent of
20 multi-party politics in 1992.

21 Q. Perhaps you could tell us from 1992 what form of violence there's
22 been. What shape does the take? What happens? Is it rival parties or
23 ethnic groups? How would you describe the particular nature and the
24 causes of it?

25 A. Your Honours, the causes are more or less ethnic-type tensions,

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1 where communities who belong or were supporting different presidential
2 candidates would mobilise themselves to evict those who felt -- those who
3 they felt were not supporting their particular ethnic group. I mean, so
4 I would say it was more or less not party based but ethnic based. That
5 is the kind of violence that we tended to see.

6 Q. Was it losers against victors?

7 A. I don't quite understand. Your Honours, can --

8 Q. Say in a particular constituency if the particular group lost and
9 their candidate didn't succeed, did they then try and take it out on the
10 victors or didn't it even matter what the results were? Was it a
11 violence that came about because you had affiliated yourself in a
12 particular direction?

13 A. It wasn't necessarily about parliamentary candidates or it wasn't
14 constituency based. It was more around the presidential elections.
15 Let's take both the 1992 and 1997, it was in some areas where the
16 Kalenjin community felt that those living in the Rift Valley should
17 supporting the candidate from the Rift Valley who at that time happened
18 to be a Kalenjin. And if they didn't vote for that particular candidate
19 they were being asked to move out of the areas they occupied if they
20 weren't going to support the political direction of that -- of that
21 community that was in that particular region. So I think that was more
22 or less the form it took.

23 Q. Thank you. Another political event that we've seen mentioned in
24 relation to the information and documents in this case was the
25 constitutional referendum in 2005. First of all, if you could explain

1 what the referendum was about at that time.

2 A. Your Honours, as I said, we over the years had had since
3 independence a number of changes to the constitution culminating in the
4 removal of section 2(A) of the -- in the constitution that barred more
5 than one party. And when that was done there was the introduction, as I
6 said, of multi-party politics. However, there was a feeling that that
7 removal of that section alone was not enough to allow a proper democracy
8 to flourish. And there was then a move towards having a comprehensive
9 review of the constitution and the need for a new constitution, so as to
10 be able to deal with some of the social, developmental, and indeed ethnic
11 challenges that the country had gone through over a period of time. So
12 really, the new constitution was aimed at dealing with some of the
13 social, economic, and ethnic and land issues and many other issues that
14 Kenyans felt needed to be redressed.

15 Q. Did President Kibaki's government then produce a constitution
16 which was submitted for a national referendum?

17 A. There was a constitution that was developed not necessarily by
18 President Kibaki's government because really it was a process that was
19 being driven by a conference that had been held and ultimately driven
20 through a parliamentary process, but there was a draft that was finally
21 approved by parliament somewhere in 2005.

22 Q. Which side of the debate did you eventually support? Yes, for
23 reform of the constitution on that particular draft; or no, against it?

24 A. Your Honours, at that time my party felt that there were a number
25 of issues that the constitution that had been approved did not take into

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1 account. And we adopted a stance as a party, that those issues were
2 issues that needed to be incorporated into the new constitution. And
3 therefore, we felt we could not support the draft as it was and therefore
4 we took a position not to support the constitution and we went for --
5 during the referendum we went on the no side, that the constitution
6 should not be approved at that particular time.

7 Q. And President Kibaki's NARC or N-A-R-C party, what was the
8 position of that party?

9 A. Your Honours, the position of that party was that the
10 constitution should be adopted the way it was. So their position was
11 yes.

12 Q. Let's turn now to 2007. There's evidence before the Court as we
13 know that your KANU party was originally within a party that had been
14 formed called the ODM; is that right?

15 A. That is correct. What, your Honours, happened was that during
16 the referendum of 2005 members who had joined President Kibaki in the
17 2002 election, many of them who belonged to what was called then -- if I
18 remember correctly -- it was LDP party. Though they were in government
19 were also opposed to the constitution. So they also for the constitution
20 did not support the government position, but rather also joined us and
21 supported the no position. And thereafter the no's were -- had the
22 symbol of an orange and it sort of began to take the life after the
23 referendum of a political grouping that had many people who had all
24 participated in the no. And that is what began to take the shape of a
25 political organisation, gearing itself to participate in the 2007 general

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1 elections.

2 Q. Did you remain with your KANU party inside that political group?

3 A. Yes, we remained as KANU. We did not dissolve KANU. We remained
4 as KANU as a political party.

5 Q. Did there come a time in 2007 when you took your KANU party out
6 of the alliance of the orange?

7 A. Yes, there did come a time in 2007 where -- I won't say "I," but
8 the party itself decided that it was no longer comfortable within the
9 political arrangement that was now calling itself the Orange Democratic
10 Movement.

11 Q. And what was the reason for you and some of your colleagues to
12 leave that particular group?

13 A. Your Honours, the main reason was there was a feeling amongst
14 some of us that the direction that the Orange Democratic Movement at the
15 time was taking was a direction that was creating tensions, especially
16 between communities, that was not helping put the country together, but
17 rather there were rising feelings or ethnic tensions that were coming out
18 as a result of different ethnic groupings not necessarily feeling or --
19 there was a sense of animosity if I can -- for lack of a better
20 word -- that was developing amongst people. And like I said, KANU from
21 independence as a national party has always stood for one united country,
22 one country with a strong central government. And the mood that was
23 within the ODM was more for a *majimbo* or a regional-type government. But
24 the understanding that was being carried in many parts was that areas
25 belonged to certain communities as opposed to a country belonging to all.

1 And that was one of the major reasons why some of us did not feel
2 comfortable within that particular arrangement.

3 Q. The Court has before it various documents which reflect that
4 phrase, *majimbo*, m-a-j-i-m-b-o. And the particular issues concerning
5 *majimbo*, if you could explain them to the Court as to what you mean by
6 that. What structure did *majimbo* envisage? What did it stand for?

7 A. *Majimbo* was more for a federal-type structure. And there is
8 nothing wrong with a federal-type structure except for the fact that in
9 many circumstances it was taken to mean the fact that there was sort of
10 exclusive areas for certain communities. And that was really the key
11 problem, whereas our position was that what Kenyans were really saying
12 they wanted was not necessarily to split the country up, but rather what
13 we were looking for was more of a fiscal decentralisation to allow
14 greater participation, especially at the grass-root level in
15 decision-making. And we felt that that is what the country needed
16 especially as we were moving now towards an East African Community.
17 There was no need to split the country when we were looking even more
18 towards greater regional integration and that really was the issue.

19 Q. Did you any feelings whether that policy of *majimbo* would
20 encourage ethnic groups to be amenable or compatible with each other or
21 was it an exclusionary policy?

22 A. Like I said, *majimbo* really means federalism. However, the
23 understanding of many was not necessarily that we were getting a federal
24 system of government. The understanding that was being carried out by
25 many was that regions belonged to ethnic communities. So it was my

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1 feeling that were we to allow that sort of situation to occur, it would
2 result in greater ethnic tensions as opposed towards reducing ethnic
3 tensions and creating a more united government. And that was one of the
4 problems that I had with the *majimbo* argument.

5 Q. Did all the representatives of KANU leave the Orange Movement or
6 did some remain and not follow your direction or your party direction?

7 A. No, not all -- not all left. Some remained within -- within the
8 Orange and in actual fact KANU almost sort of split into two between
9 those who wanted to remain within the Orange Movement and those who felt
10 that they were not comfortable with that particular argument. But there
11 were also those who felt they were not comfortable with the nomination
12 process that the ODM itself was following.

13 Q. It's a matter of record, this was September 2007. So yourself
14 and your colleagues who left the Orange Movement, where then did you go?
15 What was the direction that you all went?

16 A. Well, first we had deliberations within our own
17 National Executive Council and during those deliberations we were looking
18 at the options of other fielding a presidential candidate as a party or
19 looking to see if we could participate with others. And after lengthy
20 discussions at the NARC level, we agreed that we could also open up
21 channels and discuss at that time with President Kibaki, who was also
22 seeking re-election, because there was also a good number within KANU who
23 felt that despite the fact that we were on opposing sides in the 2002
24 election, the development record of President Kibaki over the five years
25 that he had been president was such that we could support his candidacy

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1 for a second term while we gave ourselves time, as KANU, to
2 reorganisation ourselves to mount a challenge in future elections.

3 Q. So did it come about that the PNU was thereafter formed in which
4 the incumbent president, Mwai Kibaki, was the leader of the PNU?

5 A. Your Honours, after deliberation our own national delegates
6 conference agreed that for the 2007 election we would support
7 President Kibaki, but they also passed and resolve that we would not
8 dissolve our party. We would stay as a party, as KANU, support the
9 presidential candidacy of Mwai Kibaki, but we would field our own
10 parliamentary and civic candidates under the KANU umbrella. So we joined
11 a loose coalition of many other parties who had also agreed to support
12 the presidential re-election of Mwai Kibaki but who also felt that they
13 wanted to field their own candidates. And that loose coalition is what
14 at that time was the PNU coalition that came together. But in terms of
15 parliamentary and civic seats, we had our own individual candidates. But
16 when it came to the presidential vote, we all supported the presidential
17 bid of Mwai Kibaki.

18 Q. You would have heard me in Court yesterday refer to the 17th of
19 November and 18th of November, 2007, which was the time of the
20 parliamentary and civic nominations for the elections. Can you perhaps
21 describe what process that was that took place at that time?

22 A. Your Honours, during that particular time what was happening was
23 we had now to go through the process of nominating who our candidates
24 were going to be for the civic elections and for the parliamentary
25 elections. And at that time there was a move and a drive under the

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1 chairmanship of the then Vice-President Moody Awori to ensure or to try
2 and ensure that as much as we were all putting up candidates they wanted
3 to see that we had a nomination process because there was a feeling that
4 if each party were to put up a candidate in the main election that would
5 result in a split vote on our side. So there was now this drive that we
6 needed to have a nomination, first and foremost, amongst parties that
7 were supporting President Kibaki in order to see if we could come up with
8 one candidate through a nomination, be it KANU or PNU or FORD Kenya for
9 that matter and many of the other parties. So that is the exercise that
10 was currently underway during that particular period, to nominate the
11 candidates who were going to be presented before the Electoral Commission
12 for the main general election for civic and parliamentary seats. So it
13 was -- it was quite a difficult time, yes.

14 Q. I referred the Court to a diary you may remember yesterday that
15 recorded 25 MPs lost their seats and referred to the process continuing
16 from the 17th of November into the 18th of November. What particular
17 problems were faced by you as KANU chairman and, indeed, your party in
18 resolving these nominations?

19 A. Your Honours, what was happening was that after we held the
20 nomination process there were many candidates who felt that that
21 nomination process was not conducted in a proper manner, and hence they
22 were not willing to accept the results of the nomination process. So
23 there was a lot of discussion at the time going on, trying to get various
24 candidates to accept the outcomes of the nomination process because we
25 were now running out of time because the electoral commission had given

1 dead-lines as to when the names of their respective candidates had to be
2 submitted who were going to participate now in the general election. And
3 there were a lot of disputes in very many parts of the country between
4 candidates who had gone through the nomination process but were not
5 willing to accept the results of that nomination process.

6 So as party leader in KANU -- not just myself, all the other
7 party leaders, there was a lot of intense discussion and a lot of
8 dialogue going on, trying to see if we could get candidates to accept or
9 how we could get compromises so that we could meet the
10 Electoral Commission dead-line.

11 Q. And where did these discussions take place?

12 A. Well, the discussions were taking place in various places because
13 we had -- like I said, we had our own candidates, so there was the KANU
14 team that was meeting at our own headquarters. There were also teams who
15 were meeting up at the PNU headquarters. But ultimately, we all had to
16 sort of generally abandon those particular places because there was a lot
17 of commotion as many candidates and the supporters were coming to these
18 various headquarters demanding that they be given their respective
19 certificates and we ultimately had to retreat to a place where we could
20 try and sort out this problem that was occurring between various parties
21 through this council that I said had been formed.

22 Q. So given your position, were you involved in discussions in the
23 KANU offices as well as the PNU offices?

24 A. Yes, I was involved because we were just moving from place to
25 place trying to get agreement, but like I said when commotion arose we --

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1 we retreated to another building that had been set aside in Kileleshwa
2 where we continued with those discussions basically through the night.

3 Q. And which of the parties, KANU or the PNU, were at Kileleshwa?

4 A. Like I said, there were many parties that were involved because
5 we had NARC Kenya that was participating in those elections, we had the
6 PNU itself, we had KANU, we had FORD Kenya. I can't remember all the
7 parties because there was a whole myriad of them. But there were very
8 many parties that, like I said, were all -- had formed this loose
9 coalition supporting Kibaki but were not necessarily eager to surrender
10 their positions with regard to parliamentary and civic seats.

11 Q. Just taking the PNU, did that have to relocate to a secret
12 location; and if so, could you tell us where?

13 A. It was in -- I think it was a building in Kileleshwa,
14 your Honours. There was a place where we had -- where materials and
15 stuff were being kept. But for that particular period we chose it as a
16 location for us to be able to meet because it was not a well-known
17 location. So we could keep away the huge crush of candidates who were
18 looking for certificates. So we had to move and find a place where we
19 could sort of meet and discuss in an atmosphere of relative calm.

20 Q. A man called Witness 0004 for the Prosecution whose name you
21 know, but do not mention it, you know that name. Have you ever met that
22 person?

23 A. Your Honours, I have never met that person referred to as
24 Witness 0004.

25 Q. On the night of the 17th of November at about 9.00 in the

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1 evening, did you go to the Yaya Centre in Nairobi and, as he alleges,
2 meet him and some members of the Mungiki along with your personal
3 assistant and speak to them for a period of time slightly over an hour?
4 Did that event happen?

5 A. Your Honour, that event never happened.

6 Q. Have you been to the Yaya Centre with your assistant -- we named
7 two candidates for that position because of the name disclosed by
8 Witness 0004, and I think you're aware of the common surname. Have --
9 with either of those gentlemen, have you met such people in the
10 Yaya Centre, or have you been to the Yaya Centre with either of those
11 yes?

12 A. Your Honour, the Yaya Centre is really not a meeting place. I
13 have never been with either my assistant or anybody else who I work with
14 to Yaya Centre. But I have been to Yaya Centre with my wife and my
15 family. That's where she does her shopping, and I don't think that is a
16 place I'm going to go and take my political colleagues.

17 Q. We all know who you are. If you went to a bar in the Yaya Centre
18 with a group of Mungiki, would that excite interest in -- amongst the
19 people around that location?

20 A. Your Honours, I don't know whether it would excite interest or
21 not, but it would definitely attract attention without a doubt.

22 Q. Thank you. The next date I'm going to go to because I don't know
23 what the Judges will make of evidence, but Witness 0004 mentioned another
24 date, the 25th of November, 2007, which he may have withdrawn, where a
25 meeting between you and he with your personal assistant took place at the

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1 Yaya Centre in the evening of the 25th of November, 2007. Did such a
2 meeting take place?

3 A. Your Honours, I didn't quite hear that. Is it another meeting
4 took -- I didn't quite hear that question.

5 Q. Witness 0004 made an earlier statement when he alleged that a
6 meeting had taken place on the 25th of November, 2007, at the Yaya Centre
7 between you, him with a group of Mungiki, as well as your assistant.

8 A. Your Honours, I have never held a meeting with Mungiki or anybody
9 at the Yaya Centre. I want to repeat again that I have been to the
10 Yaya Centre, but I have been in my capacity as -- with my wife and my
11 children, like many other families who go to the Yaya Centre. But I have
12 never been there for any meeting with any person.

13 Q. The 25th of November is a date that we know in this Court because
14 that was the date where there was a big youth rally and Uhuru Park,
15 Nairobi and eventually President Kibaki came and spoke to the assembled
16 youth. Did you go to that rally as well?

17 A. Your Honours, yes, I did attend that rally at Uhuru Park.

18 Q. And at that -- a rally, did you address the rally and the people
19 assembled?

20 A. Yes, your Honours, I was one of the speakers at that rally.

21 Q. After that rally took place, can you recollect where you went?

22 A. After the rally at Uhuru Park?

23 Q. Yes.

24 A. After the rally at Uhuru Park, the rally at Uhuru Park ended
25 quite late because I think it was over a -- it was ending between 6.30,

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1 7.00 and it had been a long day for me since I had already been in the
2 morning for another rally in Bomet in the Rift Valley, and that had
3 required a very early departure in the morning in order to attend the
4 Bomet rally and come back and attend the Uhuru Park rally. So after the
5 Uhuru Park rally, I left for home.

6 Q. Thank you. Let's now turn to the next date, the 26th of
7 November, 2007, the day after the Uhuru Park rally. And we saw yesterday
8 a video-clip showing the KICC centre and you going up the steps into the
9 KICC and later delegates going to the Intercontinental for lunch as put
10 in a newspaper photograph. On the 26th of November, that day, did you go
11 to State House in Nairobi and meet there a group of Mungiki in a tent
12 with the president, with Ambassador Muthaura, and several others?

13 A. Your Honours, I did not attend any meeting with Mungiki or
14 anybody else at State House on that date that is being referred to or,
15 for that matter, on any other date.

16 Q. Did you go to State House that morning to meet the young people
17 or the youth who had assembled in a special meeting with President Kibaki
18 to present a youth charter? Were you part of that event on the 26th of
19 November?

20 A. No, your Honours, I was not part of that event because I was not
21 one of the organisers of that event. Those who attended, I think, were
22 the organisers of the event or the rally that was there at Uhuru Park.
23 So in attendance, I think it was Kibaki Tena, if I'm not wrong,
24 Kibaki Tena, who had organised that rally, and I think it was their
25 members who had attended. And like I said, when we, as KANU, joined the

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1 Kibaki alliance we had our youth representative who was a member now of
2 Kibaki Tena as part of a presidential campaign. So he attended as a
3 member of the Kibaki Tena team. We did not attend since, like I said, we
4 were not even organisers of that rally. We just attended the rally in
5 our capacity as party leaders.

6 Q. You saw the video-clip that was shown during these proceedings of
7 President Kibaki on that day at State House filmed with the young people.
8 Had you seen that video-clip before?

9 A. I had seen that video-clip before, yes.

10 Q. Did you recognise - I don't want you to name names - but did you
11 recognise people within that video-clip as people you knew?

12 A. The two people I can say I recognised in that video was
13 Mr. Badi Ali, who was the KANU youth representative who is in that video,
14 and Ambassador Khamati, who was a member of my -- who was part of my
15 presidential campaign team. So those two I did recognise from the video.

16 Q. And do those people know you?

17 A. Yes, they do.

18 Q. So let's now find out what the purpose of going to the KICC on
19 that date of the 26th of November actually was. What was happening when
20 we saw you and other people going up a red carpet into the building?

21 A. Your Honours, as I had said earlier, we had first and foremost
22 gone through a period of party nominations. That was the problem I was
23 telling you we were experiencing in trying to sort out all the nomination
24 problems that were going on. On that particular day, it was the day
25 after the nominations now had been concluded and party candidates had now

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1 gone to submit their final certificates to the return -- to their
2 respective returning officers in the constituencies. So we now had
3 parliamentary and civic candidates, and there was a meeting of
4 parliamentary and civic candidates from all over the country at KICC that
5 was supposed to have been chaired by President Kibaki because that was
6 pretty much now the beginning of the main campaign period. However, like
7 I said, we were having major problems with the nominations because there
8 were many who did not accept the results of the nominations and hence
9 went and submitted still their names to the Electoral Commission under
10 different parties. So what then was supposed to have been an opportunity
11 for President Kibaki to meet candidates who had been sponsored under now
12 PNU became now quite chaotic because all the other candidates who had
13 lost the nominations and had gone forward and presented their papers were
14 also present at the meeting. So it became again quite chaotic, to the
15 point that President Kibaki who was supposed to come and address us did
16 not come and address us at that particular meeting and it was the
17 vice-president who then took charge of the meeting.

18 Q. When did you know that President Kibaki was going to skip the
19 meeting, which is the headline in the newspaper we have seen?

20 A. I think the vice-president informed us -- after we had tried to
21 go through the sorting out of who would be allowed in the meeting and who
22 would not be allowed into the meeting and we couldn't sort that out, that
23 was around 11.00 when the vice-president informed us that the president
24 would not be coming to KICC, but instead the president had said that he
25 would give all members, including those who were standing on other

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1 political parties, he would give all members lunch at the
2 Intercontinental Hotel. So it was at that stage then that the meeting
3 sort of was abandoned and we all moved to the Intercontinental for the
4 lunch that President Kibaki now was going to give all members who were
5 present at that meeting, whether they were PNU or from other parties, so
6 long as they were supporting him, your Honours.

7 Q. If I can now ask you about timing on that particular day. Can
8 you recollect when the meeting at the KICC that we've seen on the film,
9 when that started or when you arrived?

10 A. I think we were arriving somewhere towards 9.00 or so in the
11 morning.

12 Q. And what time did you leave the KICC?

13 A. I think it was just around -- must have been around 12.00, 12.30,
14 because we all basically stayed there, the Intercontinental was walking
15 distance so we didn't really need to move from the place. So we all
16 pretty much stayed there until the lunch appointment at the
17 Intercontinental which was walking distance from the
18 Kenyatta International Conference Centre.

19 Q. And did President Kibaki go to the lunch that he organised?

20 A. Yes, your Honours, President Kibaki did eventually come to the
21 lunch.

22 Q. And when was the first time that you saw him that day?

23 A. Your Honours, it was at the lunch, when he came to the lunch.

24 Q. Let's move on now to the elections of 2007. I'm going to go to
25 that period at 30th of December, 2007, when the election result was

1 declared. And we know that that declaration took place at the KICC. Had
2 you been to the KICC on the days before the final election result was
3 announced?

4 A. Yes, your Honours. On top of being presidential campaigner
5 during the elections, all of us who were really presidential campaigners
6 or co-ordinators of the presidential campaign were also presidential
7 agents, and therefore after the elections were done and I had cast my
8 ballot in my home constituency of Gatundu South I then proceeded later in
9 the evening to the Kenyatta International Conference Centre to begin my
10 duty as a presidential agent at the national tallying centre.

11 Q. Can you remember which date that was prior to the 30th of
12 December?

13 A. Your Honours, if the election was on the 27th, it was from the
14 27th night that we began our duties at the
15 Kenya International Conference Centre.

16 Q. We know from evidence the returns started to come in, culminating
17 in the final tally on the 30th of December. And so on each of those days
18 before the 30th, would you attend the KICC as part of your duties?

19 A. Your Honours, we basically lived at KICC until the 30th when the
20 final results were announced, from the 27th.

21 Q. At the time of the announcement of the result on the 30th of
22 December, what was the atmosphere like in the KICC? What was happening
23 amongst the political groups?

24 A. Well, your Honours, it was quite highly charged. The atmosphere
25 at KICC was quite highly charged because as the results were coming in,

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1 there were times when it looked like the ODM was ahead but then there
2 were other results being waited for and then the PNU would go ahead. But
3 ultimately, it became even more charged when it now became clear that PNU
4 now was not only just closing the gap but had also now, or the PNU
5 candidate, in this case Mwai Kibaki, was closing the gap and was now
6 coming closer to Raila Odinga, and at that time we started hearing all
7 sorts of comments, No, the results now are being rigged, the results that
8 are coming in are not correct, et cetera, et cetera. So the atmosphere
9 was charged.

10 Q. Before the result was announced and before this period at the
11 KICC, had you had any information that your political rivals were going
12 to make those allegations that the election was rigged if they lost?

13 A. Yes, your Honours, it was already in the media. It was in the
14 media with various press conferences that had been held by a number of
15 ODM leaders alleging that there was a plot that was being hatched to rig
16 the elections.

17 Q. And was there a plot to rig the elections?

18 A. Your Honours, not that I was aware of, no.

19 Q. In relation to reaction around the country, around Kenya, at that
20 time on the 30th of December, when the result was announced, did you have
21 any information at that time as to the feelings, what was happening, what
22 the reaction was, to it?

23 A. Your Honours, at that stage, like I said, we were largely at the
24 KICC ourselves. So I was not really much in touch with what was going on
25 because our key focus at that stage was the tallying that was going on at

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1 the centre where we were at. So I can only talk about the sense I was
2 getting from within the building where I was, and that is what I'm saying
3 was quite highly charged amongst the different parties that were there to
4 oversee the tallying. That is what I can comment.

5 Q. Did you go to the inauguration of President Kibaki that day at
6 State House where he was sworn in as president after the chairman of the
7 ECK announced formally the result?

8 A. Yes, your Honours. On the 30th, on the 30th, I can't remember,
9 but it was late afternoon, after the election results were announced,
10 myself and a number of the other agents who were -- who were there, then
11 proceeded to State House because we had been told that the inauguration
12 ceremony would be held that afternoon. So we did leave now the tallying
13 centre and move to State House for the inauguration ceremony.

14 Q. And what sort of ceremony was that? How did that event take
15 place, describe it?

16 A. Your Honours, it took place in the grounds of State House, where
17 Members of Parliament who had been elected, there were also Members of
18 Parliament who had also lost their elections but had supported Kibaki, as
19 well as other distinguished gentlemen I saw. There was the chief justice
20 who was there, there was the attorney-general was also present, former
21 cabinet ministers were also present. We also had the various heads of
22 the -- we had the chief of general staff was also there as well as the
23 heads of the army, the navy, the air force. It was a state function. In
24 a nutshell, it was basically a state function.

25 Q. Were there any international delegates there?

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1 A. I don't know about international delegates, but there was
2 definitely representation of international media who I think were there
3 to cover the event. But there was -- yeah, I know the international
4 media was there but I don't know if there were any diplomats there on
5 that particular day. Because, like I said, I arrived pretty much just
6 before the function started so I really just took my seat and -- except
7 those people I have recognised who I just mentioned, they were Members of
8 Parliament who had either won or even those who had lost, many of them I
9 knew who were there, the chief justice and others who were on the podium
10 I recognised.

11 Q. There's a document from the Muthaura team as part of their
12 disclosure which records you arriving at 5.00 p.m.. Would that be
13 something you would agree or disagree with?

14 A. That would be correct. Because, like I said, it was late
15 afternoon. We left the KICC as soon as the final results were announced
16 by the chair of the Electoral Commission.

17 Q. And did you attend that function with anyone? Were you
18 accompanied by anyone when you left the KICC?

19 A. I was accompanied by one of my personal assistants, yes.

20 Q. And if you could name him?

21 A. I was accompanied by Jemo Geshaga (* phon).

22 Q. And the event that took place at State House, how long did it
23 take?

24 A. It was about an hour or so.

25 Q. How many people attended?

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1 A. I would say approximately 200 or so. About 200.

2 Q. We've seen the swearing-in. That's been exhibited on video film.

3 Was there any form of reception?

4 A. No, your Honours. After the swearing-in ceremony, the function
5 basically ended. There was no reception after that.

6 Q. And what did you do? Where did you go?

7 A. Your Honours, basically after four days of no sleep, I went home
8 to sleep.

9 Q. I think it is Witness 0012 that the Prosecution alleges that on
10 the 30th of December he attended State House with others and that there
11 was a meeting with the Mungiki and yourself and senior PNU officials. Is
12 that agreed by you or not? Did that event take place?

13 A. Your Honours, that event did not take place. It did not take
14 place. The people who were there were largely parliamentary candidates
15 of parties that had supported Kibaki, who had won. There were a number
16 of members -- former Members of Parliament who had lost their seats,
17 other candidates who had also lost their seats, some who were cabinet
18 ministers who were also there. And, your Honours, these were people from
19 all over the country, from different parts of the country, who were
20 there. So I mean, it would be impossible for an event like that to be
21 graced by Mungiki without raising eyebrows. It's not possible. Someone
22 would have seen them somewhere.

23 Q. I take it you've been to State House many times; is that right?

24 A. I have been to State House many times, your Honour.

25 Q. Perhaps you can describe the sort of place it is, how it's

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1 situated, how it's guarded, what facilities are in there, who works
2 there, who lives there. What's the structure of the place? Perhaps you
3 can give a description to the Court.

4 A. Your Honours, it's the official residence of the head of state of
5 the Republic of Kenya, and it is a state building like any you would find
6 in any part of the world. Undoubtedly it is heavily secured. It is
7 situated in the middle of Nairobi, in the heart of Nairobi, on a hill.
8 There are three key entrances all leading out to main roads of Nairobi,
9 and it is basically a very formal, organised building. I think there
10 must be over -- well, people in their hundreds at least working within
11 that building, and it is a very formal building and structure and
12 organised in a very formal manner. It's not a building where you can
13 just walk in and out, as you say, unless you are properly invited through
14 proper channels.

15 Q. Is there a permanent staff at State House?

16 A. Yes, there is a permanent staff who are in residence because the
17 staff housing is also within the compound.

18 Q. I'm just taking another example from the evidence alleged by
19 these witnesses. A City Hoppa bus driving into State House full of
20 Mungiki would be -- would that be something that would be observed or
21 just pass unnoticed?

22 A. Your Honours, the way I know the State House that I know, unless
23 we're referring to another State House, the State House that I know, it
24 would be impossible for anybody to enter that building without being
25 recorded and noted, especially large groups like that. I mean, it would

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1 be impossible for them to go unnoticed from either the security from the
2 gates to the security within the building, to the staff to -- who work
3 within there, to the kitchen staff, to the office staff who are there.
4 It would be impossible to -- for a large group to just walk in and not be
5 noted by somebody.

6 Q. We're here in Holland at the moment, in Europe. But the
7 City Hoppa buses, perhaps you could describe. I don't know if their
8 Honours have ever seen a City Hoppa bus in Nairobi. Perhaps you could
9 describe what they're like. I believe you know the man who owns the
10 City Hoppa business.

11 A. Well, the City Hoppas are basically public transport that mainly
12 based in Nairobi and they're large green buses. I think -- yeah, they're
13 green in colour. And they basically do commuting of Nairobi passengers
14 in -- within the city of Nairobi. It's like the equivalent of public
15 transport.

16 Q. Shiny and new?

17 A. Well, I won't call them shiny and new, no.

18 Q. Perhaps a bit of age that you could give on the buses that you
19 see and the size of them.

20 A. Well, I mean, I can't give age. I'm not -- I can't give age, but
21 the size are, you know, 20-, 25-seater type buses. Age I can't say.

22 Q. And they drive around the tracks of -- around Nairobi and the
23 streets; is that right?

24 A. Yes, yes, your Honours. Yes.

25 Q. An army truck is another one with Mungiki in an army truck

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1 driving into State House. As you go through the main gate of
2 State House, what do you see as you go in through the main gate?

3 A. I don't quite understand. What do you mean?

4 Q. Is it driving straight up to a building or a courtyard or is it
5 lawns with shrubs and --

6 A. No, it's driving -- it's got a processional-type entrance,
7 your Honours. To the one side there's the main building and to the other
8 side are the grounds where sometimes events are held.

9 Q. An army truck with Mungiki driving in for their own reception in
10 the grounds of State House to be provided with clothing and food and
11 drink, would that go unnoticed or would you think that would be able to
12 be observed by people taking place as an event?

13 A. Your Honours, the only time I've known army trucks to enter
14 State House is during the coup because the military does not participate
15 in civilian activities. It is the police who have the responsibility of
16 guarding the building. So it would be impossible for a military truck to
17 be within -- within the grounds of State House. They have no
18 responsibility within there. So it would not enter without raising major
19 eyebrows as to what the military doing within the State House compound.

20 Q. And the people who work at State House, are they just PNU people
21 or Kikuyu people? Are they only drawn from one part of society or is it
22 a multi-ethnically based staff?

23 A. Your Honour, it is multi-ethnic. I mean if it is a police
24 contingent, it's a police contingent. And it's the members of that
25 particular contingent who are assigned there and they all come from

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1 different communities and the same applies to the staff. In fact, I
2 think at the time in reference the head of the State House staff was a
3 person from the Coast Province was not a person from Central Kenya.

4 Q. Let's turn to another place in Nairobi now, the
5 Nairobi Members' Club, where Witness 0004 alleged he went with others in
6 the morning of the 3rd of January 2008 at breakfast time. Are you a
7 member of the Nairobi Members' Club?

8 A. Yes, your Honours, I am a member of Nairobi Club. We call it
9 Nairobi Club.

10 Q. Is Ambassador Muthaura a member of that club?

11 A. Your Honours, I'm not aware whether he is a member or not.

12 Q. The 3rd of January, 2008, is a particular date. Can you remember
13 the events that took place on that date and where you were?

14 A. Your Honours, on the 3rd of January I was basically at home. If
15 I recall correctly, I think on the 2nd of January there had been calls
16 for mass action within the city of Nairobi for a million-man march. So
17 for security reasons, really, I was basically at home because it was not
18 advisable to be out because there was an issue of this so-called mass
19 action of demonstrations take place. If I were to leave and be
20 recognised it might be a security problem. So I was largely at home on
21 that particular day.

22 Q. Did you go to the Nairobi Members' Club on that day?

23 A. No, your Honours. On that day, like I said, I was largely at
24 home as a result of the circumstances I've just put to you.

25 Q. On -- in the month of January 2008, did you go to the

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1 Nairobi Members' Club at all?

2 A. No, your Honours, I did not go to the Nairobi Members' Club at
3 all during the month of January. In fact, I don't think I've been there
4 for a very long time.

5 MR. KAY: I see the time. We'll get down to the club rules after
6 the break, your Honour.

7 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kay. Thank you for
8 being so strict about the timing. I suggest that now we suspend the
9 hearing and we shall proceed thereafter. You will have half an hour more
10 and thereafter the floor will be to the Prosecutor.

11 So I suspend now the hearing. We shall resume it at 4.30, after
12 the break.

13 COURT USHER: All rise.

14 Recess taken at 4.00 p.m.

15 On resuming at 4.31 p.m.

16 (Open session)

17 COURT USHER: All rise.

18 PRESIDING JUDGE TRENDAFILOVA: Please be seated. We resume the
19 hearing.

20 And, Mr. Kay, the floor is again over to you.

21 MR. KAY: I'm much obliged, your Honour.

22 Q. I hadn't left the Nairobi Members' Club. Perhaps you could
23 describe the club as you walked through the front doors of it, what do
24 you see?

25 A. The Nairobi Club you basically drive through the gate, then

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1 you're in the main -- you arrive at the main building. At the main
2 building there is usually a book where you sign in members if you have
3 members. On the one side is the club bar. As you open through to the
4 doors there is the main lounge, and off to the side of that there is the
5 dining room, and then on the outside again of that main lounge you have
6 an open terrace with the sports field then out in front of you.

7 Q. And club rules concerning making phone calls inside the building?

8 A. Your Honours, there are very clear rules about mobile phone use
9 in the club. There is a fine of 1.000 shillings if your phone rings and
10 a second time if your phone rings there are also other penalties which
11 can even include suspension from the club if you operate a mobile phone
12 within the premises of the club.

13 Q. And the idea of four Mungiki walking in without hindrance into
14 the club and making their way into the members' dining room?

15 A. The only way any Mungiki or any person for that matter would walk
16 into the front door is if they were members.

17 Q. Any known Mungiki as members of the club?

18 A. I know no member of the club who has professed to be a Mungiki
19 member.

20 Q. So did this take place on the 3rd of January, 2008, that you with
21 a group of prominent business people, political people, including
22 Ambassador Muthaura, have a discussion in the members dining room with a
23 group of Mungiki?

24 A. No, your Honours. That is completely out of the question. There
25 was never such a meeting with myself, Ambassador Muthaura, Saitoti, with

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1 any -- any Mungiki. In fact, I've never been to that club with either
2 Ambassador Muthaura or Professor Saitoti for that matter.

3 Q. At that time, on the 3rd of January, 2008, Professor Saitoti and
4 yourself being together at such an occasion, would that have happened?

5 A. Your Honour, that would not have happened. That definitely would
6 not have happened. Like I said when I was giving an earlier explanation,
7 we had our own challenges at the time because of the fact that --
8 especially when it came to the parliamentary and the civic elections, we
9 had our own challenges with different members vying for different seats,
10 and there was a feeling in some areas that the KANU members who had come
11 in were costing the seats of people who had already been in government
12 with President Kibaki.

13 Q. And just finally on the 27th of January, 2008, State House
14 Nairobi, this is the day of the Naivasha conflict, were you present with
15 Mungiki at State House on that day, on the day of the Naivasha attack?

16 A. Your Honours, I was not present at State House on that day with
17 Mungiki, and like I had said earlier, your Honours, I had not been to
18 State House with any group of Mungiki ever. I have never been to the
19 premises of State House with Mungiki, not on the 27th, not on any other
20 day.

21 Q. Let's move to another allegation that they made, that millions of
22 shillings in cash were being provided to these people. One passage they
23 say 30 million shillings was provided, 3 million shillings here,
24 3 million shillings there, on several occasions. I think you know the
25 allegations. Did that ever happen?

1 A. Your Honours, that never happened. The allegations are that I
2 was there on the 30th with 3 million shillings each to give to 30 people,
3 which would have amounted to over 100 million shillings, anybody who
4 knows the Kenyan currency knows that is the equivalent of quite a number
5 of suitcases. And, your Honours, you can imagine coming from KICC where
6 I came from direct with four or five large suitcases filled with
7 currency, definitely within the search at the gate or the security,
8 somebody would have definitely seen. How would I have carried that kind
9 of money on my person? It is completely ludicrous, your Honour.

10 Q. I don't know whether the Judges know this, but what's the largest
11 denomination note in Kenyan shillings?

12 A. The largest denomination note is a thousand shillings.

13 Q. We can do the maths with 30 million.

14 A. A hundred million.

15 Q. And that's all I'll ask about that. I'd like to go back now
16 because the Prosecution have alleged as part of their case that you're
17 the commander of the Mungiki. What's your comment upon that?

18 A. Your Honours, that is not true. To be a commander or anything in
19 Mungiki, I would first of all have to be a member, and I have never been
20 a member of Mungiki.

21 Q. Can I just ask you now about the political relationship, if there
22 was one, in the year 2002. That's when you challenged for the
23 presidential elections. Is it right that the Mungiki backed you as a
24 candidate in that election?

25 A. It is true to say that they did have a number of press

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1 conferences where they said that they were backing my candidacy for
2 presidency, but, your Honours, that was never solicited for and I never
3 requested nor asked for their support in my political campaign.

4 Q. Since that period of 2002, did you have a close personal
5 relationship with the Mungiki?

6 A. Your Honours, I have never had a close personal relationship with
7 Mungiki, never.

8 Q. Is it correct or -- sorry, I'll withdraw that.

9 In relation to the Mungiki, have you ever denounced them and not
10 supported them in public?

11 A. Yes, your Honour, I have severally from the time they burnt my
12 own effigy to the time when they even came out and supported, I also
13 rejected and denounced them again at that stage, to a time when there was
14 also an involvement when they had a clash with other rival gangs in
15 Nairobi, when myself and several politicians also denounced them. We
16 have numerous times I can cite, your Honours, where I have denounced the
17 activities of Mungiki in my political career.

18 Q. And in the year 2007 for the election, did you forge a
19 relationship with them so that they would back you?

20 A. Your Honours, I did not forge any relationship with them to back
21 me in 2007. First and foremost, I was neither a candidate for the
22 presidency in 2007; and secondly, like I said, in joining Kibaki's own
23 campaign, the bulk of the support of our party, KANU, was outside the
24 central region of Kenya. And hence, even in participating in the
25 campaign, the areas that were the key focus of myself and the team were

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1 the areas where traditionally KANU had support, and those were outside
2 the central region of Kenya. So I did not need even for the sake of the
3 presidential campaign to have any contact or link with Mungiki
4 whatsoever.

5 Q. Now, did you task a former KANU MP as a responsible commander for
6 the recruitment, mobilisation, and payment of pro-PNU youth to
7 participate in retaliatory attacks in Naivasha and Nakuru from the
8 offices belonging to KANU?

9 A. I have never, your Honours, tasked any person to mobilise or
10 recruit Mungiki for any activity whatsoever.

11 Q. The allegation from the Prosecution that we heard was that people
12 were turning pro-PNU youth, making them all adopt the Mungiki creed, so
13 to speak, and be converted to it, initiated into it. Was that anything
14 to do with you if that took place?

15 A. Your Honours, I am not aware of any attempt to turn pro-PNU youth
16 into Mungiki. Like I said, the PNU and KANU itself was operating largely
17 outside of Central Kenya and it is like to say that all the youth who
18 were supporting the presidential election of Mwai Kibaki were Kikuyus,
19 which is far from the truth. Because President Kibaki did get support
20 and did have supporters who were youth from very many parts of the
21 country. So that would in itself not be a possibility. I believe the
22 leader of the presidential youth campaign himself did not come from
23 Central Kenya. I think he was from the Kamba region. So I see no
24 possibility or connection of PNU supporters being turned into Mungiki
25 supporters or being recruited into Mungiki for that matter.

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1 Q. The Prosecution have put forward a body called pro-PNU youth
2 after the election as being an entity in existence that was mobilised for
3 retaliatory and revenge attacks. Was there such an entity as pro-PNU
4 youth?

5 A. Your Honours, like I said earlier, the entity that I was aware of
6 was not called pro-PNU youth. The entity that I was aware of that our
7 own youth leader joined when we formed that coalition to support
8 President Kibaki was the Kibaki Tena group. I am not aware of any other
9 youth grouping that was central to President Kibaki's re-election bid.

10 Q. Did you create a network of local pro-PNU government officials,
11 businessmen, local politicians to provide funding, transport,
12 accommodation, uniforms, weapons, logistical support to the Mungiki and
13 pro-PNU youth to carry out co-ordinated attacks?

14 A. Your Honours, I think I need to repeat again first and foremost,
15 when we joined KANU -- when we joined the presidential election bid of
16 Mwai Kibaki, we joined as KANU, and hence we retained our structures as
17 KANU. Therefore, we did not have any pro-PNU or pro-this. We had Kibaki
18 supporters who were supporting Kibaki's presidential re-election campaign
19 and we had supporters of our own candidates for parliamentary and civic
20 seats throughout the country. So that was the focus that we had. So
21 there -- we could not now convert that, like I said, KANU was a
22 party that -- and this is born testimony by the fact that even in the
23 2007 elections the majority of seats that we won were outside of
24 Central Kenya. That is what we brought to President Kibaki's campaign:
25 Parliamentary seats and presidential votes largely outside of

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1 Central Kenya.

2 Q. Fund-raising, did you take part in meetings where prominent
3 people, including yourself, were doing fund-raising for purposes of
4 raising money to -- or just have meetings, forget the money, either way,
5 to plan revenge and retaliatory attacks on the other ethnic groups
6 believed to be responsible for violence against PNU people?

7 A. Your Honours, I did not participate in any fund-raising for any
8 retaliatory actions anywhere. But indeed, your Honour, I did participate
9 in a number of fund-raising activities to assist those who were the
10 victims of the post-election violence. Your Honours, at the time on the
11 screens, on TV, from phone calls, from friends that we had in those
12 regions, the extent of the humanitarian crisis was such that it behooved
13 anybody who had any sympathy, who had any regard for human life to do
14 what they could to assist those people. And the first such fund-raiser I
15 attended was a fund-raiser that I put together my own constituents, who
16 raised both money, food, and clothing to assist those people. I attended
17 another one where, again, funds, food, and clothing were also contributed
18 again to assist the very same victims. And the last major one I can
19 recall attending was one that was organised by the president himself to
20 raise nationally, again, funds to assist those who had been adversely
21 affected by the post-election violence. This is something I have done
22 over my period of life as a politician and even before I joined politics,
23 and it is something that I will continue to do, your Honour, because I
24 believe it behooves oneself as a citizen and as a leader to do that which
25 they can in such circumstances.

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1 Q. I'd like you now to look at a video we played earlier in the
2 proceedings. It's EVD-PT-D13-00130 and there's a transcript at
3 EVD-PT-D13-00391.

4 (Video-clip played)

5 MR. KAY:

6 Q. First of all, could you describe what that scene was. What was
7 happening there?

8 A. Well, what was going on was this was after -- towards the - I
9 can't remember the exact date - but it was towards the end of
10 January/beginning of February when people especially from Central Kenya
11 especially the Kikuyu angered by what has been or had been going on in
12 the Rift Valley, there were events where people had begun to retaliate.
13 And so what we had done is together with other Members of Parliament,
14 other colleagues in parliament from across the divide including even
15 members from the ODM party, we put ourselves together in a group that was
16 multi-ethnic to go around, especially in this particular case we were at
17 Tigoni where there were many tea farms where people from outside that
18 area were working, to go, first and foremost, to calm the people and to
19 stop them from retaliatory attacks, but also to reassure those workers
20 that they were secure and they would be protected and they did not have
21 to leave those particular areas and they could continue working and
22 resume life as normal. So this was just one of those meetings that we
23 went to. This was now at Tigoni police station where a number of workers
24 had come, fearing from their lives.

25 Q. We saw a long clip yesterday at a place called Kikuyu and you

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1 were addressing a crowd there. Can you tell the Court what that
2 particular scene was and why you were there?
3 A. Your Honours, I was on that particular day in my office. I had
4 just been appointed a few weeks back as the minister for local
5 government. And as I was doing my normal office work at the time, I was
6 called and informed that there was a major problem brewing in Kikuyu and
7 if I could join other Members of Parliament to go and assist in cooling
8 and calming tempers. So I left the office and proceeded to Kikuyu
9 township where the problem was and we proceeded to address the large
10 crowds of youth who were there and at the time they were trying to enter
11 the Kikuyu police station where a number of IDPs or let's say
12 non-residents from that particular area where camped. So we were trying
13 to cool them and to calm them and to tell them that that is not the way
14 to seek justice. And to tell them to give the government time and that
15 the rule of law should be followed and that justice would be eventually
16 taken on those who were inflicting pain on their own relatives. But the
17 way forward was definitely not to start stopping vehicles and pulling out
18 passengers or attacking people and trying to revenge for themselves. So
19 we were really just trying to calm the people, and I think we succeeded
20 in doing so on that particular occasion. And it was from there that we
21 began now doing the tours to other areas, equally to call for calm and
22 restraint and to allow the government machinery to take action on those
23 who had aggrieved them as opposed to them taking, what we call at home,
24 mob justice because that we felt was only going to take the situation
25 worse.

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1 Q. You referred there to justice and the rule of law. At that time
2 did you think justice and the rule of law would bring you to the
3 International Criminal Court in The Hague?

4 A. No, I definitely did not because everything that we did at that
5 time was to, first and foremost, assist those who had been victimised;
6 secondly, was when as a result of a growing anger amongst supporters of
7 the PNU, we went out to calm them and to prevent them from doing anything
8 that is retaliatory in nature and actually appeal to them to allow the
9 government and to allow proper procedure to get justice for them, which
10 we were assuring them would eventually happen. Little did I know that
11 that would mean myself being brought to the International Criminal Court.

12 Q. Did you have a plan with Ambassador Muthaura or General Ali that
13 was conceived to bring retaliatory and revenge attacks on people in
14 Naivasha and Nakuru?

15 A. No, your Honours. I never had any -- any such plan. We never
16 met, we never discussed it, we never conferred on it. We never had any
17 meeting at all being the three of us, least of all to discuss anything to
18 do with retaliation or revenge attacks on anybody.

19 Q. Thank you very much. Wait there, please.

20 PRESIDING JUDGE TRENDABILOVA: You finished, Mr. Kay? Thank you
21 very much.

22 Mr. Kenyatta, are you at ease? Do you think you can proceed
23 immediately with the questioning on behalf of the Office of the
24 Prosecutor?

25 THE WITNESS: (Interpretation) That will be fine,

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1 Madam President.

2 PRESIDING JUDGE TRENDAFILOVA: Yes. There is one hour more till
3 the break, which is exactly the time allocated to the team of the
4 Prosecutor.

5 Mr. Prosecutor, the floor is over to you.

6 MR. MORENO-OCAMPO: Thank you, your Honour.

7 Questioned by Mr. Moreno-Ocampo:

8 Q. Mr. Kenyatta, your Defence in his argument, his opening mentioned
9 that the consideration is Mr. Odinga was responsible of the crime of the
10 post-election violence. I would like to take this opportunity if you can
11 explain to us if it is political responsible or also criminal
12 responsible in the sense that Mr. Odinga provided weapons or ordered to
13 commit crimes?

14 A. Your Honours, I will not say that he was criminally responsible
15 because I have no evidence of him supplying arms. But, your Honour, I
16 will say that indeed he has political responsibility because had he gone
17 out much earlier and, first and foremost, not had some of the
18 inflammatory remarks that were being made at various press conferences
19 that had been mentioned earlier claiming that rigging had been taking
20 place, had he agreed to follow proper due process and gone to Court as
21 opposed to calling for mass action during the time, the violence would
22 not have occurred. And lastly, your Honour, had he when the violence
23 broke out in various parts of the country used his own political voice to
24 go to his supporters and to tell them to stop the violence, I don't
25 believe the violence would have reached the level and the magnitude of

1 over 600.000 Kenyans being displaced. So politically, yes, I would say
2 he was involved. Criminally, Madam President, I have no evidence of him
3 organising weapons.

4 Q. Thank you. Do you feel -- do you know who were the Pentagon in
5 the ODM?

6 A. Yes --

7 Q. Can you mention them?

8 A. The Pentagon I think was headed by the Honourable Raila Odinga.
9 There was also -- Mr. Nyagah was one member. Mr. Balala, I believe was
10 another member. I believe Mr. Chara Tingilu (* phon) was a member. I
11 believe the Honourable Ruto was a member.

12 Q. Were they opposing to Mr. Odinga the incitation to violence or
13 not?

14 A. Madam President, I did not hear that question. I didn't --

15 Q. The question is -- I understand your difference between political
16 responsibility and criminal responsibility of Mr. Odinga. The question
17 now goes to another level. These other leaders of the ODM are similar to
18 Mr. Odinga or different?

19 A. At the end of the day I won't call them similar or different. I
20 believe that he who bears responsibility is he who is the leader and the
21 leader was Raila Odinga. He was the leader. He was the one who could
22 have given direction or said to the others because he was ultimately the
23 party -- the party leader, the flag bearer.

24 Q. Thank you. So he was a political leader you say, but do you know
25 if the other members of the ODM leadership were involved themselves in

1 planning attacks, in providing weapons, including Mr. Ruto?

2 A. Madam President, I have no evidence once again of any planning
3 activities. What I do know is that some of the strong words that were
4 being used during the campaign period, some of the issues that were being
5 raised when the ballots were being counted and just before with regard to
6 rigging, all these contributed towards raising tensions and temperatures
7 which ultimately, I believe, were the cause of the violence that we
8 witnessed and the displacement that we saw.

9 Q. In your answer to your Defence you say you were not aware of a
10 plot to rig elections. Can you be more specific. Do you know now if
11 there was a plot to rig the elections?

12 A. Madam President, I said I was not aware of any plot to rig the
13 elections of 2007 by President Kibaki; and furthermore, since then a
14 Commission of Inquiry was put together under the able leadership -- and
15 it was an international commission under the able leadership of
16 Justice Kriegler from South Africa, and that commission which is the only
17 report I can go by clearly indicated that whereas there may have been
18 some irregularities on both sides, there was definitely no evidence of
19 any rigging especially at the national tallying centre, where I was at
20 KICC. That is what I can go by.

21 Q. Thank you. You say that to stop retaliation you were talking
22 about the need to go to Court, and similar comments publicly after the
23 elections were announced of you advising the ODM to go to Court. Do you
24 think the Court in Kenya can do justice in the -- in these cases?

25 A. I believe so. It is not the first time that we had had contested

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1 elections. We had contested elections in 1992, where the losers who felt
2 aggrieved went to Court. We had a similar situation in 1997, where the
3 losers again went to Court. And I believe that the first call of justice
4 for one who believes in the rule of law should be the Courts. And
5 thereafter, if you feel you are still aggrieved, there are still many
6 other avenues that are open to you without necessarily resorting to
7 violence or destruction.

8 Q. Yes. You think in Kenya there are many people who perceive the
9 Court would be ineffective against political leaders?

10 A. Yes, there is a perception that the Courts may be perceived as
11 being ineffective, but that is one of the main reasons also why the fact
12 that the Courts themselves require reform or review I don't believe is
13 justification, Madam President, to resort to violent means. Ultimately,
14 violence does not help any particular situation, whether you are
15 aggrieved or not. So ultimately, that is why we said: If it's not the
16 Courts, let us also engage in dialogue to find how we can actually find a
17 way forward.

18 Q. I agree with your comment on the need to go to the Court. The
19 problem is how you persuade the people to go to Court when the people
20 perceive the Court will be ineffective against leaders. So how you did
21 it, how you persuade them?

22 A. Your Honours, for me it is not a question of persuading the
23 people. It is a question of the leaders themselves accepting that we
24 need to live in peace, accepting that certain decisions can have major
25 consequences on lives, can have major consequences on property, and

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1 consequently, not to take any action and to appeal to your supporters not
2 to take any action that may be seen or may result in the loss of life or
3 that may result in the loss of property. So ultimately, it was the
4 onus - and I still maintain that particular position - it is still the
5 onus of the leaders to appeal to their members to accept that position.
6 I do remember in 1992 where again in a very, very tight election between
7 President Moi and Kenneth Matiba it was a very close election. Again, I
8 think in due respect of what a call by him would have resulted in at the
9 time, he chose the path, fully well knowing that maybe he may not get the
10 justice through Court, but at the end of the day life is much more
11 important than whatever position you are seeking to fill.

12 Q. Can you describe to the Court when this position to try to reach
13 a common agreement in the PNU and the ODM started and how it was
14 triggered?

15 A. Madam President, what I know is that soon after the general
16 election results, especially the presidential elections were announced,
17 we who were affiliated with President Kibaki - like I said, I was a
18 member of KANU, I had about 18, 20 Members of Parliament who were elected
19 with me at the same time on a KANU ticket, there were PNU members, there
20 were NARC Kenya members, there were FORD Kenya members. We immediately
21 began trying to form a coalition, first and foremost, of the supporters
22 of President Kibaki to be able to go to parliament. It was at that time
23 that ODM Kenya who also had a presidential candidate also joined
24 President Kibaki's team. And it was at that stage, once we had
25 consolidated also on our side, I think there were already ongoing

1 discussions in government - I was not a member of government at that
2 time - trying to reach out. We, ourselves, as political leaders held a
3 number of press conferences, where again we appealed to the ODM, that let
4 us have dialogue. If you feel there might not be justice, let's have
5 dialogue amongst ourselves. I remember clearly myself in one particular
6 interview, Madam President, me calling and saying: Well, let us look at
7 it from a different perspective. President Kibaki has won the
8 presidency. ODM clearly has a majority in parliament. It therefore
9 means that one way or another President Kibaki cannot rule without having
10 the support of parliament. It is a perfect opportunity for dialogue, and
11 that we started very early in January.

12 Q. All these efforts with the parliament, were they not connected
13 with the leaders of the PNU or the top leaders of the government?

14 A. Madam President, I didn't understand that question. I didn't
15 quite hear it.

16 Q. If these efforts, these negotiations you were just involved with
17 was parliamentarians, or were you also discussing this idea with members
18 of the government or the PNU?

19 A. Madam President, at that time, like I'm saying, we were -- I was
20 leader of KANU. We were having discussions as political leaders because
21 if you take FORD Kenya, for example, who were also participating in those
22 discussions, the then-chairman of FORD Kenya who was Musikari Kombo had
23 lost his parliamentary seat but he was participating in those
24 discussions, calling again and saying there was need for dialogue. But
25 in terms of government, there were representations from also members of

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1 PNU who were also elected. So at that level, at the political leadership
2 level, is where we were discussing and negotiating.

3 Q. Can you define the members of the PNU you had with you?

4 A. We had with us, it was myself -- in KANU -- I had a number of
5 other KANU leaders with me. There was Musikari Kombo; there was
6 Eugene Wamalwa, was amongst them from FORD Kenya; there was ODM Kenya;
7 there was the vice-president who had entered at that time; and minister
8 for justice now who is Mutula Kilonzo; from PNU, there was people like
9 Amos Kimunya who was also there. From NARC Kenya, there were also people
10 like Martha Karua who were also part and parcel of the discussion, so it
11 was a big group.

12 Q. When you start -- can you inform the Court when you start to be
13 member of the cabinet?

14 A. I became a member of the cabinet -- I think the cabinet was sworn
15 in on the 10th of January, if I'm not wrong.

16 Q. And when you how-- when you discussed your participation in the
17 cabinet and with whom?

18 A. Madam President, under the constitution that we had then, the
19 cabinet was not something to be discussed. It was the president's
20 prerogative to appoint cabinet ministers. So it was not a subject of
21 discussion. It was all of us waiting to know who would be appointed in
22 the new -- in the new cabinet. Our system is one where it is the
23 president who appoints and dismisses cabinet ministers. So there was no
24 question of a discussion as to who would be in government and who would
25 not be in government.

1 Q. Who in the name of Mr. -- President Kibaki called you to inform
2 you you were appointed minister?

3 A. Madam President, I was not called by anybody. The announcement
4 was made on national TV and radio. He made a live broadcast from
5 State House, announcing ten members of his cabinet, and I was one of
6 them.

7 Q. So you formatted -- you learned about your membership in the
8 cabinet through TV?

9 A. Absolutely correct.

10 Q. And how you learn how to go to the swearing-in ceremony, with
11 whom you provide -- discussed details to go to the ceremony?

12 A. Madam President, once you have been nominated to a position, you
13 are then informed by the cabinet office as to when the swearing-in
14 ceremony will take place, where, and what time.

15 Q. Who informed you?

16 A. I think I was informed at the time by Mr. Mwale, who was, I
17 believe, the administrative secretary.

18 Q. Reporting to whom?

19 A. Mr. Mwale would report to Ambassador Muthaura.

20 Q. Thank you. Going to the meetings, after -- after the appointment
21 in the cabinet, did you have discussions with the government on how to
22 manage this conflict?

23 A. Madam President, on the appointment of the cabinet, yes, when the
24 cabinet first met there were discussions on how to deal with the
25 situation as it was in the country at the time. Yes, the situation of

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1 the post-election violence was -- was discussed.

2 Q. Who was involved in those discussions?

3 A. All members who were of the cabinet at the time.

4 Q. All together?

5 A. All together.

6 Q. And as -- in your role did you have any connection with security
7 problems?

8 A. I was appointed, your Honours, as the minister for local
9 government. I was not appointed in charge of any of the security organs,
10 so I was not in charge of any of the security organs.

11 Q. At local government you have to be liaising with the local
12 police?

13 A. Madam President, I think the Prosecutor does not understand our
14 system. We -- local governments do not have police. We only have one
15 police force in Kenya, the National Police Force. There is no other
16 police force.

17 Q. You were connected with the security committees?

18 A. No, I was not connected with the security committees.

19 Q. So you have no information about the violence in detail?

20 A. Well, the details, no, except what we were seeing on TV, what was
21 reported to us in cabinet, but in terms of direct involvement, there was
22 no direct involvement because my ministry did not have anything to do
23 with security operations.

24 Q. Mm-hmm. Just to clarify some of the issues you mentioned, you
25 mentioned the Yaya Centre is like a shopping centre, but is the shopping

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1 centre part of a bigger complex or there are buildings connected with it,
2 with offices and other types of buildings?

3 A. It is a shopping complex. That's what I know, yeah.

4 Q. Including offices?

5 A. I have not been to any offices. I have just been to the shopping
6 area. So I don't know if offices are there.

7 Q. But the Yaya does include a complex bigger than the shopping?

8 A. Yes.

9 Q. Thank you. And another question about the possibility to have
10 meetings. You explained to the Court how difficult -- how tight control
11 of course of the State House is, but has someone with the authority like
12 Mr. Muthaura, for instance, can authorise a person to go in the
13 State House?

14 A. Your Honours, based on my experience as a cabinet minister, the
15 head of public service cannot authorise anybody to enter State House.
16 The person who has the authority is either the president himself or the
17 State House controller, and that is based on my own experience as a
18 cabinet minister and somebody who has also grown up in that building at
19 one stage.

20 Q. But you seen President Kibaki call the guards to inform who can
21 go and who it cannot?

22 A. No, it is the State House controller who informs the head of
23 security who is coming and with whom and at what time.

24 Q. Okay. Is the State House controller reported to Mr. Muthaura?

25 A. Your Honours, the State House controller reports to the

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1 president.

2 Q. It's not -- have no link possibility with Mr. Muthaura as a
3 Secretary-General of the cabinet?

4 A. Your Honour, the State House controller reports directly to the
5 president.

6 Q. Okay. There was information that you were distributing 100
7 million shillings in one day. Do you have enough money to distribute
8 this amount?

9 A. I wish I did have that amount of money, I would be a very happy
10 person, Madam President.

11 Q. So you say you have not this money?

12 A. To distribute around in cash, no, Madam President, I don't have.

13 Q. Can you describe to the Court the amount of your patrimony?

14 A. Madam President, I did not understand what he has just asked.

15 Q. Just to understand your previous answer. Can you describe to the
16 Court the entirety of your patrimony, how much money you have?

17 A. Madam President, I am not saying I am a poor person --

18 PRESIDING JUDGE TRENDAFILOVA: This goes a little bit too far,
19 Mr. Prosecutor.

20 MR. MORENO-OCAMPO: Madam President, we understand the person is
21 very wealthy and he says he has not enough money to provide millions. So
22 I like -- he says he wished to have this money. So I would like to
23 clarify just if 100 million shillings are more than his patrimony or not.

24 PRESIDING JUDGE TRENDAFILOVA: Mr. Kenyatta says that he does not
25 have in cash.

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1 THE WITNESS: Absolutely correct.

2 MR. MORENO-OCAMPO: No, but he says both.

3 Q. Maybe you can clarify. You can pay 100 shillings but not in
4 cash. That's your point?

5 A. Madam President, wealth is something -- you can't necessarily say
6 it's countable in cash. You can say I'm wealthy because I may have
7 assets, but that answer does not mean I have the ability to carry around
8 cash of that kind of amount, Madam President.

9 (Prosecution counsel confer)

10 MR. MORENO-OCAMPO:

11 Q. Mr. Kenyatta --

12 PRESIDING JUDGE TRENDAFILOVA: Mr. Ocampo, just -- the
13 interpreters always ask for a pause after the answer and a little bit
14 slower. Thank you.

15 MR. MORENO-OCAMPO: I will try.

16 Q. Mr. Kenyatta, there was a good relation between PNU and Mungikis?

17 A. Madam President, I didn't understand what the question was.

18 Q. If there is kind of -- is the Mungiki supported in some occasion
19 the PNU?

20 A. Madam President, I wish to clarify once again. I am the chairman
21 of KANU, not the chairman of PNU. That question should be answered by
22 the PNU members. All I can say is that we do not have a close
23 relationship between KANU and the Mungiki.

24 Q. No, but I'm sorry. I'm asking you, according to your knowledge,
25 the Mungiki were supporting on some occasions the PNU. Maybe you know,

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1 but you should answer me or the Court.

2 A. Madam President, I'm not aware of Mungiki supporting the PNU.

3 Q. Okay. Do you know a man called Peter Kagwanja?

4 A. Yes, Madam President, I do know of a man called Peter Kagwanja.

5 Q. Do you know what he is doing? Is he working for you as an
6 advisor?

7 A. Madam President, Peter Kagwanja does not work for me, but he does
8 work for the PNU coalition but he did not work for KANU.

9 Q. Can you explain -- can you describe his role?

10 A. Madam President, other than saying he is an advisor, I cannot
11 explain his current role because I am not his employer. So I don't know
12 his exact -- his exact role.

13 Q. Okay.

14 MR. MORENO-OCAMPO: I will request the Chamber to show
15 EVD-PT-OTP-00158. It's a report published by Peter Kagwanja in
16 "African Affairs" entitled "Power to Uhuru: Youth Identity and
17 Generational Politics in Kenya's 2002 Elections."

18 PRESIDING JUDGE TRENDAFILOVA: Would the Court Officer please
19 display.

20 COURT OFFICER: Your Honour, I would just like the Prosecutor to
21 confirm the confidentiality level of this --

22 MR. MORENO-OCAMPO: EVD -- no, it's public, it's public.

23 COURT OFFICER: Thank you.

24 MR. MORENO-OCAMPO:

25 Q. Okay. Do you know this article, Mr. Kenya?

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1 A. I know the article from the perspective that is one of the
2 documents that has been disclosed to my Defence.

3 MR. MORENO-OCAMPO: Can we show page 59, and I will read slowly.
4 Mr. Kagwanja the current advisor of PNU says:

5 "Unable to play the ethnic card, KANU turned to generational
6 politics, positioning young Uhuru against elderly Kibaki and tightening
7 its patron-client relations with the predominantly Kikuyu Mungiki
8 movement."

9 And the question is: Did you tighten relations between Mungiki
10 and KANU?

11 A. Madam President, we did not.

12 Q. Have you answered?

13 A. I answered.

14 PRESIDING JUDGE TRENDAFILOVA: Can you repeat your answer.

15 THE WITNESS: (Interpretation) Madam President, I did not.

16 MR. MORENO-OCAMPO:

17 Q. Okay. On page 63, Kagwanja say that John Njenga Maina, the
18 leader of the Mungiki, announced that the Mungiki will support
19 Mr. Kenyatta. How did this support materialise?

20 A. Madam President, I think the best person to answer that is the
21 author of the article who claims that that is what happened. I am not
22 aware of that except what I said earlier, Madam President, that there was
23 public declarations by members of Mungiki that they support my
24 candidature and as I said that was unsolicited support. So I have
25 nothing else to add to that. Maybe Professor Kagwanja can -- he is the

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1 author of the article. Maybe he would be better-placed to tell me how he
2 thinks that was happening.

3 Q. You say it was unsolicited but you never say they did not provide
4 it. So the question is: Did they provide unsolicited support to your
5 candidacy as you are aware? Maybe you are not aware.

6 A. Madam President, they did not provide any support because, as has
7 also been shown in parts of my own defence, even when they tried to get
8 tickets on my -- on our party KANU, we rejected people like Maina Njenga,
9 we rejected people like Ururu Uringi because we did not, as a party, want
10 to associated with them. So as far as I'm concerned it was unsolicited
11 support, we never saw the support, and we continued with our campaign
12 without generally having their support.

13 Q. Can you give me a reason because in the same page, Mr. Kagwanja
14 says that:

15 "Uhuru Kenyatta himself swung between publicly distancing his
16 campaign from Mungiki's acts of terror and covertly soliciting Mungiki's
17 support, arguing that 'anybody had the freedom to support whoever he
18 wanted.'"

19 So can you give us any reason why Professor Peter Kagwanja submit
20 this idea that you covertly solicited the Mungiki's support that you
21 openly rejected?

22 A. Madam President, once again, I have no idea. This is a public
23 document that he has published himself. I have no idea what his sources
24 are, and I still maintain that he would be the best person who is best
25 placed to say why he believes so because this is his opinion and he

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1 definitely did not interview me when he was doing the article. So I
2 cannot say more than that.

3 Q. Can you confirm a fact because on page 64, Mr. Kagwanja says that
4 in August 2002 Ndura Waruinge said on television that you, Mr. Kenyatta,
5 were a member of the Mungiki. Did this happen, did Mr. Wariunge say
6 that?

7 A. I don't recall him say that, but I have seen as part of the
8 testimony that there are claims that certain individuals have said that I
9 am a member of the Mungiki. Now, whether that was said in a public forum
10 or in what forum, I'm not sure. All I can say is that that is his claim,
11 but my position, Madam President, is very clear: I have never been a
12 member of Mungiki.

13 Q. You effectively denied according with this information denied
14 this accusation, but it was three months later, do you remember the
15 denial, and do you remember what you were thinking in order to decide to
16 deny or not to deny this information?

17 A. Madam President, I did not hear that.

18 Q. Can you repeat.

19 PRESIDING JUDGE TRENDAFILOVA: Would you explain, Mr. Prosecutor,
20 again your question?

21 MR. MORENO-OCAMPO: Yeah.

22 PRESIDING JUDGE TRENDAFILOVA: The suspect didn't get it.

23 MR. MORENO-OCAMPO:

24 Q. Our information is that you denied three months later -- our
25 information is that you denied this assessment that you were part of the

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1 Mungiki done by Mr. Ndura Wariunge. The question is: Do you remember
2 this denial, and do you remember the process that you took to decide to
3 go public and deny this?

4 A. Madam President, like I said, I did not see the -- what the --
5 what he's referring to as the TV programme, I didn't see it. But I do
6 know, I think as I said in earlier testimony, that there was a series of
7 clashes that happened, I can't remember what year, and we -- it came to
8 our attention. And when we were aware, we publicly denounced Mungiki.
9 But to say that I publicly denounced this particular one, I may -- and I
10 do not recall having seen Wariunge on TV. He may have said it but it
11 could have skipped my attention. I didn't see that particular one. But
12 any circumstance where it has come up and it has been brought to my
13 attention and -- or an issue has come up to do with Mungiki that has come
14 to my attention, I have always publicly condemned and stated that I have
15 no association whatsoever with Mungiki.

16 Q. Yes, but Mr. Peter Kagwanja says that you normally do that, you
17 publicly distance yourself from the Mungiki but covertly request their
18 support. And because Peter Kagwanja is an advisor of your movement of
19 your activities, can you explain to us if you discussed this issue with
20 him?

21 A. Madam President, let us be clear. If, as the Prosecutor is
22 saying, that at the time Professor Kagwanja was advising the NARC
23 government at the time, I was in the opposition so he was not advising me
24 and we were not having any discussions. I know him now, when we have
25 supported and joined President Kibaki's government, as an advisor to PNU.

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1 But we have never discussed with him any issues to do with Mungiki. So,
2 once again, Madam Speaker, the person who is best-placed to answer that
3 question is Professor Kagwanja.

4 Q. Yeah, Mr. Kagwanja today is working for you so it is more
5 complicated.

6 A. Now, Madam President, Professor Kagwanja does not work for me. I
7 will wish to repeat for the Prosecutor's sake one more time --

8 Q. (* overlapping speakers)

9 A. -- that I belong to the Kenya African National Union that
10 supports President Kibaki. Professor Kagwanja works for the
11 Party of National Union. That isn't my party. My party is KANU, so he
12 doesn't work for me but I do know him as an advisor of the
13 Party of National Unity.

14 Q. Do you know, Mr. Kenyatta, that the National Security
15 Intelligence Service produced a report saying a former member of the
16 parliament, a member of your party, your party, was the one -- one of the
17 ones organising the attackers in Mungiki that we are investigating in
18 this case?

19 A. Madam President, I am not aware because I was not privy to any
20 reports by National Security Intelligence. So I'm not aware of that
21 report.

22 MR. MORENO-OCAMPO: Can we go for a minute to closed session to
23 provide the name of the individual?

24 PRESIDING JUDGE TRENDAFILOVA: Of course, of course. Or to
25 private session.

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1 MR. MORENO-OCAMPO: Sorry?

2 PRESIDING JUDGE TRENDAFILOVA: Or to a private session will be
3 fine?

4 MR. MORENO-OCAMPO: Yes.

5 PRESIDING JUDGE TRENDAFILOVA: Yes.

6 Mr. Court Officer, please, let us switch into a private session.

7 (Private session at 5.34 p.m.)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

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23 (Expunged)

24 (Expunged)

25 (Expunged)

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Page 65 expunged – Private session.

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

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11 (Expunged)

12 (Open session at 5.38 p.m.)

13 COURT OFFICER: Madam President, your Honours, for the record

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

15 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer.

16 MR. MORENO-OCAMPO:

17 Q. Thank you for your clarifications. A few last questions. You

18 mentioned different times that your party is KANU, but at the same time

19 you are a member -- you are deputy prime minister of this coalition in

20 which you are with the PNU. How close are you with the PNU? Is it just

21 occasional relation, permanent relation, can you explain that?

22 A. Well, Madam President, like I said, we are a distinct party,

23 KANU. The PNU coalition, as it is called, is a party composed of the PNU

24 party itself, KANU, FORD Kenya, ODM Kenya, NARC Kenya, amongst many other

25 parties.

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1 Q. It is a coalition?

2 A. It is a coalition.

3 Q. But you belong to KANU?

4 A. I belong to KANU.

5 Q. Can you give us any reason to understand this connection between
6 Mungiki and the violence? Because this information by the Mungiki's
7 involvement came from official sources. The information about the member
8 of your party in the preparation of these attacks came from official
9 sources. And the only link, the only evidence we have, connecting the
10 Mungikis with this coalition is through you. There is no -- we have no
11 other link between the Mungiki or PNU or others. Can you explain to us a
12 different reason? Because the fact that the Mungiki were involved in the
13 attack is official, it's coming from official documents. The issue is --
14 our theory, our evidence shows that you were calling the Mungiki, that
15 you were organising them, you were financing them. But maybe this is a
16 chance for you to explain to us now it is a different person who did that
17 because the fact is that the Mungiki were involved in the attacks. The
18 question is: Is it a different person than you who organised this?

19 THE INTERPRETER: Message from the English booth: Could we
20 please ask the Prosecutor to slow down, please. Thank you.

21 PRESIDING JUDGE TRENDAFILOVA: Mr. Prosecutor, would you slow
22 down.

23 MR. MORENO-OCAMPO: Okay. I do it again.

24 PRESIDING JUDGE TRENDAFILOVA: The interpreters again. Yes,
25 please.

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1 Mr. Kenyatta, please.

2 THE WITNESS: (Interpretation) Madam President, I have not
3 financed Mungiki activities. Madam President, I am not aware of any
4 association of the Mungiki with the Party of National Unity involving
5 post-election violence or otherwise. Madam President, I am not aware and
6 neither -- and this one I can actually state as a fact that KANU does not
7 have any links with Mungiki and was not involved in any way with Mungiki
8 in the 2007 elections, either before the elections, during the elections,
9 or after the elections. That, Madam President, is what I know.

10 MR. MORENO-OCAMPO:

11 Q. Mr. Kenyatta, do you think the Mungiki for some reason, because
12 they went and decided to support you and then you rejected, or for other
13 reasons consider you a traitor and that is why some of the members of the
14 Mungiki are making a statement against you involving you in the crimes?

15 A. Madam President, save for the clip that my Defence showed of them
16 burning my effigy and calling me a betrayer of what they believe in, I
17 have no link, no association with Mungiki. I have no idea why they would
18 give false witness against myself, save for what they did with my Defence
19 counsel, which I don't wish to repeat but it is quite clear and put quite
20 clearly by my Defence counsel what those witnesses did or tried to do to
21 my Defence counsel. So those are the only reasons I can give that those
22 particular individuals, whether they are Mungiki or not, were doing so in
23 an attempt to extort money.

24 Q. Just to elaborate on what you answered because if --

25 MR. MORENO-OCAMPO: Can you correct, Mr. Kay, because I think you

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1 said the video was from 2000 but in the transcript it said 2008, but I
2 believe you say it is 2000; is that correct?

3 MR. KAY: The burning of the effigy was in August of 2000 if that
4 assists my learned friend.

5 MR. MORENO-OCAMPO: Thank you so much. That's what I heard but
6 the transcript says 2008.

7 Q. That's why I would like to clarify this last point, Mr. Kenyatta,
8 because the Mungiki in 2000 considered that you betrayed and were
9 attacking, so, however, just two years later they were trying to support
10 you and you rejected and you say unsolicited assistance. How they can
11 move from these attacks to support you, can you explain -- any reason to
12 explain this change?

13 A. Madam President, I do not know, but there is one thing I can say
14 and this is my perception and I cannot say whether it is fact or not
15 fact. But definitely there was especially the biggest victims of
16 Mungiki -- of the Mungikis menace in Kenya has actually been the Kikuyu
17 community itself through extortion, through killings, and et cetera. So
18 I can only assume that those who were pushing for linking Mungiki with me
19 were doing so to cost me votes in 2007 from the Central Kenya region
20 because undoubtedly, like I said, the people who have been the biggest
21 victims of the Mungiki menace in Kenya are actually the people of Central
22 Kenya and mainly the Kikuyu.

23 MR. MORENO-OCAMPO: No further questions, your Honour.

24 PRESIDING JUDGE TRENDABILOVA: Thank you very much, Mr. Ocampo.

25 Now, Mr. Anyah, probably you are going to request authorisation

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1 to ask questions?

2 MR. ANYAH: Yes, indeed, Madam President, with leave of your
3 Honours, I would like to ask questions.

4 PRESIDING JUDGE TRENDAFILOVA: You are going to ask questions
5 regarding the interests of victims being affected?

6 MR. ANYAH: Yes, Madam President.

7 PRESIDING JUDGE TRENDAFILOVA: Pursuant to Article 68(3). Would
8 you very shortly substantiate, very shortly, your request.

9 MR. ANYAH: I will.

10 Madam President, in addition to the evidence given by the witness
11 today, yesterday during the presentation of the Defence team for
12 Mr. Kenyatta, it was elicited that he undertook certain actions of
13 generosity, if you will, towards victims of the post-election violence.
14 There was an article from the "Kenyan Times" referred to which indicated
15 he made a visit to IDPs and I wish to ask him a few questions about that.

16 PRESIDING JUDGE TRENDAFILOVA: Just a moment.

17 (Pre-Trial Chamber confers)

18 PRESIDING JUDGE TRENDAFILOVA: Mr. Anyah, of course you have the
19 floor, but with the request of the Chamber that we see the direct link to
20 the victims up until 6.00, please, the floor is over to you.

21 MR. ANYAH: Madam President, I will try to hurry-up. I just need
22 to set up. Yes, I am fine.

23 Questioned by Mr. Anyah:

24 Q. Good evening, Mr. Kenyatta.

25 A. Good evening.

Witness: Witness KEN-D13-PPPP-0001 (Resumed) (Open Session)
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1 Q. I will be asking you a few questions about the victims in this
2 case. I will try to be brief, and if I say something you do not
3 understand, please ask me to repeat myself. Do you follow me?

4 A. Yes.

5 Q. Thank you. Do you know how many victims are participants in this
6 case?

7 A. As in direct participants or -- what I know is if we're talking
8 about the victims of the post-election violence, then we're talking about
9 approximately 600.000 Kenyans. But I'm not a hundred per cent sure
10 whether that's what you're asking.

11 Q. Very well. I appreciate the distinction. Do you know with
12 reference to this case, the case in which you've been named as a suspect,
13 how many victims are engaged in the proceedings, that is, who have been
14 accepted by the Court to participate?

15 A. Madam President, I'm not sure of the exact number, no.

16 Q. Do you have some idea of the ethnic configuration of the victims
17 or composition of the victims in this case?

18 A. No. Again, Madam President, I am not -- I don't have those
19 numbers with me, no.

20 Q. Have you read documents disclosed to your legal team in this
21 case?

22 A. Madam President, I've not seen documents directly myself, but my
23 counsel has gone through those documents, Madam President.

24 Q. Have you looked at the Document Containing the Charges against
25 you in this case?

Witness: Witness KEN-D13-PPPP-0001 (Resumed) (Open Session)
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1 A. Yes, I have.

2 Q. Have you made note of references in that document to particular
3 ethnic groups as the victims in this case?

4 A. Yes, I have.

5 Q. The victims in this case, to your knowledge, are from which
6 ethnic groups predominantly?

7 A. Madam President, based on the representations that have been made
8 since the case started and from the documents that have been brought to
9 also my attention, they are mainly from the Luo community, and we have
10 also heard of members of the Luhya community and members of the Kalenjin
11 community.

12 Q. Thank you, Mr. Kenyatta. And you are also aware there is a
13 second case involving Kenya pending before the Court, yes?

14 A. Yes, I am, Madam President.

15 Q. Do you know anything about the ethnic composition of the victims
16 in that case?

17 A. Again, Madam President, I have not seen those documents.

18 Q. I am not asking if you've seen documents. I asked the question
19 if you know from any source, newspapers, televisions, do you know
20 anything about the ethnic composition of the victims in that case?

21 A. Madam President, I have not seen anything but I can only possibly
22 assume that they would largely be from the Kikuyu, the Kisii, the Bukusu
23 ethnic communities who were -- I just would assume. That is an
24 assumption, not from knowledge.

25 Q. From where does your assumption come? What sources form the

Witness: Witness KEN-D13-PPPP-0001 (Resumed) (Open Session)
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1 basis for your assumption?

2 A. The basis of my assumption is because they formed the bulk of the
3 victims of the post-election violence.

4 Q. Are you aware that this case, as far as the victims are
5 concerned, concerns Naivasha and Nakuru?

6 A. Yes, I am aware, your Honours.

7 Q. You told us that you were local government minister. I believe
8 you said you took office on the 10th of January, 2008. Is that fair to
9 say?

10 A. Yes, your Honours, that is fair to say.

11 Q. And you stayed in office until April 2008; true?

12 A. I was in that office until the Grand Coalition Government was
13 formed if -- around April, yeah.

14 Q. Of what year?

15 A. April of 2008.

16 Q. Now, during that period of time, January through April 2008, as
17 minister of local government, did you make any trips to the
18 Rift Valley Province?

19 A. Yes, I did.

20 Q. And what were the purpose or purposes of those trips?

21 A. During that particular time, I did visit a number of IDP camps.
22 I visited an area in Burnt Forest, I visited Nakuru, I visited
23 Trans-Nzoia as well as other parts in the country. But in specific
24 reference to Rift Valley, those were the areas.

25 Q. Did you visit Naivasha?

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- 1 A. I did not visit Naivasha.
- 2 Q. Did you visit anywhere in Nyanza province?
- 3 A. I didn't visit Nyanza province.
- 4 Q. Did you visit the Western Province?
- 5 A. The Western Province towards the side of Trans-Nzoia, yes, I did.
- 6 Q. The prime minister of Kenya, Raila Odinga, is from which
- 7 province?
- 8 A. The prime minister of the Republic of Kenya is from
- 9 Nairobi Province.
- 10 Q. And from which province in Kenya is his support base from?
- 11 A. The prime minister's support base, according to him, is the
- 12 Kenyan nation.
- 13 Q. I'm not asking --
- 14 A. All provinces.
- 15 Q. I apologise for interrupting. I'm not asking what Mr. Odinga's
- 16 claimed support base is. I am asking you what you know as his support
- 17 base. Mr. Kenyatta, you, yourself, what do you know about the support
- 18 base of Raila Odinga? What provinces form his constituents?
- 19 A. If I were to go by the last elections, that would be parts of
- 20 North-Eastern, the Coast, Nairobi, Rift Valley, Nyanza, Western, that if
- 21 I was to go as by the latest polls, Madam President.
- 22 Q. What ethnic groups or ethnic group in Kenya are his main
- 23 constituents, if you know?
- 24 A. What ethnic groups are his main constituents? If I was to take
- 25 his Kibira constituency, Madam President, the composition in Kibira is

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1 Kikuyu, Luo, Nubian, Somali, they would be the bulk in his constituency.

2 Q. That is in relation to Kibera. To your knowledge, are the Luos
3 the ethnic group the Luos, supporters of Raila Odinga?

4 A. I would say that the Luos do support Raila Odinga.

5 Q. Thank you. When you went to visit Nakuru you said and you said
6 you visited IDPs, did you visit any IDPs that were of the Luo ethnic
7 group?

8 A. Madam President, when I visited IDP camps I was not visiting any
9 particular community. I was visiting the IDP camps and many had people
10 who were displaced. I was visiting camps, I was not visiting ethnic
11 communities.

12 Q. We appreciate that. We know you were visiting camps, not
13 necessarily ethnic communities. But I go back to my question and let me
14 cut to the chase. Were some of those that you met at the camps, were
15 they Luos?

16 A. Madam President, from the videos that you have seen, the people
17 we visited in Tigoni were largely Luos and Luhyas. The people that we
18 visited in Kikuyu who we had gone to help were again largely Luo and
19 Luhya and some Kalenjin. So, Madam President, I visited places where
20 there were displaced people and that's what I did.

21 Q. What was the name of the IDP camp in Nakuru you visited, if you
22 know?

23 A. Madam President, I can't recall the name of the camp but I
24 visited a camp in Nakuru, I did. But the name I don't have off head.

25 Q. What month was this and what year?

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1 A. Madam President, it was during that particular period, but since
2 then I have also visited a number of camps, especially when we have had
3 the re-settlement exercises, and et cetera, going on in the country.

4 Q. The particular period you are referring to, is it during your
5 tenure as local government minister?

6 A. Madam President, if we're talking about period between January
7 and April, I was minister of local government.

8 Q. That's not my question. I'm trying to figure out what month you
9 went to the IDP camps in Nakuru. Was it during your tenure as local
10 government minister?

11 A. If the period we are referring to is between January and April,
12 yes, I was minister of local government.

13 Q. And is that when you went to the camps?

14 A. I have been to the camps, yes, as minister of local government; I
15 have been to camps as minister of trade; and I have been to camps as
16 minister of finance. So I have been -- I have visited IDP camps
17 throughout the period.

18 Q. And the camp or camps you went to in Nakuru, how many persons
19 were housed there, if you know?

20 A. Madam President, I wouldn't have the numbers offhand, but there
21 were many thousands.

22 Q. Was it called the Shogard camp -- Showground camp?

23 A. Madam President, I don't -- there were many camps, like I am
24 saying, in and around Nakuru. There were not just one, so I don't know
25 which -- the name would not be familiar.

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1 MR. ANYAH: Madam President, I see the time. I still have
2 questions to ask of the witness.

3 PRESIDING JUDGE TRENDAFILOVA: How much time do you need,
4 Mr. Anyah?

5 MR. ANYAH: This is an important witness and with leave of your
6 Honours I would ask for at least 20 minutes.

7 PRESIDING JUDGE TRENDAFILOVA: 20 is too much. The Chamber -- we
8 have discussed this. The Chamber would give you ten minutes more. Do
9 you think that you can go to the point?

10 MR. ANYAH: Perhaps 15, if it pleases the Court.

11 PRESIDING JUDGE TRENDAFILOVA: Yes.

12 MR. ANYAH: Thank you.

13 PRESIDING JUDGE TRENDAFILOVA: My colleagues are -- so let us
14 make a break, and thereafter, Mr. Anyah, you will proceed.

15 The hearing is adjourned and we shall resume the hearing at 6.30.

16 COURT USHER: All rise.

17 Recess taken at 6.00 p.m.

18 On resuming at 6.30 p.m.

19 (Open session)

20 COURT USHER: All rise.

21 PRESIDING JUDGE TRENDAFILOVA: Please be seated.

22 Mr. Anyah, please proceed with your questions. You have
23 15 minutes.

24 MR. ANYAH: Thank you, Madam President.

25 Q. Mr. Kenyatta, before the break I was asking you questions about

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1 Nakuru and a visit to an IDP camp or camps. At some point you became
2 minister of finance. Was that in January 2009?

3 A. I can't remember the exact, but it was in 2009, yes. 2000 --
4 yes, around 2009, yes.

5 Q. And to your knowledge has the Kenyan government to some extent
6 attempted to compensate or assist victims of the post-election violence?

7 A. Yes, your Honours. The Kenyan government has been heavily
8 involved in trying to ensure the proper resettlement of victims of
9 post-election violence.

10 Q. The resettlement efforts, has to taken the form of monetary
11 compensation?

12 A. It's taken various forms. It has an element of monetary
13 compensation, it has had an element of rebuilding of structures that were
14 destroyed, it has taken the form of in some instances of purchase of land
15 for resettlement of IDPs.

16 Q. Have you personally been engaged in any of those efforts?

17 A. Madam President, my responsibility as minister of finance is to
18 mobilise resources which indeed we have endeavoured to do and those
19 resources and the implementation is then with respective ministries,
20 Madam President.

21 Q. So you have not been personally involved beyond mobilising
22 resources in your capacity as minister of finance?

23 A. In my capacity as minister of finance, that has been my
24 involvement.

25 Q. These resources, to your knowledge, have they been allocated

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1 fairly between the different ethnic groups?

2 A. I believe so because the decision taken by cabinet was the need
3 to resettle all IDPs. There was no question what their ethnic background
4 was, it was a question of the resettlement of IDPs.

5 Q. Have you heard of sentiments being expressed by members of the
6 Luo community that they are not receiving their fair share of government
7 disbursements to assist post-election violence victims?

8 A. Madam President, what I am aware of is there have been complaints
9 from some quarters that the process has taken too long, but I am not
10 aware as per which community because those sentiments have been across
11 the board from all IDPs.

12 Q. In a video shown by your Defence team yesterday, the video in
13 which you were standing on a car with Lewis Nguyai and you were speaking
14 to a group of young persons you said something to the effect of:

15 "I promise you, anyone who has lost their land will get their
16 land back."

17 Did you say something to that effect?

18 A. Yes, I did.

19 Q. The group that you were addressing, were they predominantly
20 Kikuyus?

21 A. Yes, those were the -- they are the ones who were blocking the
22 road, yes, that is correct.

23 Q. Have you made any such pledge or promise to other ethnic groups
24 since you became deputy prime minister?

25 A. Madam President, the group that I was addressing was a group who

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1 at the time were engaged in acts of violence and we were trying to calm
2 the situation. Since then we have been addressing ourselves as a
3 government to the issue of IDPs, irrespective of their ethnic background.

4 Q. Have you made such a pledge to members of the Luo community?

5 A. Madam President, as minister of finance of the Republic of Kenya,
6 I've made that as a pledge to all IDPs, regardless of their ethnic
7 background.

8 Q. Mr. Kenyatta, when victims apply to participate in this case,
9 they fill out an application and there is a question in that application,
10 question 29. It asks them to indicate who they feel is responsible for
11 the harm or violence they suffered. Many victims, and I will state the
12 pseudonyms of the victims because learned counsel opposite have had
13 access to these documents, many of them mention Mungiki, they mention
14 Kikuyu men, they mention Mungiki and Kikuyu men. Examples are A827811,
15 A828111, A844811, A844511. And then some of them go a step further and
16 they not only mention the Mungiki, they mention the Mungiki in a
17 political context. For example, victim number A8280 says regarding those
18 who were responsible:

19 "There were 'Mungiki' from the Kikuyu community. This was due to
20 incitement from the political leaders which was done during the 2007
21 post-election violence."

22 Another victim, A8451 says:

23 "There were Mungiki who were paid by some politician to come and
24 kill Luos, Luhyas, and Kalenjins in Naivasha area."

25 Have you heard such sentiments expressed, Mr. Kenyatta, that the

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1 Mungiki were not only the assailants, that they were urged on and had a
2 connection with politicians to execute the crimes that they did?

3 A. Madam Chair, that's what we have been hearing since we have been
4 here, so I have heard.

5 Q. Outside of the courtroom, as you campaign for the presidency of
6 Kenya, have you heard such sentiments expressed?

7 A. Madam President, if we are talking about the election of 2007, I
8 was not a presidential candidate.

9 Q. I am not speaking about that. You intend to run for the
10 presidency in 2012; yes?

11 A. Yes, indeed, I do.

12 Q. And to that effect you do undertake political campaigns around
13 the country, yes?

14 A. Yes, I do.

15 Q. As you speak to people around the country, have you heard such
16 sentiments expressed?

17 A. Sentiments to do with the fact that the Mungiki were killing?

18 Q. Yes.

19 A. No, I have not heard those sentiments, Madam President.

20 Q. Will you agree with me that the Mungiki were involved in
21 committing acts of violence against victims during the post-election
22 violence of 2007?

23 A. Madam President, what I do know is that during the post-election
24 period there were acts of violence committed against innocent Kenyans.

25 As to who committed those acts of violence, whether they were Mungiki or

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1 otherwise, I cannot say. But I do know, Madam President, that there were
2 acts of violence committed against innocent Kenyans.

3 Q. So we do not have an agreement on whether or not the Mungiki were
4 involved; yes?

5 A. Madam President, I do not know. It could have been the Mungiki,
6 it could not have been the Mungiki. What I do know is that there were
7 acts of violence committed against innocent Kenyans. That I do know.

8 Q. A victim applying to participate mentions you, not just one
9 victim, quite a few of them. This is victim number A861211. Asked who
10 is responsible the victim says: Uhuru Kenyatta. He meeting at
11 green Lodge Hotel Naivasha after messages were spread.

12 So this victim is speaking about a meeting at the Green Lodge
13 Hotel in Naivasha. Another victim, victim --

14 MR. KAY: Perhaps you can ask whether he's ever been to the
15 Green Lodge Hotel in Naivasha. It's not an opportunity to make speeches
16 by this counsel. It's not an opportunity to make speeches by this
17 counsel, it's an opportunity to ask questions, so please do so.

18 PRESIDING JUDGE TRENDAFILOVA: Mr. Anyah, yes.

19 MR. ANYAH: Madam President, with all due respect, I can read two
20 witness applications and then ask a question. I can control the mode of
21 questioning to the witness so long as I'm fair to the witness.

22 PRESIDING JUDGE TRENDAFILOVA: Not the whole of the victims'
23 applications but these parts of --

24 MR. ANYAH: Relevant --

25 PRESIDING JUDGE TRENDAFILOVA: -- yes, that are relevant and that

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1 substantiate the point that you would like to make.

2 MR. ANYAH: Yes, because I would like to read the second one
3 before asking him the question.

4 THE INTERPRETER: Message from the English booth: Could counsel
5 please be requested to slow down. Thank you very much.

6 PRESIDING JUDGE TRENDABILOVA: Slow down, Mr. Anyah.

7 MR. ANYAH: Yes, Madam Interpreter. Thank you.

8 Q. Mr. Kenyatta, another victim 861011, who is responsible, this
9 victim says: Honourable Uhuru Kenyatta. Immediately after his meeting
10 everything changed and hostility filled the whole region. Two victims
11 refer to a meeting, Mr. Kenyatta. One mentions the Green Lodge Hotel in
12 Naivasha and the other one just refers to a meeting. Did you hold such a
13 meeting at the Green Lodge Hotel in Naivasha?

14 A. Madam President, I am not familiar with any Green Lodge Hotel in
15 Naivasha. And as for the second question, Madam President, I have never
16 held any meeting so I do not know what meeting the person is referring to
17 since I have never held any meeting to plan any kind of violence against
18 any Kenyan.

19 Q. I could read more victim applications who mention you. The
20 question, Mr. Kenyatta, is: Why? Why do you suppose these displaced
21 persons in Nakuru, Naivasha, are mentioning you directly as being
22 responsible?

23 A. Madam President, I do not know why. But I can only guess, as my
24 lead counsel said in his opening statement, the issue of myself being
25 mentioned with regard to the post-election violence was at a press

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1 statement that was issued on the 2nd or the 3rd - I can't remember - the
2 3rd, I think it was, of January, where the Honourable Raila Odinga went
3 on public media and said that Mungiki was committing genocide and that
4 that was being planned at State House in my presence, a fact,
5 Madam President, which we have said we were never at any State House
6 meeting. But that perception, Madam Speaker, could be possibly why those
7 victims have then said because they heard Raila Odinga say Uhuru Kenyatta
8 was at State House planning violence with Mungiki, that could be why they
9 would then turn and say that it was Uhuru Kenyatta who organised the
10 Mungiki because they heard it on public broadcast.

11 Q. So it is with reference to a statement by Raila Odinga that you
12 find the explanation for the victims connecting you with their
13 victimisation? Beyond what Mr. Odinga said, do you know of another
14 reason why these victims would mention you in their applications?

15 A. I know of no other reason, Madam President.

16 Q. Thank you, Madam President.

17 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

18 Mr. Kenyatta, there is one question from the Bench and it is
19 related to this article of Mr. Peter Kagwanja.

20 THE WITNESS: (Interpretation) Kagwanja.

21 PRESIDING JUDGE TRENDAFILOVA: A little bit difficult for me to
22 pronounce. I'm sorry, I excuse myself.

23 Did you take any legal action concerning the author of this
24 article associating you with the Mungiki? This is our question.

25 THE WITNESS: (Interpretation) Madam President, I was only aware

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1 of that particular document when it was part of the disclosures of this
2 particular case. I was not aware of its existence prior to that, when we
3 saw it as one of the disclosures in this particular case. And,
4 Madam President, that is something I intend to take legal action on soon
5 after we are through with this particular case. I was not aware of its
6 existence before that.

7 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Kenyatta.
8 On behalf of the Bench, there are no more questions.

9 So now the lead counsel, you have the floor.

10 MR. KHAN: (* Microphone not activated)

11 PRESIDING JUDGE TRENDAFILOVA: Of course I was referring to the
12 lead counsel in the Defence team of Mr. Kenyatta. But obviously,
13 Mr. Khan from other Defence team if anything said by Mr. Kenyatta touches
14 upon the interests of your client, of course you have the opportunity to
15 pose some questions, Mr. Khan.

16 MR. KHAN: Madam President, your Honours, we're most grateful. I
17 did indicate to my learned friend that we would ask, with your Honours'
18 leave, to ask questions of Mr. Kenyatta for about five to eight minutes,
19 as perhaps with your leave we can proceed.

20 PRESIDING JUDGE TRENDAFILOVA: Yes, of course.

21 MR. KHAN: Madam President, my learned friend Ms. Alagendra will
22 ask the questions.

23 PRESIDING JUDGE TRENDAFILOVA: Yes, Ms. Alagendra, the floor is
24 over to you.

25 MS. ALAGENDRA: Good afternoon, your Honours.

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Questioned by Ms. Alagendra

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1 Questioned by Ms. Alagendra:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. Sir, during the campaigning period of November and December 2007,
5 could you tell the Court, please, what was the nature and extent of your
6 contacts with Ambassador Muthaura?

7 A. Madam President, I did not have any contact with
8 Ambassador Muthaura because he was not in the political campaign. I
9 think during that particular period, the only time I can say I met him
10 was on the 12th of December during the national celebrations, what we
11 call *Jamhuri* Day where he was present, but he was not involved in any way
12 whatsoever with the campaign. A campaign, the presidential campaign.
13 The team leader was the vice-president at the time who was the Honourable
14 Moody Awori.

15 Q. Sir, my next question to you is: Could you tell the Court what
16 was the nature and extent of your contact with Ambassador Muthaura in the
17 month of January of 2008?

18 A. Madam President, the month of January I met Ambassador Muthaura
19 on the day of swearing-in, which I think was on the 10th. I met him also
20 when we had the first cabinet meeting and I think we had a number of
21 other cabinet meetings during that particular time where I did meet him.

22 Q. Sir, you told the Court that the Grand Coalition Cabinet was
23 formed in April 2008. Am I correct?

24 A. That is -- I didn't say that. I think it was one of the counsel
25 that said that. It was around April anyway. I don't -- it was around

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1 April when the Grand Coalition Government was formed.

2 Q. Thank you, sir, for that. Do you know, sir, when the national
3 accord was signed?

4 A. The national accord to the best of my recollection was either the
5 end of February or -- middle/end of February, if I'm not wrong.

6 Q. And of what year, sir, please?

7 A. 2008.

8 Q. Sir, to your knowledge, do you know if there were any initial
9 problems in the formation of the Grand Coalition Cabinet?

10 A. Yes, there were a number of problems because I think there was a
11 lot of discussion and negotiation as a result of the fact that the
12 cabinet now had to be appointed by the president in consultation with the
13 prime minister.

14 Q. And, sir, to the best of your knowledge are you aware if during
15 this period there were any secret meetings between
16 His Excellency President Kibaki and the prime minister, honourable
17 Raila Odinga, in order to find a solution?

18 A. I don't have any evidence, but indeed we did hear that there were
19 a number of meetings that were being held to try and resolve the impasse
20 and to ensure that a cabinet was formed. And that's why it took some
21 time to form cabinet after the accord was signed. But I am aware there
22 were some kind of meetings. We did hear of some kind of meetings that
23 were going on to resolve the impasse.

24 Q. And, sir, did you hear if Ambassador Muthaura had a role in any
25 of these meetings to find a resolution?

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1 A. Again, I was not there but if I am to go on hearsay, we did hear
2 that Ambassador Muthaura and the PS, Aiza Hakiya (* phon) were also
3 involved in those discussions.

4 Q. Sir, I'm going to read to you from the transcript of the
5 22nd of September, 2011, and what I'm going to read to you, sir, is the
6 presentation by the learned Prosecutor, Ms. Adeboyejo. And this is what
7 Ms. Adeboyejo told the Court.

8 MS. ALAGENDRA: Your Honours, I'm reading from page 39, lines 18
9 to 25, and page 40, lines 1 to 2.

10 Q. Sir, my learned friend said this, she said:

11 "Prosecution Witness 12 explains that on or around 30
12 December 2007 Muthaura held a meeting in the office of John Michuki in
13 Nairobi on the deployment of the Mungiki to Kibera."

14 And further down at lines 25 she informed the Court that:

15 "Kenyatta was present in this meeting along with other PNU
16 officials and Mungiki members."

17 And my learned friend referred this honourable Court to the
18 following items of evidence EVD-PT-OTP-00652 at 0120 to 0122;
19 EVD-PT-OTP-0061 at 0315 to 0320; and also to EVD-PT-OTP-00662 at 0329 to
20 0330.

21 Sir, from our reading of these exact items of evidence - and by
22 "our" I mean the Muthaura team - we do not find a reference to any such
23 meeting where yourself or Ambassador Muthaura are present at
24 Honourable Michuki's office in Nairobi. Nevertheless, I would like to
25 ask you this question based on counsel's submissions to this Court.

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1 Sir, did you ever attend a meeting at Honourable Michuki's office
2 on 30 December 2007 which was held by Ambassador Muthaura in order to
3 discuss the deployment of Mungiki to Kibera?

4 A. Madam President, as I said earlier, on the 30th of January I was
5 at the Kenya International Conference Centre from morning all the way
6 until when the election results were announced at approximately --

7 PRESIDING JUDGE TRENDABILOVA: I'm sorry, 30 December.

8 THE WITNESS: (Interpretation) Oh, 30 December --

9 PRESIDING JUDGE TRENDABILOVA: 2007.

10 THE WITNESS: (Interpretation) Is that correct?

11 MS. ALAGENDRA:

12 Q. That is correct.

13 A. 30 December I was at the Kenya International Conference Centre
14 from morning until when the election results were announced at about late
15 after -- late afternoon, around 4.00 or so. So there was no way I could
16 have been at that meeting and there is substantial number of people who
17 would witness to the fact that I was at the
18 Kenya International Conference Centre, including the prime minister
19 himself, Raila Odinga, because he was there at the Kenya International
20 Conference Centre. And from there, I went to State House at
21 approximately 5.00 p.m., when the inauguration ceremony was about to
22 start. And even there we did not have any discussion with
23 Ambassador Muthaura because I just took my seat and he was the master of
24 ceremony at the function, introduced the function. The president was
25 sworn in. The function lasted about an hour and we all left immediately

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Questioned by Mr. Monari

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1 after that. We did not meet at any other place on that particular day.
2 There was no meeting between myself and Ambassador Muthaura and Michuki
3 on the 30th of January to discuss anything to do with the Mungiki. And
4 for that matter, we have never had a meeting with Ambassador Muthaura and
5 John Michuki to discuss matters related to Mungiki.

6 Q. Sir, just to be clear, we are talking about 30th of December?

7 A. It's 30th -- if it's the day of the inauguration that we are
8 talking about.

9 Q. Yes. Sir, my final question to you is: Have you ever been to
10 the office of Honourable Michuki at Kagan House together with Ambassador
11 Muthaura? Have you ever been there together with Ambassador Muthaura?

12 A. Madam President, I have never been to Honourable Michuki's office
13 at Kagan House with Ambassador Muthaura.

14 MS. ALAGENDRA: Thank you ver much, sir, for your answers.

15 PRESIDING JUDGE TRENDAFILOVA: Thank you, Ms. Alagenda.

16 I see Mr. Monari. You have questions as well.

17 MR. MONARI: Sorry about that. I intend to take about three
18 minutes.

19 PRESIDING JUDGE TRENDAFILOVA: Thank you. Go ahead, please, the
20 floor is yours.

21 MR. MONARI: If I can just take three minutes.

22 Questioned by Mr. Monari:

23 Q. Honourable Uhuru Kenyatta, the Prosecutor asked a question that
24 alluded to the fact that Honourable Raila Odinga did not file an election
25 petition because he had no faith in the Kenyan judiciary. Am I correct?

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1 A. That is correct.

2 Q. Are you aware whether members of his party filed election
3 petition with regard to the National Assembly and the civic authorities
4 in -- from the last elections, 2007?

5 A. Madam President, I'm not aware about civic elections, but indeed
6 I am aware that the Orange Democratic Movement did file a series of
7 election petitions with regard to parliamentary seats. Yes, that did
8 happen.

9 Q. And are you aware whether these parliamentary seat -- the
10 election petitions were adjudicated upon by the High Court?

11 A. Yes, I am aware and in a number of instances, the election
12 results for a number of constituencies were annulled by the High Court.

13 Q. Will I be correct then to conclude that the failure to file the
14 election petition -- the presidential election petition was a selective
15 choice?

16 A. Madam President, I would say yes, because indeed they did file
17 election petitions for a number of parliamentary seats, which were in a
18 number of instances adjudicated in their favour.

19 Q. And instead he called for mass action?

20 A. Yes, that is what happened, Madam President. He called for mass
21 action.

22 MR. MONARI: Madam President, that's the end of our
23 cross-examination.

24 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Monari.

25 Now, finally, the floor is over to you, Mr. Kay.

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Further Questioned by Mr. Kay

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1 MR. KAY: I'll be very brief, your Honour. Thank you.

2 Further Questioned by Mr. Kay:

3 Q. First matter is this, Mr. Kenyatta: In relation to that
4 statement on the 3rd of January, 2008, by the right
5 Honourable Raila Odinga alleging State House, Mungiki, Kenyatta,
6 et cetera, did you take legal action for defamation against the KTN
7 television network for publishing that slander?

8 A. Yes, Madam President, because when the caption was aired by KTN
9 we did call their management and asked them to make an immediate
10 retraction, which they did not do. So we were therefore forced to take
11 legal action.

12 Q. Were you awarded substantial damages in the High Court of Kenya
13 as a result of that defamation?

14 A. Yes, I was, Madam President.

15 Q. This might be of interest to victims counsel. In relation to
16 those damages, did you take the damages for yourself or did they get
17 applied by you in another direction?

18 A. Madam President, I set up a fund for IDPs and that money was
19 applied to that fund.

20 Q. Have other awards in libel cases been applied by you in that way?

21 A. Yes, Madam President. I have had another award which I have also
22 applied to the same and the reason we have not made any disbursement is
23 because we have made further application because we thought that the
24 award should have been higher. So we are waiting for that to be
25 adjudicated before we disburse.

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1 Q. Thank you very much.

2 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kay.

3 The Chamber does not intend to proceed with the second witness,
4 that's why I shall ask now Mr. Kenyatta to go back to his seat. Thank
5 you very much, Mr. --

6 MS. ADEBOYEJO: Madam President, your Honours, before he goes to
7 his seat I just want to correct something that my learned friend just
8 read to you with regards to this witness when she was -- that's
9 Ms. Alagendra, when she was asking him questions on behalf of the team of
10 Ambassador Muthaura. And she said specifically concerning EVD --

11 PRESIDING JUDGE TRENDAFILOVA: Just a moment, Ms. Adeboyejo.
12 This is just a clarification.

13 MS. ADEBOYEJO: Just to clarify.

14 PRESIDING JUDGE TRENDAFILOVA: You are not going to ask
15 questions?

16 MS. ADEBOYEJO: Not at all.

17 PRESIDING JUDGE TRENDAFILOVA: Because you know thereafter I have
18 to give again the floor to the Defence. Please, please.

19 MS. ADEBOYEJO: Not at all, it's just to clarify the record. She
20 referred to EVD-PT-OTP-00652 on page 120, we just wanted to clarify that
21 Mr. Kenyatta is mentioned as being present in Michuki's office but not
22 Ambassador Muthaura. We wanted that to be clarified.

23 PRESIDING JUDGE TRENDAFILOVA: Thank you for the clarification,
24 Ms. Adeboyejo.

25 Let us not go into disputes. That is in the record what you

1 said, Ms. Alagendra, and what Ms. Adeboyejo.

2 Mr. Kenyatta, please go back to your seat. Thank you very much.

3 THE WITNESS: (Interpretation) Thank you, Madam President.

4 Thank you, your Honours.

5 (The witness withdrew)

6 PRESIDING JUDGE TRENDAFILOVA: We are not going to invite the
7 next witness of the Defence of Mr. Kenyatta because the idea of the
8 Chamber is that it will be much better to start tomorrow. There are some
9 changes, organisational matters, that have been consulted with the lead
10 counsel of Mr. Muthaura. As we are behind schedule, since the early
11 morning hours of today we are trying to find some hours in addition to
12 the schedule of course the availability of this courtroom because there
13 are other Judges sitting, the Registry could arrange that we have two
14 morning sessions in addition to the regular afternoon sessions. We have
15 discussed this matter with Mr. Khan because of the health issues of
16 Mr. Muthaura. We are going to proceed as of 9.30 till 11.00; 11.30 till
17 1.00; and thereafter our regular sessions in the afternoon. This is for
18 Monday. I'm sorry, didn't I mention this? It's my mistake. So by this
19 we hope that you are going to finish as scheduled in our initial
20 schedule. If Mr. Muthaura wouldn't feel very comfortable staying longer
21 in the courtroom, of course due to the health reasons - and this has
22 nothing to do with the first case when one of the suspects wanted to come
23 and go whenever it pleases him which is inappropriate and disrespectful
24 to the proceedings and to the Court - Mr. Muthaura, you are free whenever
25 you feel uncomfortable and not at ease to go back to your hotel.

1 If there are no any other matters, tomorrow we shall proceed at
2 2.30 as with the second witness of the Defence team of Mr. Kenyatta. We
3 adjourn the hearing until tomorrow.

4 Just Tarfusser is reminding me that on Wednesday we are going to
5 have instead of two sessions of one hour and a half, two sessions of two
6 hours just in case we need a little bit more time. But if we would
7 finish early of course and if there is no reason to be in the courtroom
8 we are not going to spend any more time in the courtroom. I wish you a
9 very good evening thanking every one of you, and with my, as always, very
10 special thanks to the interpreters, stenographers, court reporters, court
11 officers, security officers and everyone who was present today in the
12 hearing. Thank you. Have a nice evening. The hearing is adjourned.

13 COURT USHER: All rise.

14 The hearing ends at 7.08 p.m.

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