

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul and
4 Judge Cuno Tarfusser
5 Situation in the Republic of Kenya - ICC-01/09-02/11
6 In the case of the Prosecutor versus Francis Kirimi Muthaura,
7 Uhuru Muigai Kenyatta, and Mohammed Hussein Ali
8 Confirmation of Charges Hearing
9 Friday, 30 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. Welcome
15 everyone who is in the courtroom today. Court Officer -- and the public
16 gallery as well, of course.
17 Court Officer, would you kindly call the case, please.
18 COURT OFFICER: Good afternoon, Madam President, your Honours.
19 This is the Situation in the Republic of Kenya, in the case of the
20 Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and
21 Mohammed Hussein Ali, case reference ICC-01/09-02/11. Thank you,
22 Your Honours.
23 PRESIDING JUDGE TRENDAFILOVA: Just for the record, to ask
24 whether in the Prosecutor's team and the Defence teams there are some new
25 faces.

1 Ms. Adeboyejo.

2 MS. ADEBOYEJO: Yes, Madam President. Good afternoon,
3 Madam President, your Honours.

4 PRESIDING JUDGE TRENDAFILOVA: Good afternoon.

5 MS. ADEBOYEJO: We have a new face, our legal assistant is here
6 with us. His name is Hai Do Duc.

7 PRESIDING JUDGE TRENDAFILOVA: Thank you very much.

8 Mr. Khan, my question goes to you.

9 MR. KHAN: Madam President, your Honours, good afternoon. I'm
10 pleased to welcome once again to court Venkateswari Alagendra,
11 co-counsel in the case.

12 PRESIDING JUDGE TRENDAFILOVA: Mr. Kay.

13 MR. KAY: No new members, your Honour.

14 PRESIDING JUDGE TRENDAFILOVA: No.

15 And Mr. Evans or Kehoe?

16 MR. MONARI: Madam President, no new members, except that
17 Mr. Orina has rejoined us again.

18 PRESIDING JUDGE TRENDAFILOVA: Thank you. On behalf of --
19 Mr. Anyah.

20 MR. ANYAH: Good afternoon, Madam President, good afternoon
21 your Honours. No new members.

22 PRESIDING JUDGE TRENDAFILOVA: No new members. And with as far
23 as the Chamber is concerned, we have again in the courtroom

24 Ms. Eva Maria Witschnig and Mr. Triestino Mariniello. They're not new
25 faces, but still for the record they're present here today.

1 Today, we shall proceed with the questioning of the second
2 witness as called by Mr. Kay and his team, Mr. Lewis Nguyai. Is there
3 something that you would like tell us, Mr. Kay.

4 MR. KAY: No, your Honour, I was getting up to call him, if I
5 may.

6 PRESIDING JUDGE TRENDAFILOVA: Yes. Court Usher, would you be so
7 kind as to invite Mr. Nguyai into the courtroom.

8 (The witness entered court)

9 PRESIDING JUDGE TRENDAFILOVA: Good afternoon, Mr. Witness.
10 Please be seated. As you know, you're before Pre-Trial Chamber II of the
11 International Criminal Court, and you have been called to testify by the
12 Defence team of Mr. Kenyatta in the case of the Prosecutor against
13 Mr. Kenyatta. You're going to be questioned first by the Defence team of
14 Mr. Kenyatta, thereafter the -- the team of the Prosecutor, the
15 Legal Representative if authorised by the Chamber could also pose
16 questions to you, the other Defence teams if some of the facts that
17 you're going to present to the Chamber will appear to have an impact on
18 the interests of their clients. Of course, the Chamber can question you
19 as well.

20 You know from the familiarisation that -- that proceeded on
21 behalf of the Victims and Witnesses Unit that you have to make a solemn
22 undertaking as to the truthfulness of the evidence which you will provide
23 to the Chamber, and in this regard I would like just to remind you that
24 according to Article 71(8)(a) of the Rome Statute the Court has
25 jurisdiction over the offence of giving a false testimony, and also the

1 Court has jurisdiction for misconduct before the Court, something that I
2 am very much hopeful that the Court has to resort to. And finally, as
3 provided by Rule 74 of the Rules of Procedure and Evidence, you have the
4 right against self-incrimination which implies that you may object to
5 make any statement that might tend to incriminate you, and this is
6 provided in the said Rule 74(3)(a) of the Rules of Procedure and
7 Evidence. And also the Bench assures you that the evidence provided in
8 response to the questions asked in the courtroom will not be used either
9 directly or indirectly against you in any subsequent investigation or
10 prosecution by the Court.

11 Have you understood your rights and obligations?

12 THE WITNESS: Yes, Madam President, I have understood my rights.

13 PRESIDING JUDGE TRENDAFILOVA: Now I would ask you to please
14 stand up for the purposes of the swearing in, and I would ask the
15 Court Officer to assist you in this regard.

16 COURT OFFICER: Please repeat after me. I solemnly declare.

17 THE WITNESS: I solemnly declare.

18 COURT OFFICER: That I will speak the truth.

19 THE WITNESS: That I will speak the truth.

20 COURT OFFICER: The whole truth.

21 THE WITNESS: The whole truth.

22 COURT OFFICER: And nothing but the truth.

23 THE WITNESS: And nothing but the truth.

24 WITNESS: WITNESS KEN-D13-PPPP-0002

25 PRESIDING JUDGE TRENDAFILOVA: Thank you. Now would you answer

1 some questions with regard to your identification, to tell us your full
2 name, your date and place of birth, your nationality, your education,
3 marital status and current occupation.

4 THE WITNESS: Thank you, Madam President. My full names are
5 Lewis Nguyai. I was born on the 15th of April, 1964, that makes me 47
6 years old. I am presently the Member of Parliament for Kikuyu
7 constituency as well as the assistant minister in the office of the
8 deputy prime minister and local government. I have a Bachelor of Arts in
9 economics and mathematics and a Masters of Business Administration from
10 the -- the first one is from the University of Nairobi and the other one
11 is very recent, it's from the United States, it's a national university
12 in conjunction with the Columbia University in New York. I am married
13 and I have three children.

14 PRESIDING JUDGE TRENDABILOVA: Thank you very much, Mr. Nguyai.
15 Do I pronounce correctly your name?

16 THE WITNESS: Lewis Nguyai.

17 PRESIDING JUDGE TRENDABILOVA: Nguyai.

18 THE WITNESS: Yes. I think I left one thing. I was born in
19 Kiambu county.

20 PRESIDING JUDGE TRENDABILOVA: Yes, thank you very much. And
21 your national.

22 THE WITNESS: My nationality is Kenyan.

23 PRESIDING JUDGE TRENDABILOVA: Kenyan. Yes.

24 Mr. Kay, the floor is now over to you. Please proceed.

25 MR. KAY: I'm grateful to your Honours.

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1 Questioned by Mr. Kay:

2 Q. Mr. Nguyai, you are a Member of Parliament, and is it correct
3 that you stood in the 2007 elections for your present constituency on
4 behalf of the PNU party?

5 A. That is correct, Madam President.

6 Q. I'll just ask you a few questions about your political
7 background. Had you stood for parliament before that election?

8 A. Yes, I had, in 2002, on the same constituency.

9 Q. And which political party did you stand for in 2002?

10 A. In 2002, I ran on a KANU ticket.

11 Q. And then in 2007, did you run on a KANU ticket or PNU ticket?

12 A. I ran on a PNU ticket, but there was no other KANU candidate
13 within my constituency.

14 Q. Would it be correct to say that in those elections the PNU came
15 to various arrangements with its constituent parties so that some
16 candidates didn't run against each other from like-mind parties?

17 A. What happened in my constituency is we had to have two
18 nominations. The first one was a KANU nomination, and I won the KANU
19 nomination ticket. I had then a choice of running the KANU ticket but
20 there were very many people who were interested in running on the PNU
21 ticket, and since I wanted to make my chances better I opted to also go
22 for the PNU nomination, and I also won the PNU nomination. So I actually
23 had two certificates and I had to choose which one I would want to
24 present for the polling stations for -- for the polling, and I chose the
25 PNU ticket.

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1 Q. Thank you. Prior to that election in 2007, in the three or four
2 months before, how actively involved in the campaign were you?

3 A. I concentrated on my personal campaign. I had very little to do
4 with the national campaign.

5 Q. And in -- in your constituent circumstances was it a tough battle
6 for you to get elected or was it an easy seat to fight for?

7 A. Madam President, I had 63.000 votes compared to my competitor,
8 and we had a total of 22 candidates. The person who was next had 6.000
9 votes, and then the other one had 2.000 votes. So -- and the rest had
10 hundreds. So generally I had a landslide.

11 Q. Thank you. And just some general matters. By the time of that
12 2007 election, did you know Uhuru Kenyatta?

13 A. Yes, I did, Madam President.

14 Q. Did you know him well? Perhaps you can describe how well.

15 A. I knew Uhuru Kenyatta probably before he ever knew me, because,
16 one, he was the son of the first president, so I used to see him on
17 media. After that, I met him on a few occasions when I was in the
18 university, and then after that I only met him when I became interested
19 in politics, when I went for Harambee in Gatundu, and I realised that he
20 wanted to run for the presidency and I also had intentions to run for the
21 Kikuyu parliamentary seat, and I thought that it might be good to be in
22 the same party that he was in.

23 Q. And is that the 2002 elections?

24 A. That was the 2002 elections.

25 Q. If you could remember to leave a five-second gap because we have

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1 interpreters.

2 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Kay, for
3 reminding this.

4 MR. KAY:

5 Q. Turning now to the 2007 elections, were you involved in
6 campaigning with Mr. Kenyatta?

7 A. Madam President, because we both had the same political party
8 affiliations, I was involved in campaigning for the
9 Party of National Unity within my constituency and within the
10 neighbouring constituencies.

11 Q. I want to turn now to that period when the election results were
12 coming in. We know in this court that the result was announced on the
13 30th of -- of December. Were you involved in any of those events that
14 happened down at the KICC where the election results were recorded?

15 A. Yes, Madam President. Once my results were announced, I think it
16 was early on the 30th of December, I proceeded home, had a shower,
17 changed, and then I proceeded to the KICC where the presidential tallying
18 was taking place.

19 Q. Perhaps you could describe for the Court what the scene was on
20 that 30th of December down at the KICC.

21 A. Madam President, I would say that there was a lot of tension and
22 a lot of throwing to and from of words between the chairman of the
23 electoral commission of Kenyatta and the commissioners and the members of
24 both parties in anxiety to -- because of the anxiety of awaiting the
25 results.

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1 Q. Did you have any official function in relation to the electoral
2 results on behalf of PNU, or did you just go as an interested MP?

3 A. Madam President, I went there as an interested MP. I had no
4 official role.

5 Q. When the result of the election was announced, that Mwai Kibaki
6 had won the presidential election, were you in the KICC at that time?

7 A. Madam President, I must have been at the Intercontinental Hotel
8 when the elections were announced, and I remember that because my wife
9 called me from the house and told me that they're running to the streets
10 to celebrate the winning of President Kibaki's election. So I ran
11 towards -- I took my driver, and we went back towards the KICC.

12 Q. We know on the 30th of December that Mwai Kibaki was sworn in for
13 a second term as president of Kenya. Did you go to the swearing-in
14 ceremony?

15 A. Yes, Madam President. I went for the swearing-in ceremony for
16 the new president-elect Mwai Kibaki.

17 Q. We know that that was at State House. What time did you go to
18 State House?

19 A. I believe, Madam President, I must have got into State House at
20 around 5.00, 5.15, and the swearing in took place most likely probably an
21 hour after that.

22 Q. Can you describe the occasion, how formal it was?

23 A. Madam President, it was a very formal occasion in the sense that
24 it was conducted by the Chief Justice, and it had all a programme that
25 was followed, that was lead by the master of ceremony who was the head of

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1 the civil service, and who is still head of the civil service.

2 Q. When the ceremony had taken place, what time did you leave
3 State House?

4 A. I think right after -- Madam President, I think right after the
5 swearing ceremony had taken place. Besides congratulating the president,
6 which must have taken another half hour to probably 45 minutes, right
7 after that I left State House.

8 Q. Are you able to put a time on it?

9 A. It must have been 7.00 to 7.15. It was starting to get dark.

10 Q. You've told us about the Lord Chief Justice there. The other
11 attendees at the swearing-in ceremony were whom?

12 A. Madam President, I think the majority were the -- the elected
13 Members of Parliament, members of the civil service, senior members of
14 the civil service, the electoral commission of Kenya chairman was there,
15 and even the commanders of the Defence forces then called the armed
16 forces of Kenya.

17 Q. Are you able to put a number?

18 A. Madam President, I'm not very good at estimation, but I would
19 imagine there were at least 300 to 400 people over there.

20 Q. I have to ask you this question: Did you see any of the members
21 of the Mungiki at State House on that particular day?

22 A. Madam President, I did not see any member of the Mungiki, and in
23 that I say of those who I was aware were members of Mungiki at that
24 particular point in time.

25 Q. To get into State House on that particular day, were -- were

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1 there security arrangements?

2 A. Yes, Madam President. We had come in through I believe is what
3 is called gate C. Once we got to a parking in front of gate C, we then
4 had to give our identity cards, which then would be taken by the
5 security, and we'd have to wait for at least 15 to 20 minutes in terms of
6 verification, and then we would then wait until the identity cards were
7 returned. And then the gate was opened for one car each, and then we
8 would be looked at the faces and the identity cards would be looked at.
9 Then they would pick the mobile phones, and then we'd be able to drive to
10 a designated car park.

11 Q. Thank you. Let's move on from there to events that then took
12 place after the 30th of December.

13 Can you recollect when you first heard of serious violence,
14 clashes, if you like, happening after the election?

15 A. I started receiving phone calls towards most likely midnight of
16 30th December from people who -- some I did not know, but they were
17 claiming they were in the Rift Valley, and they were saying that they are
18 being attacked, and by morning there was now information in the media
19 that they had skirmishes and violent attacks. And I can't remember
20 exactly at what time we got very devastating and disheartening news that
21 a church somewhere in Eldoret in a place called Kiambaa had been burnt.

22 Q. Did you see images of that church in the media?

23 A. Yes, Madam President. I saw images of first and foremost people
24 running away and houses burning. In particular, I can't remember whether
25 I saw the image of the church being burnt, but I can remember later we

1 saw images of the burnt church.

2 Q. We know from evidence in the case this was the
3 1st of January, 2008. Where were you at that time?

4 A. Madam President, I was at home, I live in a place called
5 Lower Kabete which is on the west side of Nairobi, but it is only
6 2 kilometres to the border of my constituency. My constituency borders
7 Kikuyu, so I was -- normally I was at home because, one, 1st of January,
8 was a holiday, a New Year's holiday, and so most of the images I saw I
9 saw from the television of my house.

10 Q. At this time did you go to your constituency to see what was
11 happening there?

12 A. At -- Madam President, at that time I was also receiving a lot of
13 calls from people within my constituency, particularly those who claimed
14 to be relatives of the people who had been burnt in Kiambaa church. In
15 my constituency, there is a village called Kiambaa, and the people who
16 were in Kiambaa in Eldoret were people who relocated from Kiambaa in
17 Kikuyu to go to Kiambaa in Eldoret. Of those people included one
18 Presbyterian church priest who called me and asked me to see what I could
19 do to ensure that people could be brought to safety.

20 Q. Sir, were you able to take any steps in relation to -- to that
21 request?

22 A. Yes, Madam President. The first thing I did was to try and
23 locate the provisional police officer in charge of Nairobi who I was
24 familiar with to try and get in touch with the provisional police officer
25 of the Rift Valley so that they could assist the people who were being

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1 chased, and houses were being burnt.

2 Q. How did your constituents react to -- to the news that was
3 happening elsewhere, in Eldoret and Kiambaa?

4 A. Madam President, the initial reaction was shock, and it was utter
5 shock. Thereafter, we started receiving people who were running away
6 either in buses or lorries, and they were just looking for an open space
7 where they would camp. So now it turned from shock into a humanitarian
8 aid situation.

9 In Kikuyu, they came to an open ground which was known as
10 Kanjera. The first thing that happened was the district officer and
11 myself decided to set up what we call a settlement committee. We
12 realised that they were coming in very large numbers, and what -- since
13 we couldn't get ahold of aid in terms of tents, we decided to write
14 letters to residents in the neighbourhood and make requests for people to
15 house them, and we adopted a policy immediately. We used to call it
16 "Adopt a family." And we are happy that in Kikuyu constituency there
17 were no IDP camps. Most of the people who were displaced that ran at one
18 point to 12.000 people were all housed by people who we had requested to
19 take in on the humanitarian level to their houses.

20 Q. Thank you. What about food, clothes, those sort of necessities
21 for life? What sort of provision were you able to make for those things?

22 A. Madam President, the first initial provision was to request the
23 local residents to give their own donations, and I can remember we have
24 about 25 major shopping centres within my constituency, and I had to get
25 onto a pick-up truck and use a megaphone and move from one shopping

1 station to the other asking for donations. And we then set up at the
2 Presbyterian church of Kikuyu a relief centre, and that relief centre was
3 all where the donations were brought, and those donations would come in
4 form of food, in form of clothing. But what was also very good was that
5 we had a lot of volunteers. At the end of the day, by the time the
6 government machinery was able to keep -- kick in, and Red Cross, we had
7 sufficient food and clothing for the people who were in Kikuyu
8 constituency.

9 Q. Just so we have an idea of the time-line, when would you say that
10 the government was able to start providing help and the Red Cross able to
11 start providing help?

12 A. Madam President, it must have taken probably about two weeks. So
13 the first two weeks we concentrated on humanitarian help. We were able
14 to set up a table where everybody who came in was registered, and we had
15 tables and allocations of where they would go as families to be taken
16 care of by the adopting family.

17 Q. This was your first time you'd been elected as a MP. Were you
18 involved in any of the party political negotiations going on at this time
19 as between the leadership of PNU and ODM, or making public statements on
20 behalf of the PNU party in relation to the elections?

21 A. No, Madam President. I was a newly elected Member of Parliament.
22 We had all crisis within our constituencies. I felt that the crisis
23 within my constituency was of paramount importance, and I think before
24 the swearing in I only foresee probably us having two or three informal
25 meetings -- I think two informal meetings where we came in as newly

1 elected Members of Parliament to deliberate on the goings-on, and I would
2 say specifically Members of Parliament who were PNU affiliated.

3 Q. And by the "goings-on," do you mean the issues between ODM, the
4 legitimacy of the election, whether they were going to form a partnership
5 with PNU or challenge the elections? Those sorts of issues, is that what
6 you mean?

7 A. Yes, Madam President. The ODM had disputed the elections, and
8 when we went for the first meeting, it was the coalition of the PNU, and
9 it was to track or find a way in which we would be able to build dialogue
10 so that we would be able to come to a quick settlement. There was also
11 the discussion of how we would be able to take care of the people who
12 were being displaced in the various areas of Kenya, and particularly from
13 the Rift Valley.

14 Q. These meetings that you went to, were they meetings at which you
15 and your fellow politicians were plotting revenge and retaliation against
16 the people who had forced those with which you were concerned out of
17 their area?

18 A. No, Madam President, they were not.

19 Q. Perhaps you can give us an idea of the ethnic composition of your
20 constituency, how many Kikuyus, how many Luhya.

21 A. Madam President, I would imagine, and I don't have the exact
22 figures, but I would say 90 per cent of my constituency are Kikuyus, but
23 we also have a large number of other communities. My constituency has
24 265.000 people, so to my imagination at least 25- to 30.000 are of
25 different ethnic communities.

1 Neighbouring Nairobi also makes it somehow cosmopolitan, because
2 you would refer to it is an a dormitory constituency where people live at
3 night and go to work into Nairobi during the day.

4 Of those who I've been able interact with, we have members of the
5 Luo community, we have members of the Luhya community, we have members of
6 the Kamba community. We have members of the Kisii community. We even
7 have members of the Somali community. And we have also distributions of
8 also the smaller ethnic groupings.

9 Q. Given what was happening, did you experience any conflicts within
10 your constituency in relation to what had happened in Eldoret and
11 elsewhere?

12 A. Yes, Madam President. Towards the end of January, we first
13 started hearing that the violence that had erupted in Rift Valley was
14 starting to spill over towards Naivasha and Nakuru, and then towards the
15 very near end we heard that violence had erupted in Naivasha and Nakuru.
16 I remember receiving a call from the office of the president, minister of
17 state security and requesting me to very quickly go to Wilson Airport and
18 accompany him to Naivasha to see if we can be able to handle and -- the
19 skirmishes that were happening in Naivasha, of which I obliged.

20 Q. Can you recollect the -- the date of that?

21 A. Madam President, it must have been the 27th -- 28th, I believe,
22 27th or 28th of January. What I remember is we were flown by helicopter
23 to Naivasha where we landed in a place called Karagita, and that's where
24 we first found the first-hand violence that had taken place.

25 I can remember Karagita town was one side of the road, and the

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1 flowers and the lake was on the other side of the road, and when we got
2 there, we had a large group of people on the Karagita side with crude
3 weapons, and a large group of people behind a fence behind the flower
4 farms. And that was the first place where we had long public gathering
5 to try and pacify and control and manage the situation in Naivasha.

6 Q. This day that you went, was that the day when the serious
7 conflict was happening in Naivasha?

8 A. Madam President, it must have been a day or two after the serious
9 conflict had started, and the purpose of going there with a minister for
10 internal security, Honourable George Saitoti, and I can rather we also
11 met the Member of Parliament for that area waiting for us at Karagita,
12 was to make sure that we could try and contain the violence and pacify
13 the populous of Naivasha so that the violence doesn't spill over to
14 Naivasha and then become unmanageable.

15 Q. Just looking back at that first scene you gave us of people with
16 crude weapons on one side and then people behind the fence on the other,
17 by "crude weapons," could you describe what they were?

18 A. Many were long sticks, and others had stones. I -- at Karagita
19 itself I didn't see people with machetes, but as we proceeded on, we
20 could see different small groupings with even machetes. But what we did
21 first was to talk to the people in Karagita. We had now been able to
22 assemble a huge police presence. So the police was actually standing
23 right across -- along the road shielding these ones from getting to the
24 people who were on the farm.

25 So once we finished pacifying the people who were seeming to be

1 the ones attacking, we then went to the people who were in the farms, who
2 pleaded with us to ensure that they had escorts to go to the police
3 station where they felt more secure.

4 Q. If you could describe the ethnic groups, then, on which side of
5 the road so that the Court knows that.

6 A. I had to speak to the ethnic group, and on the side of the road
7 and the Member of Parliament who was there also had to speak to that
8 group in Kikuyu. So the majority were Kikuyus. On the other side we had
9 to speak in Swahili, so the majority were a mixture of non-Kikuyus.

10 Q. That scene you saw there by the road, people with the crude
11 weapons and some with *pangas*, were they Mungiki people? Are you able to
12 say who the people were?

13 A. I would not tell whether they were Mungiki or not, but they
14 didn't seem to have a leader per se, but I would not say whether they
15 were Mungiki or not.

16 Q. And is there any reason why you can't tell whether they were
17 Mungiki or not?

18 A. Madam President, Mungiki generally are more morphus in nature. I
19 don't think they have any identificational symbol where you can say that
20 this is a Mungiki and this is a non-Mungiki, but some of them wear
21 dreadlocks. I didn't see people particularly with dreadlocks. Some of
22 them are reputed to use the snuff. I didn't see people carrying snuff.
23 But as I said, I wouldn't say for sure the nature of the people. But to
24 my imagination is that the people who we were talking to were locals, and
25 this I say was because they were complaining about harassment from --

1 particularly they were complaining from the commandant of the prisons of
2 Naivasha, who was saying -- they were saying was attacking them during
3 the night, and he was going -- identifying the Kikuyus, and he -- he
4 would use the prison guards to attack them. So for that reason, I would
5 imagine that they were people who were familiar with the area and knew
6 the area and were more local than from outside.

7 Q. So having met that scene on -- at that time, what else did you do
8 in Naivasha?

9 A. Madam President, we went to three other scenes. First was we
10 went to the police station where there were internally displaced people
11 who were predominantly non-Kikuyus, and we listened to their plight.
12 They wanted either to be transported back to their place of origin.
13 Others wanted to be provided with security and sanitation, which included
14 providing more security at the police station.

15 After we had agreed on a plan of action together with the
16 district commissioner on how they would be provided with their needs, we
17 went to the house where the fire that killed a number of people was
18 reported. And it was a traumatising experience in the sense that you
19 could still smell the burning of flesh. And after that we then went to
20 the Nairobi-Nakuru highway where there was another group of people who
21 were blocking the Nairobi-Nakuru highway. And when we tried to talk to
22 them, after some time we -- when we talked to them, as we were leaving we
23 could see that they were reassembling. So the minister of internal
24 security gave instructions to the police to disperse them as soon as we
25 left, and I can remember as I was leaving I could see the police starting

1 to throw tear gas and -- and moving their trucks to try and disperse and
2 open up the highway. Thereafter, we flew back to Nairobi.

3 Q. Was that the first occasion that you had to deal with a hostile
4 crowd during this period of clashes?

5 A. Yes, it was.

6 Q. Did you take any other steps to try and pacify hostile crowds?

7 A. Yes, Madam President. As Naivasha was erupting, there seemed to
8 be a domino effect that was coming towards Nairobi, and so on, I believe,
9 the 30th of January, at around midnight I received a call by a gentleman
10 who wanted me to go for a meeting that time at night. I did not know
11 him. He just identified his name. I had never talked to him before.
12 And then at around 3.00, I was told that there was a car which was going
13 around the Kiambaa area, Magoga (* phon) area, calling people to rise up
14 the next day and take revenge for the deaths that had occurred at
15 Kiambaa. I then called district officer for the area, and we agreed that
16 we meet as early as possible. But we also agreed to call a number of
17 elders who were from the area to see if we could contain and manage the
18 situation.

19 Q. Sir, what steps did you take next?

20 A. In the morning, pretty early in the morning, at around 9.00 we
21 were at the district officer's office. He had his security senior
22 personnel, which included the officer commanding station Kikuyu and the
23 head of the administration station in Kikuyu, and what was happening at
24 that time is we were waiting for -- we are trying to work out a plan on
25 how we would get -- because of the numbers of the people we thought would

1 be involved, how we would get sufficient security forces.

2 But what happened was at around 10.30, 11.00, we were told that
3 there was a huge group of youth in an area called Kinor (* phon). Now, I
4 think, Madam President, if I can just explain a little. Kikuyu
5 constituency has the Nairobi-Nakuru highway. If you go up the
6 Nairobi-Nakuru highway, the first area that is next to Nairobi is Kinor,
7 and we were told that there is a huge group of youth who are there and
8 who are blocking the highway. So I decide to go there, and I was
9 accompanied by the security forces. When I got there I found a group.
10 Again I cannot estimate the number, but I would say there were about 400.
11 And they were really rowdy, and they were saying that, "We cannot allow
12 our people to be killed, and we do not take revenge." So I got onto the
13 top of my car, and I tried to pacify them. We had a talk with them. At
14 one point in time they got rowdy sufficiently for the police to shoot in
15 the air. When the shooting came up I think they realised that this was
16 serious business so they listen. And I requested them deeply to go back
17 home. This is an issue that cannot be resolved in any other way but by
18 discussion and by people being able to sit down.

19 Then at that particular point in time I was told that there was
20 another group in a place called Gitaru that had assembled which is now
21 probably 4 kilometres from Kinor, and by that time there was a lot of
22 cameras, and press had come to start monitoring. And one of my fellow
23 Members of Parliament by the name of Peter Kenneth called me and told me
24 that he's heading over there because he had heard from the media, and we
25 met there where we started pacifying the crowd and using the same

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1 exercise to contain and talk to them and convince them that this was not
2 the right thing to happen.

3 And when that happened, we were told that there was another one
4 that is erupting in a place called Zambezi. So Peter Kenneth proceeded
5 to go to Zambezi and I was left now talking to these ones.

6 Eventually we were able to agree and they dispersed. Then I
7 followed him to Zambezi. As soon as I got to Zambezi, he left and went
8 to Nairobi and I was left with the district commissioner, the head of
9 police. And that was a big crowd, and we had probably spent about half
10 an hour when they agreed to disperse. Immediately they agreed to
11 dispersed we were told there's another group in Kikuyu. By that time I
12 was told that Uhuru had left from Nairobi to go towards Kikuyu. So we
13 also dashed towards Kikuyu, which is a little off the highway, but it's
14 from Devi (* phon), you go more as if you're going to Nairobi. And we
15 arrived at the scene in Kikuyu town approximately at the same time,
16 because when I could see his car ahead of me, Uhuru's car, I arrived at
17 the same time and there was a huge crowd over there. Many of them had at
18 that point gotten the local Kikuyu residents scared, and so what the
19 local nonresident Kikuyus were doing is they were trying to find their
20 ways through private and public means into the police station. And so
21 they were assembling a little off the police station to block any of them
22 getting to the police station so that they could then attack them. So
23 that was the scene that we met.

24 Q. And just for the record, you say Uhuru. Who do you mean?

25 A. Uhuru Kenyatta, who is a suspect in this particular case.

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1 Q. I'd like to show you a short clip of film. EVD-PT-D13-00123.

2 (Video-clip played)

3 "Kenneth was earlier in the Tigoni Limuru area. And later

4 Uhuru Kenyatta also made his presence felt. Interjecting his pleas with

5 tough talking, all" --

6 MR. KAY:

7 Q. Shall we replay it, as it's for your benefit.

8 A. Yes, Madam President. I didn't see anything at all.

9 Q. Sorry. I didn't realise your monitor wasn't on. Thank you very
10 much. Could we replay it.

11 (Video-clip played)

12 "Katanga MP Peter Kenneth was earlier in the Tigoni Limuru area.

13 And later Uhuru Kenyatta also made his presence felt. Interjecting his

14 pleas with tough talking, all the while his frustration evident. But at

15 the end of the day making his point clear that this has to stop, the rule

16 of law must be followed."

17 MR. KAY:

18 Q. Thank you. This Court saw an uncut version of that film

19 yesterday or the day before of about 15 minutes and they've got the

20 transcript, so the Judges know what Mr. Kenyatta said, but you've put the

21 context there as to what was happening. And just so it's clear, people

22 you described as being the hostile group were trying to get at those of

23 another ethnic composition who were seeking safety; is that right?

24 A. Yes, Madam President, that is correct.

25 Q. So what was Uhuru Kenyatta doing there?

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1 A. Madam President, Uhuru Kenyatta was trying to the best of his
2 ability to pacify these people with a lot of frustration and to make them
3 not take any action against the people who nonethnic Kikuyus within the
4 area.

5 Q. We saw in our long clip that we played the other day that you
6 also addressed the crowd at -- at the end. Did his message to them that
7 day succeed?

8 A. Yes, Madam President. When I addressed the crowd, I was asking
9 them, "Are you going to keep peace? Are you going to let the government
10 do its work?" And they were claiming that they had agreed to do that.

11 Q. The case that we're facing in this courtroom is that he and other
12 PNU politicians were in fact planning or causing attacks on -- in
13 relation to non-Kikuyu people.

14 Were you aware of any such plans going around your political
15 party that that was what was happening?

16 A. No, Madam President, I was not.

17 Q. After the incident involving Uhuru Kenyatta, what did you do --
18 do next?

19 A. Madam President, after the incident involving the crowd and after
20 we had pacified them, Uhuru requested me to go around the constituency
21 making sure that every area was peaceful. At that particular point in
22 time, the area of Zambezi there was still tension. And Zambezi borders a
23 place called KARI, which is Kenya Agricultural Research Institute, which
24 is a huge institution which has a lot of non-Kikuyus. So he went back to
25 Nairobi and I went to Zambezi and Nderi and KARI. And once again,

1 Madam President, I met the same kind of situation like the one you saw in
2 this particular video.

3 Q. I'd like you to describe that scene in a bit more detail in KARI.

4 A. The scene in KARI was -- there were some people, I can't
5 remember, but there must have been three or four who had smeared
6 themselves with blood. And they had smeared themselves with blood, and
7 they were claiming -- one of them was claiming that the non-Kikuyus who
8 live outside Kenya Agricultural Research Institute had cut the breast of
9 his sister. So it was a scene that was intensely emotional. And I would
10 believe that the ones who had smearing the blood were trying to intensify
11 the emotions so that they could get the sympathy of the rest so that they
12 could carry out the attacks on KARI. What happened was we were with the
13 head of the police for Kikuyu constituency at that time, and he told me
14 and I believe it was true that these people had smeared themselves not
15 with human blood but with animal blood, and you could see it was more
16 smearing yourself than really blood that you were trying to save somebody
17 from being cut a breast from.

18 When we tried to pacify them, we actually got to have a lot of
19 difficult exchanges to the extent that by the time I was leaving I gave
20 the police a request, because I didn't have the capacity to give them
21 instructions, to ensure that they increased their presence there and they
22 protected the people who were non-Kikuyus over there.

23 Q. After these events did you, with another group of MPs, take
24 further steps to try and calm the situation?

25 A. I remember after those events, particularly of what happened in

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1 Kikuyu, we started communicating on telephone to the various MPs. Now we
2 felt that this was -- there was a need for us to discuss across board. I
3 remember making a phone call to a gentleman by the name of
4 Richard Onyonka, and he then said that he would get another Member of
5 Parliament called Eugene Wamalwa. And then I remember at around the same
6 time I received a phone call from a gentleman by the name of
7 Jeremiah Kioni, who is also a Member of Parliament, and we agreed that we
8 should meet urgently the next morning in Parliament building to work out
9 a strategy as leaders on how we were going to contain the violence from
10 spilling over, particularly to Nairobi, and also from spreading from
11 Naivasha to the Kikuyu area. And we then agreed to meet the next
12 morning, and we had a meeting which by that time had a group of, I would
13 imagine, 12 or 13 MPs from across the divide. Then we agreed that we
14 would try and get, each of us, the senior-most leadership from each side
15 of the parties to try and make peace rallies across Kikuyu and Limuru,
16 because that's where the violence seems to have started heading towards,
17 and we made an itinerary, and we agreed that our side of the delegation
18 was going to be headed by Uhuru Kenyatta. And we also got the other side
19 of the delegation having Fred Gumo, and we then said that we would not
20 wait for another day. We would try and make sure that we started going
21 round as quickly as possible.

22 I'm -- I believe that by probably 11.00, 12.00, we were ready to
23 start moving, and the first place we went to was Wangige.

24 Q. This case concerns Uhuru Kenyatta, so I'll ask you about him now.

25 Why was he chosen as your leader for this delegation?

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1 A. One, Uhuru Kenyatta, I think after President Kibaki, was
2 perceived to be the most popular member of the Mount Kenya region, and
3 also the most senior-most having been a presidential candidate. And
4 secondly, I would say without a doubt many of us perceived him to be an
5 excellent peacemaker, and he had also done a very good job the previous
6 day in Kikuyu.

7 Q. Fred Gumo is a member of the ODM; is that right?

8 A. Yes. Fred Gumo and -- was a member -- is a member of the ODM.
9 Richard Onyonka was a member of the UDM which is an affiliate of ODM. I
10 can't remember all the members there were, but in the press you could see
11 that was good mixture between what you'd call the moderates, PNU, and
12 ODMs who are trying now to take a middle ground compared to the
13 hard-standing PNU and ODM'ers.

14 Q. Was there any difficulty getting Uhuru Kenyatta involved in this
15 peace talk?

16 A. Uhuru was regarded a moderate, so in fact, by the time we were
17 finishing the meeting, he gave us the indication in terms of phone call
18 that he would be with us in Wangige, and we will meet in Wangige, and we
19 will go on the peace tour with him accordingly.

20 Q. Let us just look at some photographs now. EVD-PT-D13-00532,
21 public.

22 Is your screen on?

23 A. My screen, Madam President, is saying "Courtroom message,
24 English." There's nothing else. There's nothing else. There is no
25 picture on it.

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1 Q. We can see a photograph here. That's you in the middle, isn't
2 it (* overlapping speakers)?

3 A. Yes. Yes, Madam President, I'm not heightened down like the
4 rest.

5 Q. And Mr. Kenyatta on the left?

6 A. Yes, Madam President.

7 Q. And Fred Gumo on the right, is that?

8 A. Yes, it is.

9 Q. Do you recognise at all where this photograph was taken?

10 A. Madam President, this photograph was actually taken by my
11 personal assistant, and this was in the Wangige area.

12 Q. Is there any more photographs in this clip of the exhibit? If
13 so, the next page.

14 Here we see, obviously, Mr. Kenyatta, yourself, Fred Gumo. Do
15 you recognise this scene?

16 A. Yes, Madam President. That is still within the Wangige area, and
17 I can also see Honourable Elias Embau and Honourable Soita Shitanda.

18 Q. Perhaps you could point out where they are in the photograph.

19 A. Soita Shitanda is right behind me with a white shirt between Gumo
20 and Uhuru Kenyatta, and Elias Embau is to the right of Honourable Fred
21 Gumo.

22 Q. And what is happening here in this scene in Wangige?

23 A. What we -- Madam President, what we decided to do was each one of
24 us was going to try to reach across board, and I can remember
25 Honourable Fred Gumo of ODM saying that he had children who had married

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1 across the Kikuyu, and if the Kikuyus would be attacking, they would be
2 attacking their own children. I can also remember him saying that it is
3 time that we stopped speaking different languages and all learned Swahili
4 so that this issue of tribalism or ethnicism would end.

5 I can also recall that each and every of the Members of
6 Parliament who spoke, spoke on the benefits of peace and the danger of
7 the direction that the rest of the country was taking.

8 Q. After Wangige, where did you go?

9 A. Madam President, the next stop was towards Tigoni, and in Tigoni
10 we wanted to visit the Tigoni police station where there were internally
11 displaced people from the farm lands around the Limuru area who were
12 non-Kikuyus, and we wanted to first see them, then, Madam President, move
13 on to Kirathimo, where there were also internally displaced people coming
14 from the Rift Valley.

15 Q. If we could look at some now photographs at EVD-PT-D13-00131.

16 COURT OFFICER: Counsel, could you please confirm the
17 confidentiality of this document.

18 MR. KAY: Public. Thank you. I'm sorry, I didn't include this
19 in my list which was remiss of me, but ...

20 Q. Do you recognise these photographs, Mr. Nguyai?

21 A. Nguyai.

22 Q. Nguyai. I'm not the only one at fault.

23 A. Yes, Madam President. This is a group of Members of Parliament
24 from various parties across board arriving at the Tigoni police station
25 in Limuru constituency.

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1 Q. On the right-hand side of that photograph we see a gentleman in a
2 dark suit in the top photograph. Do you recognise who that is?

3 A. Yes, Madam President. That is Honourable Johnson Muthama of ODM
4 Kenya.

5 Q. So what happened then in Tigoni in?

6 A. Tigoni, there was a large group of internally displaced people
7 within the Tigoni police station who had sought refuge within the police
8 station. Obviously, their composition was non-Kikuyu. And we then had a
9 meeting and a talk with them, listening to their plight, which included
10 lack of shelter, lack of sanitation, concerns about security and food,
11 and also included their desire to be relocated out of the police station
12 to their original home areas. And once we listened to their plight, we
13 also started speaking to them as leaders, and the first request that we
14 tried to request them, because we did not want the country to go into
15 disarray, is for them to accept, to be given sufficient security,
16 Madam President, so that they could go back to their farmlands where they
17 were working on, and specifically Uhuru told the DC to ensure that they
18 have sufficient security, that they could still live within the Limuru
19 area without fear.

20 Q. After Tigoni, where did you next go?

21 A. Madam President, our intention was to go to Kirathimo, but before
22 this meeting ended we were then told that chaos had once again erupted in
23 the Nderi, Zambezi area. So we felt we had to cut our trip short and
24 rush there to try and contain the violence. So we got into our
25 respective cars. Mine, because I was a Member of Parliament, was right

1 at the front. Uhuru's was right behind me and the other Members of
2 Parliament were behind us. And we drove to Zambezi. By the time we got
3 to Zambezi, the crowd with crude weapons and burning torches was so large
4 that I can remember looking behind and I could see the cars turning back
5 and trying to veer off and run away from the chaos. So we found
6 ourselves in the middle of a crowd, my car and Uhuru's car alone.

7 Once again, just like the other situations, he got onto the top
8 of the bonnet of his car and tried to, to his very best with a lot of
9 frustration, to talk to the crowd. Specifically, he was saying that
10 these people who you want to chase away are your income. They rent your
11 houses. They buy food from you. And the crowd was very hostile. In
12 fact, one of the boys, and I can remember him because I came to know him
13 later, who had smeared himself with blood said that Lewis, which is
14 myself, is a dog because we stopped the previous day's skirmishes.

15 And since it was very hostile, once he had been able to pacify
16 them, he gave them a warning that the police is not going to let them try
17 and do anything. And we discussed and he told me this is a police case
18 but you need to keep on informing me and making sure that this place is
19 safe. And I told him that I would do that and I would keep on monitoring
20 the situation, and we left.

21 Q. And did you take any steps then after Nderi? What happened next?

22 A. Madam President, we -- if you remember previously, we had
23 initiated the elders' committees which now the message had spread around,
24 and we agreed to meet with the elders in Kikuyu town, in Kikuyu township
25 school, and what we did was to bring together elders from each

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1 sub-locations. I have 25 sub-locations within my constituency and each
2 formed a committee in which they would then go and discuss with the youth
3 on how to contain violence and convince them not to be involved in
4 violence.

5 Q. The case in this court is that Uhuru Kenyatta was planning
6 violence, that he was organising it, providing money for it, providing
7 uniforms, weapons, people. What's your view of that?

8 A. Madam President, I would say there is nothing that could be
9 further from the truth than that.

10 Q. I'm going to move to another area of your evidence now, and that
11 concerns meetings. Did you take part in any fundraising meetings in
12 relation to what had happened in the post-election violence?

13 A. Yes, Mr. President. I took part in a fundraising at the Galileo
14 club in Nairobi, and I took part in terms of the initial organisations in
15 the fundraising that was eventually at KICC, and I also contributed from
16 my salary, together with other MPs, money which was going to be deducted
17 from our salaries as humanitarian towards IDPs.

18 Q. Can I ask you about Galileo, first of all. Can you recollect any
19 date which you attended the Galileo for a meeting concerning fundraising?

20 A. No, Madam President. I can't recall the date, but it must have
21 been sometime in I believe either late January or early February.

22 Q. The organisation of such a meeting, can you describe who
23 organised it, what its objectives were?

24 A. Yes, Madam President, your Honours. I was called by the then
25 Member of Parliament for Juja, Honourable Mr. George Thuo, who knew that

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1 I had some association with the Galileo club to organise a meeting to
2 fund raise for the internally displaced people so that we could be able
3 to supplement as much as possible the effort of the government and also
4 get the whole community being able and the whole fraternity within
5 Nairobi which has a high income to be able to provide funds to ease the
6 suffering of these people.

7 So he asked me to call Galileo's, the propriety of Galileo's, who
8 is a gentleman I knew, and when I called him, somehow he was already
9 aware that we wanted to book the place, and he told me that he had
10 reserved the space for the evening. It was an evening function, which
11 was due to start early evening, that would be 6.30, 7.00 and end probably
12 by 8.00, 9.00. And after that, I remember that when I was calling him,
13 he had a specific date. The date I cannot remember. And on the material
14 day, I arrived at Galileo at around 7.30.

15 Q. How many people attended this meeting?

16 A. Madam President, I would say between 150 to 180.

17 Q. And what sort of people?

18 A. Madam President, this would be the young, and I said -- by saying
19 "young," 30 to 40, businessmen, upcoming middle class businessman of
20 Nairobi together with the younger fraternity of the Members of Parliament
21 from the PNU coalition.

22 Q. Was it just PNU politician who attended, or did other political
23 groups also join?

24 A. Madam President, I'm trying to remember if I saw nana (* phon)
25 PNU politicians, and I think we were all PNU politicians.

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1 Q. Did Uhuru Kenyatta attend this meeting?

2 A. Yes, Madam President. Uhuru Kenyatta came very late for this
3 particular meeting, and by "late," would I say he came there around
4 10.00.

5 Q. And did he address the meeting?

6 A. Yes, he did, but for a very short time. Specifically, I remember
7 him again requesting for peace and assuring the people that the
8 government was open to dialogue and that the solution was for people to
9 sit down together, discuss together, and have a common solution together.

10 Q. Was there talk about retaliatory violence and revenge against
11 these people who started the attacking?

12 A. No, Madam President. There was no talk of violence or
13 retaliation, but there was, Madam President, a vivid description of the
14 pain and suffering that was taking place, and that was more to bring out
15 an appeal for people to contribute as much as possible.

16 Q. Was money raised at this meeting?

17 A. Yes, Madam President, money was raised, but I cannot recall how
18 much because I don't think it was announced. It must have been
19 circulated later as to how much was announced, and I can only recall how
20 much I contributed myself. I cannot even recall how much the rest
21 contributed.

22 Q. Were -- did some of the people who attend provide anything other
23 than money? Were there donations of other forms of support?

24 A. Yes, Madam President. I remember one of my personal friends was
25 also a constituent who has a large billboard company, and those

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1 billboards are made of canvas, pledged to donate the canvas so that they
2 could be transformed into tents for the internally displaced people, and
3 he had hundreds of them, and he did live up to his promise, because the
4 next day we were at his premises going to pick them up.

5 Q. Reports such as the KNCHR report allege through statements inside
6 that report that at meetings such as this you were talking about planning
7 violence and retaliating and getting together groups to attack the
8 others. Is that true?

9 A. Madam President, I have read the KNHCR report, and you have seen
10 what was happening in Kikuyu. On clause 491 of the KNHCR report they
11 only indicated that the local MP, without a mention of name, tried to
12 pacify, and they have deliberately left out the tremendous amount of work
13 that Uhuru Kenyatta did and led right across there.

14 MR. KAY: Your Honour, I note the time.

15 PRESIDING JUDGE TRENDABILOVA: Mr. Kay, let us make the break and
16 we shall resume our session at 4.30.

17 COURT USHER: All rise.

18 PRESIDING JUDGE TRENDABILOVA: Mr. Nguyai, you will be taken back
19 to the place where you were waiting, and we shall resume the questioning.

20 (The witness stands down)

21 Recess taken at 4.00 p.m.

22 On resuming at 4.31 p.m.

23 (Open session)

24 COURT USHER: All rise.

25 PRESIDING JUDGE TRENDABILOVA: Please be seated. We resume our

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1 hearing.

2 Court Usher, would you kindly invite Mr. Nguyai to the courtroom.

3 Making mistakes, I'm sorry. It happens. Not only in the legal field,

4 but also pronunciation-wise.

5 (The witness takes the stand)

6 PRESIDING JUDGE TRENDAFILOVA: Mr. Nguyai, just to remind you
7 that you're still under oath.

8 THE WITNESS: Yes, Madam President.

9 PRESIDING JUDGE TRENDAFILOVA: And we shall proceed with Lead
10 Counsel Kay, thereafter the Prosecutor's team will pose some questions to
11 you.

12 Yes. Please, Mr. Kay.

13 MR. KAY: Yes, thank you, Madam President.

14 Q. Did you go to any other fundraising meetings that you can
15 recollect?

16 A. No, Madam President, I did not go to any other fundraising.

17 Q. Did you at this period of time, January/February 2008, hold your
18 own meetings at the Landmark or Jacaranda Hotel?

19 A. Yes. Madam President. The Jacaranda Hotel is in the Westlands
20 area. It was formerly the Landmark Hotel. And it is somehow a
21 convergence of roads that come from Kikuyu constituency. So it's a
22 convenient place for me to hold meetings.

23 Q. I'm now going to ask you certain individuals. I don't want you
24 to mention their names. Do you understand? And for the purposes of
25 reference, the first of those individuals will be Mr. X, and the second

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1 one you call 12. Another individual that I ask you about later on, you
2 call him 11, but I'll remind you about that. Do you understand?

3 A. Yes, Madam President.

4 Q. In January 2008, did you meet or come across any members of the
5 Mungiki at or near the Jacaranda Hotel?

6 A. Yes, Madam President, I did meet members of the Mungiki at the
7 Jacaranda Hotel.

8 Q. Without giving their names, can you say in what circumstances you
9 met them?

10 A. Madam President, sometimes in January of 2008, as I was leaving
11 the Jacaranda Hotel, I was stopped by two gentlemen, and the two
12 gentlemen introduced themselves as -- first they thanked me for housing
13 their brother on the adopt-a-family process, and since I hadn't put
14 anybody in my house, I asked who is their brother, and then they told me
15 that my mother had taken one of their brothers as an IDP, and they wanted
16 me to thank -- to thank me. So I said I will pass the thanks to my
17 mother. And then they told me that -- they asked me if I recognise them.
18 I told them I do not. They told me that they were the top echelon of the
19 Mungiki. One identified himself as (expunged), and the other
20 identified himself as (expunged).

21 Q. What were they doing at the Jacaranda Hotel?

22 A. Madam President, they were, so to speak -- they -- they stopped
23 me at the gate, but I would say they were lurking around the parking area
24 of the Jacaranda Hotel.

25 Q. Can you recollect what date, even approximately, when this would

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1 have been that you first met them?

2 A. I would imagine it must have been around about the 16th, 17th of
3 January. It was obviously not the first half of January. I think it was
4 the second half of January.

5 Q. Had you seen either of them before?

6 A. Madam President, I had never seen any one of them before.

7 Q. And did they ask you to do anything?

8 A. Madam President, what they told me was they first indicated to me
9 that they had not supported PNU in the elections, but they told me that
10 it was time for the community to try and come together, and what they
11 said was that the community is protected by three pillars, and they said
12 specifically the leaders, the rich, and the warriors.

13 Q. And was this on the first occasion that you met them?

14 A. Madam President, yes, on the first occasion I met them. They --
15 once they told me that, they also narrated a story which they told me to
16 try and verify that they were once in the 9th parliament - which I was
17 not a member of, I'm a member of the 10th parliament - that they were
18 once in village market and they claimed that they had done an oathing
19 ceremony and neutralised the security to members of the 9th parliament.
20 What I did was that evening there was another gentleman who used to call
21 me from my local area, my local sub-location, and he would call me any
22 time a young gentleman went missing. So I called him in the evening and
23 I asked him if he knew the names of those particular people, and he told
24 me that I was speaking to the very top of the Mungiki leadership.

25 Q. Did they ask you to do anything for them?

1 A. Yes, Madam President. They told me that they were the warriors.
2 They were trying to get to the rich. That's why they came to the
3 Jacaranda Hotel, because they believed that Karume was one of the rich,
4 and they would want me because now as an elected leader to get them to
5 the top leadership. They said specifically it would be most desirable if
6 I could get them to the president, but if I failed, I should try and get
7 them to either Honourable John Michuki or Honourable George Saitoti or
8 Honourable Uhuru Kenyatta. But they also indicated to me that they
9 thought I was a friend of Uhuru Kenyatta and he -- I should specifically
10 try him, because they thought I was going to access him more than anyone
11 else.

12 Q. So what did they want you to do with respect to Uhuru Kenyatta?

13 A. They wanted to make contact with Uhuru Kenyatta, Madam President.

14 Q. Did they also offer anything to you, anything they could do for
15 you?

16 A. Yes, Madam President. They asked me if I would want to have
17 security for them -- from them, of which, Madam President, I declined.

18 Q. And did you exchange telephone numbers or other means of contact
19 with them?

20 A. Madam President, on -- once I had confirmed on the first meeting
21 that from the gentleman from my home area these were truly Mungiki
22 people, being a Member of Parliament I thought it would be prudent to
23 save their numbers so that if ever they call me I would know it is them
24 calling me. And I also gave them my telephone number.

25 Q. Did you contact Uhuru Kenyatta and put them in touch with him?

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1 A. Madam President, I did not contact Uhuru Kenyatta, neither did I
2 put them in contact with him.

3 Q. From what you're saying, they had no means of contacting him.

4 A. Madam President, I used to go to Jacaranda Hotel probably on
5 every alternate day. I met with them right through from January to the
6 end of February even into March, I would imagine seven or eight times,
7 and at no time did they come into contact with Uhuru Kenyatta.

8 Q. Did they repeat their request when you saw them after this first
9 occasion?

10 A. Yes, Madam President. They requested me every time we met who in
11 the leadership would I put them through to. One, they were saying they
12 had a plan in which they could end the violence. When I listened to
13 them, they wanted was more of money and resource and ammunition to go and
14 make attacks on people they perceived were trying to fight with the
15 Kikuyu ethnic community.

16 Q. Of your seven or eight meetings, the question of them getting
17 money to fight, can you recollect which of the meetings that would have
18 been at?

19 A. Madam President, I would say by the time we got to the third or
20 fourth meeting, they would ask, one, for token money, which would be
21 money for either transport or for credit for telephones, simple pocket
22 money, 2.000, 3.000 shillings. I would give that to them. And they
23 would then say that they are not able to have the funds that they used to
24 have because of the violence breaking down, so their network was not
25 operational, and that is why they were asking for little tokens of money,

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1 but they would insist on coming into contact with any potential -- or any
2 senior political leader within the PNU fraternity.

3 Q. So the request for money for arms, can you recollect if that was
4 before events had taken place in Naivasha?

5 A. I cannot recollect, Madam President.

6 Q. Or before events in Nakuru?

7 A. I can remember one particular instance, and that was after
8 Naivasha and Nakuru, and in that instance they claimed that the violence
9 that took place in Naivasha was not neatly done and did not have the
10 impact that it should have had. It was carried out by nonprofessionals,
11 and if they had the role to carry it out, it would have been more
12 devastating, and what they said in terms was they would have done a much
13 cleaner job.

14 Q. Now, just for the purposes of identification and so that you
15 know, the one you described with the brother whom your mother had housed,
16 we'll call him 12 and the other one Mr. X, okay?

17 Did you provide any money to X or 12?

18 A. Besides, Madam President, the small tokens during that particular
19 instant in time, I became familiar with 12 as time went and even after it
20 became peaceful. He claimed that he had lost quite a number of relatives
21 through killings and he was taking care of a number of children, and for
22 that reason he wanted me to do what I could to assist with school fees,
23 and this I did when I could over the last two years. And he also
24 indicated that he did not want his own children to go to public schools,
25 because he wanted to remain anonymous. So he took his children to

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1 private schools within Kikuyu constituency. And when I did not have
2 funds to pay for the school fees, I would request the headmaster of one
3 particular school to give him leeway to be able to raise funds, to be
4 able to pay for the school fees.

5 Q. And can you explain why you did this as an act of charity?

6 A. Madam President, he claimed that he was not able to get into
7 gainful employment. He was afraid for security reasons to go to
8 legitimate places in case he would be tracked down, and for that reason
9 he would want support. But I want to make one clarification. If I
10 became a Member of Parliament, I was put in two committees that came into
11 intense contact with the Mungiki. One was the security committee, which
12 was in charge of security, and I was the vice-chairman of that security
13 committee. And second was a select committee that investigates into
14 organised crime, and for that reason and (* indiscernible) I was
15 nominated by the Honourable Jeremiah Kioni as a select committee that
16 would look at all these organised crime, their causes and how we could
17 overcome it, and during that time I had numerous formal - and that's me
18 and my fellow Members of Parliament - formal contacts with senior members
19 of the Mungiki, and we even visited the Naivasha, and once they come into
20 prison to have formal meetings with the top leader of Mungiki, who is
21 publicly known.

22 Q. Who is that?

23 A. His name is Maina Njenga.

24 Q. Just while we're on the matter, they've said in this court here
25 that Uhuru Kenyatta is the top commander of the Mungiki. Was that a

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1 position you ever came across in your research or public duties?

2 A. Madam President, I am not aware of an instant where
3 Uhuru Kenyatta is a member of the Mungiki. Madam President, when I was
4 doing my campaign in Kikuyu, Uhuru Kenyatta came for one day only to
5 do -- to support me with the campaigns as he would with every other
6 KANU/PNU candidate, and we had two meetings, one in Wangige and another
7 in Kikuyu, and he rode with me in his car and was talking to somebody on
8 the phone, and I can remember him saying very specifically, "I never want
9 to be associated with that group." And when he put off his phone I asked
10 him which was that group, and he told me, "It was some people who wanted
11 me to talk to some people from Mungiki, and I will never be associated."
12 And I asked him why, and he told me that it would always be a political
13 blow to him, and it had somehow also cost him in the 2002 elections by
14 people trying to associate him to the Mungiki, and he told me from a
15 Catholic family he would not want to ever be associated with them.

16 Q. You've referred to 12. Do you recollect an occasion when you met
17 the Kenyatta legal team in their office in Nairobi and you produced your
18 iPhone?

19 A. Yes, do I.

20 Q. And was software obtained that downloaded from your iPhone
21 various text messages that had emanated from Mr. X, Mr. 12, and another,
22 Mr. 11.

23 A. Yes. Round about August, in my second interview with the Defence
24 team. First, I must confess that I am the one who originally introduced
25 12 to the Defence team, and what I did was to make a call to him, and I

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1 requested him that if he is called by a member of the Defence team, and I
2 was told at that particular point in time it would be a counsel called
3 Mbuthi Gathenji, he should accept to go and speak the truth in the sense
4 that he had never ever come into contact, and he assured me that he would
5 do the same.

6 So when I was then contacted again by the Defence team in August,
7 at that time I was again interviewed for the second time, and I indicated
8 that I had received threats and extortion messages from 12 and X and
9 another one demanding 3 million Kenya shillings for the work they had
10 done with the Defence team.

11 Q. The Judges have all those messages and have -- what was
12 downloaded off -- off your iPhone as part of the evidence in the case,
13 and the other parties as well, and I don't want to reveal in any way who
14 sent those because they are protected witnesses. You understand that, so
15 I'm not going to call them up on the screen and go through them one by
16 one. But you looked at the printed document that was produced whereby we
17 had downloaded all those messages. Can you confirm that?

18 A. Yes. Madam President, I looked at the printed documents that
19 have the transcripts of the messages that I had been sent that are still
20 on my iPhone and on the backups up to today.

21 Q. And for clarity, all those text messages have original dates,
22 original call numbers, and are as they were originally received; is that
23 right?

24 A. Yes, Madam President.

25 Q. You mentioned 12. I'm going to move on from X as he doesn't

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1 feature in this case, but 12, and you referred to another, we know who
2 that is, but you call him 11, all right? So that of whatever that
3 another is, 11 isn't mentioned. Do you understand me?

4 A. Madam President, I'm presuming that when you say 11 and 12, they
5 will be the two people who I met. Yes, then I do understand.

6 Q. No. Eleven is not one of the ones you met. When you refer to
7 the text messages from another.

8 A. Okay. So, Madam President, it means the other who sent the text
9 messages and the one who I met.

10 Q. Yes.

11 A. Yes.

12 MR. KAY: And I have to say that in that particular way, because
13 it is capable of identification if we go further than "the other,"
14 your Honour. I hope the Court understands that.

15 Q. In relation to -- to 12, you mentioned him trying to extort money
16 from you. Perhaps you can give the date period when that was, if you can
17 remember.

18 A. It was between 5th and 15th of March, Madam President.

19 Q. X also sent you text messages.

20 A. Madam President, what happened is when 12 had exhausted channels
21 of trying to extort money, he one day appeared at the reception of my
22 office. I still don't know how he was able to go around the security.
23 And he -- I was told by my body-guard that he's outside my door, and I
24 requested my body-guard to come in and we talk with him, and he told me
25 that he had a very hot envelope and it had a deadline, and if I did not

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1 honour what we had on the SMS the envelope was going to explode, and he
2 told me to pass on the message to Uhuru.

3 I then called the legal counsel, Mbuthi, and told him the
4 message, and he told me that they had been trying to extort money from
5 the legal team, and therefore the legal team had opted to have nothing to
6 do with them. And from my own volition, I decide I was not going to have
7 anything to do with him. So what happened thereafter was now they
8 started sending SMSs. They sent SMSs. One day they called on an
9 anonymous number which I thought wasn't them, and I was able to talk to
10 both X and 12, and thereafter I avoided even the anonymous numbers but I
11 was able to forward those messages to the permanent secretary in charge
12 of internal security, and I left it at that.

13 Q. Turning now to 11, did you receive text messages from him this
14 year?

15 A. Madam President, the last text message I got was Friday last
16 week.

17 Q. Ah. You're ahead of us then.

18 A. Yes.

19 Q. Maybe others might like to inquire about -- about that, but I
20 want to ask you about the messages that you have indicated in a statement
21 and that we downloaded from the phone. What sort of messages was he
22 sending you?

23 A. He was sending messages, Madam President, that were in English.
24 One of them I can remember said that we laid the traps bare for your
25 friend, and not even a thank you, honourable, or something to that

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1 effect.

2 Q. Did he try to obtain money from you?

3 A. Yes, Madam President. He tried to obtain money from me, yes.

4 Q. Can you recollect the amount of money?

5 A. For each of the demands, it was the 3 million shillings I had
6 allegedly been received by Uhuru which I was allegedly holding and
7 refusing to pass on.

8 Q. Had you received 3 million shillings from Uhuru Kenyatta to hold
9 and pass on to them?

10 A. Madam President, there is not one time in my life except the time
11 that I was in the car with Uhuru in Kikuyu that we ever discussed an
12 issue of the Mungiki, and I have never received any money from him
13 whatsoever.

14 Q. Did you speak to any other people who had had a similar
15 experience to you?

16 A. Yes, Madam President. There was another Member of Parliament who
17 had a similar situation. There was also a member of, I believe, Uhuru's
18 staff who had similar messages.

19 Q. The Court has seen the name of the Member of the Parliament in a
20 statement, and I don't want to bring that into the public because that
21 might identify the witness.

22 Thank you very much. If you wait there, there may be some
23 questions.

24 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Kay. Of course, if
25 you need, you have the half hour at the end, and you have not exhausted

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1 your time since the first day, so if you need it, you will have
2 additional time for some more questioning.

3 MR. KAY: Thank you. Money in the bank, your Honour.

4 PRESIDING JUDGE TRENDAFILOVA: Now I turn to the team of the
5 Prosecutor. Ms. Adeboyejo, on behalf of your team who is going to take
6 the floor.

7 MS. ADEBOYEJO: Thank you, Madam President, your Honours. My
8 colleague Mr. Adeniran will be asking the questions of this witness.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you. I see Mr. Adeniran.
10 The floor is over to you.

11 MR. ADENIRAN: Thank you, Madam President.

12 Questioned by Mr. Adeniran:

13 Q. Sir, my name is Akingbolahan Adeniran, and I will be asking you a
14 few questions, practically in the same way as counsel for the Defence.
15 In answering me, if you could pause for five seconds, that would be
16 great, so that the interpreters can follow as well. Is this okay?

17 A. It is okay.

18 Q. Can you tell me your ethnicity?

19 A. Madam President, my ethnicity is Kikuyu.

20 Q. You said you work in the office the deputy prime minister; is
21 that correct?

22 A. That is correct.

23 Q. Can you tell me who you report to?

24 A. Madam President, I report to the deputy prime minister and
25 minister for local government, Honourable Musalia Mudavadi.

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1 Q. Okay. Can you tell me who he reports to?

2 A. Madam President, he is a member of the cabinet, and the cabinet
3 is now a coalition cabinet. The ultimate head of that is the president,
4 but on a party affiliation basis, he's the deputy prime minister, and the
5 deputy leader, I believe, of the ODM.

6 Q. Thank you. Do you know where Mr. Kenyatta lives?

7 A. Yes, Madam President, I do know where Mr. Kenyatta lives.

8 Q. Where?

9 A. He lives along what I believe is Denis Pritt Road, pretty near
10 the State House.

11 Q. How far is it from the State House?

12 A. Madam President, in my estimation, it would be about 400 metres.

13 Q. Within walking distance.

14 A. Madam President, I believe 400 metres is walking distance.

15 Q. Thank you. Is Mr. Kenyatta planning to run for the presidency in
16 2012?

17 A. Madam President, I have not heard him declare that he wants to
18 run, but I did receive a text message that he made that declaration in
19 this courtroom yesterday.

20 Q. How long have you been associated with Mr. Kenyatta?

21 A. Madam President, on a political level, I have been associated
22 with Uhuru Kenyatta from 2002, during the elections, but I have been in
23 contact with him only more recently after 2002 and the run-up to the 2007
24 elections.

25 Q. In the past 12 months, 12 months, have you attended any public

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1 rallies with Mr. Kenyatta?

2 A. Yes, Madam President. I have attended numerous, I would imagine
3 seven or eight public, rallies, with Honourable Kenyatta.

4 Q. Do you recall a rally in Arungah on the 27th of March, 2011?

5 A. Madam President, I recall that rally.

6 Q. Do you recall another in Kiambu county on the 1st of April, 2011?

7 A. Madam President, I do recall that rally. I believe it was in
8 Githunguri in Kiambu.

9 Q. Can you tell me what was the subject of these rallies?

10 A. Madam President, I would say prior to the first meeting with the
11 ICC where they -- the six suspects were coming to the ICC for the first
12 time, we had scheduled a number of rallies for prayers and also for --
13 mainly for prayers, and I'd say for encouragement to the run-up of that
14 particular instance.

15 Q. Is this all that you discussed during both rallies?

16 A. Madam President, those rallies were normally attended by between
17 20 to 30 Members of Parliament. The agenda was very, very critically
18 geared towards prayers, and I can say that, Madam President, because I
19 was a co-ordinator of those meetings, and I was the one who was setting
20 the agenda. But, Madam President, each politician gave his own speech
21 from his heart and his own views.

22 Q. Can you remember some of the views that were given in those
23 rallies?

24 A. Yes, Madam President. The majority of views were that the
25 investigations were not thorough. They were not complete. They were

1 errors, and I can remember some of the speeches indicating that the
2 suspects - that in particular would be Uhuru - would come here and if he
3 would be cleared of the charges, and once he's cleared of the charges, he
4 would request for deeper and further investigations that would really get
5 to the culprits.

6 Q. Is this all you remember from the rallies?

7 A. Madam President, unless you want probably a very specific
8 instance and you tell me what else, I would say that was the general
9 agenda of those particular rallies.

10 Q. What was your reaction to the ICC process?

11 A. Madam President, it was utter shock, particularly when I heard
12 the three who were mentioned in case 2, to the extent that I would say it
13 affected me in terms of confidence for probably a week.

14 Q. How would you describe your relationship with Mr. Kenyatta?

15 A. Madam President, he's my party leader. I am one year his junior
16 in age. He's the deputy prime minister, and he's also -- I would refer
17 to him as a friend.

18 Q. Are you aware of the 11th of April heroes' homecoming for the
19 Ocampo Six?

20 A. Yes, Madam President, I am aware of a prayer service in
21 Uhuru Park, which was meant to welcome the six people who came from
22 The Hague after the first interaction with this court.

23 Q. Did you participate in that event?

24 A. Madam President, yes, I did.

25 Q. Were you one of the organisers of that event?

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1 A. Madam President, yes, I was.

2 Q. Were you the main organiser of that event?

3 A. Madam President, I was not the main organiser of the event. The
4 event had a committee and there was a chairman of the committee, but I
5 was the co-ordinator of the PNU coalition for that event.

6 Q. Are you aware of contemplation of proposals to postpone the 2012
7 elections until -- in case the ICC process is not completed? And I will
8 repeat that question, because I know it wasn't that clear.

9 Are you aware of any plans to postpone the 2012 elections if the
10 ICC process is not completed by then?

11 A. Madam President, I am one of the people who had made such a
12 proposition initially.

13 Q. Have you organised any other events or activities for
14 Mr. Kenyatta?

15 A. Madam President, when you gave your warning that there should be
16 no political activities that could stir emotions, we decided we would
17 not -- I being one the co-ordinators, I made the suggestion that we
18 should cease having any political events of that nature.

19 Q. As recently as last month, did you propose a call for prayers on
20 behalf of Mr. Kenyatta?

21 A. Madam President, I would want to be told the venue of the prayers
22 that I would have proposed.

23 Q. Anywhere.

24 A. I do not recall doing that, Madam President.

25 Q. Very well. These are very recent events, but let us go back to

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1 early January 2008. How much time did you spend with Mr. Kenyatta during
2 this period?

3 A. Madam President, besides the formal KANU/PNU meetings, I was not
4 even an assistant minister then, and I would say probably it would have
5 been in January three or four interactions besides the fund raising that
6 we talked about, and in February, it must have been another three or four
7 interactions. I did not spend a lot of time with
8 Honourable Uhuru Kenyatta.

9 Q. I want to be more specific. The 1st, the 2nd, the 3rd of
10 January, were you with Mr. Kenyatta at all?

11 A. Madam President, there was the date of the swearing in. I can't
12 recall the date of the president. I was with him on date of swearing in
13 at State House.

14 Q. I can supply the date because it's already in the court records.
15 It was on the 30th of December, 2007.

16 A. Then I was not with Uhuru Kenyatta on the 1st, 2nd, and 3rd of
17 January.

18 Q. In the statement that you provided to the Defence team of
19 Mr. Kenyatta, you mentioned -- and I'm going to read you that particular
20 sentence. The EVD is EVD-PT-D13-00596, and the relevant page, 0028.

21 Now, you said, and I quote:

22 "There was a gentleman that used to call me when there were
23 extrajudicial killings."

24 Do you remember making this statement?

25 A. Yes, I remember making this statement, and the --

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1 Q. Let me just ask you the next question, okay? Thank you.

2 What do you understand by "extrajudicial killings"?

3 A. I understand extrajudicial killings to be killings that are
4 conducted out of the justice system, and it is a reference that is made,
5 and in this particular instance the gentleman I'm talking about was --
6 used to call me before I became a Member of Parliament regarding young
7 people who either disappeared or who he speculated would have been killed
8 extrajudicially.

9 Q. Who were these young people that were supposedly killed
10 extrajudicially?

11 A. At that instance in time, Madam President, before I became a
12 Member of Parliament, he would call me out of concern of people who would
13 be from the youth within Kikuyu constituency outside Kikuyu constituency,
14 and I came to see such people when I became a member of the select
15 committee, because we visited the city mortuary once and found young boys
16 whose bodies had decomposed, who had bullets in their head.

17 Q. Who was responsible for these extrajudicial killings?

18 A. Madam President, I don't know. Any answer I would give you is
19 speculative, because it would either be they have their own cells where
20 they would probably fight against each other, but they used to say that
21 it came from the government and they alleged it came to the government.

22 Q. Can you be more specific? The government. What part of the
23 government?

24 A. Madam President, when we were members of the select committee on
25 organised crime, we interviewed two parties, and that was the security

1 forces, which included the police and the Mungiki. Now, the Mungiki made
2 allegations that they had been killed and shot by police and vice versa.
3 The police also had certain individuals and names of both police force
4 and members of the public who had been allegedly killed by the Mungiki.

5 Q. At this time, who was the head of the police?

6 A. Madam President, the head of the police was
7 General Mohammed Hussein Ali, and we also interviewed him as a committee.

8 Q. Who was the minister of state for provincial administration and
9 internal security at this time?

10 A. Madam President, you'd have to be specific. If you're talking
11 about time that I was in the select committee, it would be
12 Honourable George Saitoti, the minister for internal security.

13 Q. You mentioned that the time that this gentleman used to call you
14 was before you became a Member of Parliament. That's the period I'm
15 referring to.

16 A. That is correct. Then in that instance, it would be the
17 then-minister for internal security, who was Honourable John Michuki.

18 Q. You've mentioned the Mungiki now several times. What do you
19 understand by the term "Mungiki"?

20 A. Madam President, I will give the literal meaning first, then I
21 will give the meaning that I have come to understand it as.

22 The literal meaning means a big gathering of people coming
23 together. That's from the Kikuyu language. But from my now later
24 understanding, it is a group of people who are very loosely connected
25 trying to form an organised crime department.

1 Q. Organised crime, you say.

2 A. Madam President, I said trying to form an organised crime
3 movement.

4 Q. You've mentioned now at least three Mungiki members that you had
5 been associated with in the past; is that correct?

6 A. Yes, Madam President. I've mentioned at least three.

7 Q. How many Mungiki members did you associate with between
8 December 2007 and January 2008?

9 A. Madam President, between December 2007 and January 2008, I
10 specifically talked to the two that I mentioned, but they always had
11 behind them a number of youngsters, and I can remember being introduced
12 to various heads of departments. Some were finance, others were
13 empowerment, but I cannot recall their faces or who they are, and I never
14 had, besides the introduction, the direct interaction. The two that I
15 had the seven or eight meetings are the two that have been mentioned over
16 here, I would say just those two.

17 Q. You said other members of the Mungiki, and you specifically
18 referenced some positions or titles that they occupied. You did not
19 mention this in your statement. Can you elaborate on this?

20 A. Madam President, the two gentlemen who I interacted with in
21 January and February, I interacted with them in one venue only, and that
22 was the Jacaranda Hotel. It wasn't at the restaurant. What they would
23 do is they could see my car. They knew my car. They had marked my car.
24 And they would normal flag it down, and then I would open the window of
25 the car, and they would then -- in this instance they introduced me to

1 people who they told me were the top echelon, and they gave me references
2 and they showed me who they were, and that was the only time.

3 Q. So you cannot recall the identity of these other individuals that
4 you said you saw?

5 A. Yes, Madam President. I cannot recall the identities at all of
6 these other people that I saw.

7 Q. Who owns the Jacaranda Hotel?

8 A. I believe, because I have do not have the legal documents and
9 this is the common knowledge, that it is owned by the
10 Honourable Njenga Karume, a former Member of Parliament and minister for
11 defence.

12 Q. Where exactly is the Jacaranda Hotel?

13 A. The Jacaranda Hotel is to the west point of a suburb called
14 Westlands, and that is where the two roads that lead from my
15 constituency, mainly the Nairobi-Nakuru highway and the Lower Kabete road
16 converge next to a big shopping mall known as the Sarit Centre.

17 Q. You've mentioned now on a couple of occasions they would
18 intercept you by the gate; is that correct?

19 A. Yes, Madam President. They would normally intercept me at the
20 gate. Would I open my window. We would talk from the car. Then, what
21 they would do as I proceeded to the parking lot, they would follow me to
22 the parking, and as I got out of the car they would then come and would
23 talk next to my car.

24 Q. You said on the first occasion you met them. They introduced
25 themselves as Mungiki leaders; is that correct?

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1 A. Madam President, the first occasion I met them, they called me my
2 name. They thanked me. I then realised that it was their brother who
3 had been assisted by my mother. They said they were grateful, and then
4 they introduced themselves as leaders of the Mungiki.

5 Q. Leaders of the organised crime group. What was your first
6 reaction?

7 A. First, Madam President, I thought they were lying. My
8 expectations from what I had seen in the press was different leaders and
9 so I was almost certain that they were impersonating, and that's why I
10 had to make reference.

11 Q. I'd like to read to you some parts of your statement.

12 MR. ADENIRAN: Your Honours, it's the same EVD number, and I'll
13 be reading from pages 28 and 29.

14 Q. "They," you were referring to the Mungiki leaders here, "wanted
15 me to be their link to Uhuru," and I presume you're referring to
16 Mr. Kenyatta, "and they told me that they needed ammunition, financial
17 help, and we need to go and fight."

18 Second quote. This is on page 29. Again:

19 "They were always looking for money. They once said that they
20 would need a number of AK-47s to take to Naivasha, Nakuru, and Molo."

21 Do you recall saying this? Yes or no?

22 A. Yes, Madam President, I can recall very clearly saying that.

23 Q. Did you report them to the police after they said this?

24 A. Madam President, when they made those particular requests in the
25 middle of the skirmishes, it was after Naivasha and Nakuru had happened.

1 What they wanted was to extend their fight, and I made a phone call to
2 the -- what do they call -- the provincial PPO, which is a provincial
3 police officer in Nairobi.

4 Q. You did not mention that in your statement. In fact, I'll quote
5 another part of your statement to you. It's the same EVD number, and
6 this is at page 33, and I quote:

7 "So I didn't report them to the police, as at least once every
8 two weeks as a Member of Parliament I received threats from people trying
9 to extort money."

10 Is your memory different now?

11 A. Madam President, you're talking about two totally different
12 instances. If you look at the first interview, that's when they were
13 asking for money and ammunition. If you look at when I'm talking about
14 making a report to the police is after they had tried to extort money
15 from me and made threats. And instead of reporting them to the police,
16 and I do have the SMS record, I send and forwarded those SMSs to the
17 permanent secretary in charge of internal security.

18 Q. In a second I'll get to the issue of your statement. In a
19 second. You said you reported to the provincial police officer. That's
20 your statement today; is that correct?

21 A. Insofar as the issue of the request for ammunition and finance, I
22 did make a phone call to the provincial police commissioner -- police
23 officer, and as I said, it was in the middle of a lot of activities, and
24 he told me that he would get back to me on that and he did not.

25 Q. Why didn't you mention this fact in your statement to the

1 Defence?

2 A. Madam President, the first statement I did was in January, and it
3 was more in reference to the Kikuyu incident, and the issue of the
4 Mungiki in the first statement was a by the way, and so I did what I
5 would say a general statement more focused on the peace initiatives in
6 Kikuyu. I only did a further statement in August when I got into the
7 details of what I did after I had been told by the Defence team that they
8 needed more in-depth explanations as to my interactions with the Mungiki.

9 Q. I'll get to the issue of your statements in a second, but going
10 back to this subject, you said that there were two occasions. It was
11 only on the second occasion that you did not report to the police, but on
12 the first occasion you reported to the police. Is that still your
13 testimony?

14 A. That is my testimony. I reported by telephone to the police.

15 Q. And you also said that what you did not report was when they
16 tried to extort money from you when they were asking for money for
17 certain activities; is that correct?

18 A. Madam President, even though I did not report, and this can be
19 verified because there's a record of it within my telephone, I did
20 forward a message of the threats and extortion to the permanent secretary
21 in charge of internal security. That is still within the records of my
22 telephone.

23 Q. I'd like to read another part of your statement to you. This is
24 still on page 30, and what you say here, again I quote:

25 "He told me on an occasion at this time that he needed to pay

1 school fees for his late brother's children and for his own children.

2 I'd helped him before pay school fees."

3 Do you recall saying this?

4 A. Yes, Madam President, I do.

5 Q. Are you saying that you continued to support these Mungiki
6 leaders even after they requested for ammunition and for weapons to go to
7 Naivasha, Nakuru, and Molo, and after you forwarded their message to the
8 provincial police officer, that you still continued to support them?

9 A. Madam President, right after the skirmishes went down and I
10 joined the select committee, first and foremost the select committee had
11 to develop relationships and understanding to be able to investigate this
12 particular movement, and I wanted them to make an interview. So when --
13 when we started interacting, I'd say around about August/September, they
14 would come and they would say, "I need support for bus fare to come to
15 parliament. I would need support," and I continued, yes.

16 Q. After they'd requested for weapons and ammunition to go to
17 Naivasha, Nakuru, and Molo. Yes or no?

18 A. Madam President, yes, it was after that, and a period -- a
19 reasonable period after that.

20 Q. Thank you. What is the position of the government? What was the
21 position of the government? I'm not talking about the government that
22 entered into office after the 2007 elections. I'm talking about the
23 previous administration of President Kibaki. What was the position of
24 this government in respect of the Mungiki?

25 A. Madam President, even though I was not in government, I had heard

1 in many instances through the media, through the security forces, through
2 the minister that Mungiki was an outlawed organisation, and as such, it
3 was illegal and banned.

4 Q. Was it just a ban? Was this ban enforced?

5 A. Madam President, I do believe the government was using as much of
6 its machinery as possible to ensure that it remains outlawed and illegal.

7 Q. And you enter into the picture in 2007 as a member of the
8 government, the same government, different -- different party, but the
9 same precedent, still on the crackdown or enforcement of the ban against
10 the Mungiki and you meet two Mungiki leaders at this time. Can you
11 explain this to us?

12 A. Madam President, they came and with gratitude to introduce
13 themselves to my -- to me, and when they came and introduced themselves,
14 they then within that same discussion identified themselves, who they
15 are. Then I made my own local inquiry as it's -- if -- if they were, and
16 once I realised that they were, I was also made aware, and if you read my
17 statement comprehensively that the organisation was crumbling in terms of
18 network because of the violence. I continued to interact with them,
19 because they would stop me every time I was coming in.

20 Q. You said that the Mungiki leaders requested that they be put in
21 touch, and you mentioned four individuals. You mentioned
22 Honourable Saitoti. You mentioned President Kibaki. You mentioned
23 Uhuru Kenyatta, and you also mentioned John Michuki; is that correct?

24 A. Madam President, that is correct. It is in my statement that
25 those are the names that -- in fact, what they said is any of the senior

1 most PNU members, they would want to be put in touch with them.

2 Q. The Mungiki wanted to meet with John Michuki. Is that your
3 statement?

4 A. Yes. They told me that they wanted to provide help. But I must
5 mention here, Madam President, if I look at it in retrospect, the key
6 interests of the individuals was more of money because of now the various
7 interactions that I have had with them, and their key interest was
8 financial.

9 Q. Let me read another part of your statement to you. According to
10 you, of course, you said the Mungiki leaders tried to extort money from
11 you by threatening to expose you. I'll read your statement. Just hold
12 on. This is at page 33 of the same EVD number. Now I wish to quote:

13 "Why did you send and tell us to help the lawyers? Why haven't
14 you bothered to explain even after we complained? Let's put things on
15 the table through the press and let everyone judge us, and if we are
16 lying, it will be known that work is done without pay."

17 Do you recall saying this? Yes or no?

18 A. Yes, Madam President. That was, I think, the third or fourth SMS
19 they had sent. The first SMS and the second was demanding for pay. The
20 third SMS they had said they would take to the streets and go for a press
21 conference, and I believe that would have been the fourth SMS.

22 Q. Thank you. Next time, please restrict yourself to answering just
23 the questions that I pose to you.

24 A. Madam President, if I want to give the truth and the whole truth,
25 sometimes I have to give a background.

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1 Q. Yes, if you are misrepresenting it, then obviously you can, but
2 because I have limited time, I appreciate it if you can restrict yourself
3 to the questions I ask you.

4 What did he mean by putting things on the table through the
5 press?

6 A. Madam President, what they wanted to do is expose me for
7 withholding 3 million shillings that they said I had been given by the
8 boss.

9 Q. What work had been done without pay?

10 A. Madam President, they had gone and given exonerating testimony to
11 say that they were never in contact with Uhuru Kenyatta, and because they
12 had given testimony, they were now demanding to be paid for that
13 testimony.

14 Q. Did you see those testimonies?

15 A. Madam President, I did not.

16 Q. Then how do you know they gave those testimonies?

17 A. Madam President, in their own texts, they talk about laying bare
18 and removing the traps for the boss and talking to the lawyers, which
19 basically means, Madam President, they did give the testimonies.

20 Q. Again, at this point you said that you did not report them to the
21 police.

22 A. Madam President, did I not report to the police. I did forward
23 those messages to the permanent secretary who is in charge of internal
24 security and who has capacity to then do his investigation. I did not
25 only do that, he did call me. He called me on the next day, and he told

1 me he was looking into it and he was taking care of it. After a week he
2 called me again and he told me that I should tell him if that happens
3 again, but he thinks he will be able to take care of that.

4 Q. When exactly did you report to the permanent secretary?

5 A. Those messages came, I think, around the 13th or 14th of March.
6 I forwarded them as they were coming.

7 Q. Who is the boss mentioned in the text messages?

8 A. Madam President, I would only presume that when they say the boss
9 and they laid open against the traps, against the boss, I would only
10 presume because they were giving exonerating testimony against
11 Honourable Uhuru Kenyatta. I would imagine it's
12 Honourable Uhuru Kenyatta.

13 Q. You've told us today that you were interviewed twice by the
14 Defence; is that correct?

15 A. Madam President, it is very correct. I was interviewed in
16 January, and I was interviewed in August, Madam President.

17 Q. How many statements did you produce? How many statements did you
18 sign?

19 A. Madam President, I signed one statement, and that statement, if
20 you look at where the second statement starts, it gives further
21 information regarding the Mungiki. That's the heading that I believe it
22 starts with, and that's the second statement.

23 Q. Thank you for clarifying that. You also mentioned that you know
24 Mbuthi Gathengi; is that correct, yes or no?

25 A. Yes, I know legal counsel Mbuthi Gathenji.

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1 Q. You mentioned in your statement that he requested your assistance
2 to locate witnesses on behalf of Mr. Kenyatta; is that correct?

3 A. Yes, that is correct. He would normally call me to look for
4 witnesses who were Members of Parliament, and that is because
5 Mbuthi Gathengi, I have had previous associations with him, and he is
6 also a constituent from Kikuyu constituency.

7 Q. When exactly did he approach you?

8 A. Madam President, he called me the first time to go and meet the
9 legal defence to give testimony on the Kikuyu incident. When I gave that
10 defence, he then gave me a list of Members of Parliament who he wanted me
11 to tell to go and give testimony.

12 Q. Why did he require your services? You were not with Mr. Kenyatta
13 in early January. Why were you the person selected?

14 A. Madam President, it's because I have the network and I know the
15 people personally, and I would make a personalised request.

16 Q. How many witnesses were identified by you?

17 A. Madam President, besides the two that we are talking about,
18 Madam President, the rest I was being given names in reference to, and
19 they included present and past Members of Parliament. I would imagine
20 there were probably four or five present Members of Parliament and,
21 specifically, I think there were two former Members of Parliament.

22 Q. What criteria did you use in selecting the witnesses?

23 A. Madam President, I did used to be told, "Can you call and talk to
24 Honourable so-and-so," by Mbuthi Gathengi. I was not involved in
25 choosing the witnesses. I have no idea what criteria they used.

1 Q. Mr. Kenyatta could not get in touch with past and present

2 Members of Parliament himself? Is that your testimony?

3 A. Madam President, I have a personal relationship Mbuthi Gathengi.

4 He is a legal counsel that assists, and when he gave me phone calls, I

5 have more contact on a day-to-day basis with the Member of Parliaments

6 and former Member of Parliaments than the deputy prime minister and

7 minister for finance.

8 Q. Let me take you back to the incident where you and Mr. Kenyatta

9 appealed to a large crowd. The video was played today. You saw an

10 extract from a news clipping. Do you remember this incident I'm talking

11 about?

12 A. Yes, I do, your Honours.

13 Q. When did it take place?

14 A. I believe it was the 30th of January.

15 Q. Was it before or after the panel of eminent African personalities

16 initiated conciliatory talks?

17 A. That, Madam President, I cannot remember.

18 Q. The date is available publicly. No need. Can you mention the

19 names of the PNU MPs that were at the Galileo fundraising event?

20 A. Yes, Madam President. I may not be comprehensive with the names

21 of all of them, but I would start with Honourable George Thuo, the former

22 Member of Parliament for Juja; Honourable Martha Karua, then the minister

23 for justice and constitutional affairs; Honourable Kabando wa Kabando,

24 the assistant minister in youth affairs and member from Mukurweini;

25 myself. I cannot recall the rest, but I would imagine there must have

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1 been one or two others who must have been there, but it's a bit of time,
2 so I cannot recall all of them.

3 Q. To your knowledge, to your knowledge, were there fundraising
4 activities for purposes other than humanitarian purposes?

5 A. Madam President, not to my knowledge.

6 Q. In Nairobi, perhaps?

7 A. Madam President, anywhere within the country, I had had no
8 knowledge of any funds being raised for other than humanitarian purposes.

9 Q. Not in Central Province?

10 A. Certainly where I interacted, not -- I wasn't aware.

11 Q. In Kikuyu District?

12 A. Madam President, neither in Kikuyu District I was not aware of
13 any fundraising activities for purposes other than humanitarian.

14 Q. How about Limuru?

15 A. Your Honours, neither in Limuru. I can't remember any activities
16 that were fundraising for any purpose other than humanitarian.

17 Q. Were there rumours about these meetings?

18 A. Not to my recollection, Madam President. The only time I started
19 hearing about these meetings taking place is when the Kenya National
20 Human Rights report came out.

21 Q. I'd like to show you very briefly a page from the CIPEV report.
22 And this is EVD-PT-OTP-00004, at page 0588. It's a public document. It
23 can be shown on your screen.

24 MR. ADENIRAN: Madam President, may I use this opportunity to ask
25 for an additional ten minutes?

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1 PRESIDING JUDGE TRENDAFILOVA: Let me turn to the interpreters.

2 Could we just extend our session ten minutes?

3 THE INTERPRETER: Indeed, Madam President. Yes, indeed.

4 PRESIDING JUDGE TRENDAFILOVA: Thank you. So you have the ten
5 minutes, Mr. Adeniran. Please proceed.

6 MR. ADENIRAN: Thank you, Madam President. Thank you,
7 interpreters.

8 Q. Is the document shown on your screen right now -- can you see it?

9 A. Yes, Madam President, I can see it.

10 Q. I'm just going to read a portion of it.

11 A. Madam President, you called it a CIPEV report. I'm not aware of
12 who the author is or where it is from.

13 Q. My apologies. The CIPEV is the Commission of Inquiry into the
14 Post-Election Violence. This is the Waki Commission final report. I'm
15 going to read a part of it:

16 "Witnesses informed the Commission that there had been several
17 planning meet that had been convened in the Kikuyu-dominated parts of
18 Central Province and Rift Valley Province border. These meetings had
19 been used to recruit fighters, to co-ordinate communal violence and to
20 organise funding. There had been reports that a pastor, a former MP and
21 a sitting one, urged people to take up arms in self-defence in the Limuru
22 area. The allegation is corroborated by the intelligence reports
23 covering the period between 15th January to 15th February," if you see
24 the footnote, it's actually 15th and 14th February. But I continue,
25 "2008 in a mammoth rally attended by some Kikuyu MPs and politicians."

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1 I'm going to read the quote from the intelligence report:

2 "One politician called on the Kikuyu community to be ready to
3 defend themselves and urge the rich to contribute money towards the
4 cause. Another politician alleged that ODM was being backed by western
5 countries to destabilise the government.

6 I go further down:

7 "The commission received reports alleging that a group of
8 business persons met on the 26th of January, 2008, at Kikuyu Country Club
9 to fundraise for the eviction of non-Kikuyu residents."

10 Have you ever read this report?

11 A. Madam President, yes, I have read this report previously.

12 Q. And what was your reaction upon seeing this?

13 A. Madam President, first and foremost, I would say that I was never
14 in a mammoth rally at any one time attended by Kikuyu MPs and
15 politicians. And that particular meeting, if it took place, it did not
16 take place in Kikuyu, because I'd have been aware, and if it took place
17 in Limuru, then I would not be the fittest person to answer that. But I
18 do recall, and it is in my statement, that I was called sometime in
19 January and probably from this it must be the 25th of January where I was
20 invited to the Kikuyu Country club for a meeting. I did not attend that
21 meeting. The reason I did not attend the meeting was I did not know the
22 organisers of the meeting, and I felt it would not be prudent to go for a
23 meeting that I'm not familiar with and I do not know the organisers so I
24 did not attend the meeting.

25 Q. I want to read a part of your statement to you. This is at

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1 page 24. You mention a former Member of Parliament, a former local
2 Member of Parliament, and I'm not going to mention the name in an open
3 session, but perhaps if I read the sentence you will recall who that
4 former local Member of Parliament is:

5 "This person also said that there was a very serious need for
6 resources so that we could defend ourselves."

7 This was in a meeting that you attended; is that correct?

8 A. Yes. I was invited for a meeting in the Jacaranda Hotel. In
9 fact, I was in the Jacaranda Hotel, and when I was walking out one of the
10 sitting Members of Parliament was walking in, and he told me, held me by
11 the hand and said, "I think you should come and meet with other people
12 because of the concerns we have." And he took me to a seating where
13 there were, I think, one, two, three -- another three former Members of
14 Parliament, and those three former Members of Parliament being from the
15 last parliament were -- started advises us on the crisis, and they said
16 that there was a need to fundraise, and they agreed on that meeting, and
17 I was there, on a venue for fundraising at the KICC, and I believe that
18 fundraising at the KICC was eventually successful, but I did not attend
19 the fundraising at KICC myself because I did not have the resources to
20 continue contributing.

21 Q. The statement I read was very specific. It was that "there was a
22 very need" -- "a very serious need for resource so that we could defend
23 ourselves." Did that statement give you cause for concern?

24 A. Did I write in that statement? Is that my statement that I said
25 there was a need to defend ourselves? Yes. I remember it was one of the

1 former MPs who said that.

2 Q. Did the statement give you cause for concern? That's my
3 question.

4 A. Since it was the first committee meeting and the people had been
5 dying and there were a lot of skirmishes taking place and they were
6 moving on towards fundraising, it wasn't particularly alarmist, I must
7 say. It wasn't.

8 Q. Do you know how the money that was raised in this fundraising
9 events, do you know how the money was disbursed?

10 A. Madam President, I do not know how the money for the KICC event
11 was disbursed, but I do know from the propriety of Galileo's, that he did
12 give that money to, I think, one or two parties who signed for the money
13 including, I'm told, a bishop. And I also do know that he was given a
14 letter by the US embassy clearing that fundraising of any wrongdoing, and
15 even later the US ambassador came to Galileo's, and I was there, and he
16 made the same statement.

17 Q. The other fundraising activities that you mentioned, do you know
18 how the money was disbursed?

19 A. I believe I have only mentioned two fundraising activities, the
20 one for Galileo and the one for KICC. I never attended the one for KICC.
21 I never attended the follow-up committee meetings. I do not know how the
22 money was disbursed.

23 Q. Did you at any time make any reference in relation to the
24 post-election violence? Did you describe whether the post-election
25 violence was spontaneous or whether it was organised at any point in

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1 time?

2 A. Madam President, not to my recollection I did not.

3 Q. In January 2008, did you and a group of other MPs, did you go
4 forward to complain publicly about the killings that were going on at the
5 time?

6 A. Madam President, I believe it is possible. We did make press
7 statements appealing for calm, appealing for dialogue, and specifically
8 myself, and I am on record for that, I was very specific in appealing for
9 calm and -- and restraint, for that matter.

10 Q. Did you ever cite a Human Rights Watch report from January 2008
11 in respect of the violence going on in the country at that time?

12 A. Madam President, the only time I have cited the
13 Kenyan Human Rights report is in reference to myself on that part where I
14 say they did not name me as one of the people who pacified and instead
15 just said a local MP. And I thought it would have been prudent for them
16 to say these were the instigators, these were the pacifiers.

17 Q. I asked about the Human Rights Watch reports. Did you ever refer
18 to a Human Rights Watch report in relation to the violence that was going
19 on in January 2008?

20 A. Not to my recollection, Madam President.

21 Q. Did you at any time express an opinion about the killings that
22 were going on in respect of the killings against the Kikuyu going on in
23 the Rift Valley? Did you express an opinion about these killings
24 publicly in January 2008?

25 A. Madam President, I'm almost certain I did not.

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1 MR. ADENIRAN: Madam President, your Honours.

2 PRESIDING JUDGE TRENDAFILOVA: Final question.

3 MR. ADENIRAN: Yes. I would like to say something. We have
4 press articles which obviously have not been disclosed, because we learnt
5 about the identity of this witness after the disclosure deadline, but
6 there are press articles, at least two of them, that talk about what I'm
7 about to refer to. I can refer to them, and I can quote them.

8 PRESIDING JUDGE TRENDAFILOVA: No. You know the principle. What
9 has not been disclosed within the deadlines established by law cannot be
10 used during the confirmation hearing. If the Chamber coming across
11 anything that the parties have not presented but the Chamber deems it
12 important for the establishment of the truth, the Chamber is going to
13 request its admission.

14 So you rest assured we're not going to ignore anything, but you
15 cannot use it unless it is disclosed within the time-frame as established
16 by law and the decision on disclosure.

17 MR. ADENIRAN: Thank you, Madam President.

18 PRESIDING JUDGE TRENDAFILOVA: By this we end this session, and
19 we shall resume in half an hour. This is 20 minutes to 7.00.

20 COURT USHER: All rise.

21 (The witness stands down)

22 Recess taken at 6.09 p.m.

23 On resuming at 6.40 p.m.

24 (Open session)

25 COURT USHER: All rise.

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1 PRESIDING JUDGE TRENDAFILOVA: Please be seated.

2 Mr. Adeniran, you have an issue to raise with the Chamber before
3 the witness comes.

4 MR. ADENIRAN: Madam President, before the end of last session,
5 you said I could ask one more question.

6 PRESIDING JUDGE TRENDAFILOVA: Yes, of course, but let us now --
7 this is the issue that you wanted to raise.

8 Please, Court Usher, would you be so kind to invite the witness.
9 I thought you had finished with your questions, so that's why I was
10 assuming a different issue.

11 (The witness takes the stand)

12 PRESIDING JUDGE TRENDAFILOVA: Mr. Nguyai, how are you?

13 THE WITNESS: Very fine, Madam President.

14 PRESIDING JUDGE TRENDAFILOVA: So you will be at ease that we
15 proceed a little bit more with the questioning.

16 THE WITNESS: I'm fine with that, Madam President.

17 PRESIDING JUDGE TRENDAFILOVA: Because the Prosecutor's Office
18 would like to ask one more question.

19 Yes, please proceed.

20 MR. ADENIRAN: Madam President, if I may, like Oliver Twist, ask
21 for five additional minutes.

22 PRESIDING JUDGE TRENDAFILOVA: One question for five additional
23 minutes, or five minutes for some questions?

24 MR. ADENIRAN: Five minutes for some questions.

25 PRESIDING JUDGE TRENDAFILOVA: Fine. Please proceed,

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1 Mr. Adeniran.

2 MR. ADENIRAN: Thank you, Madam President.

3 Q. Sir, you told us that you belong -- or you were part of a
4 parliamentary committee that was investigating organised crime; is that
5 correct?

6 A. Yes, Madam President. I am part of -- was part of a select
7 committee, until I became an assistant minister, that was investigating
8 organised crime.

9 Q. And can you tell this Court why Maina Njenga was released from
10 prison?

11 A. Madam President, by the time Maina Njenga was released from
12 prison, I had left that particular select committee and become an
13 assistant minister.

14 Q. Do you know why he was released from prison?

15 A. I do not know the real specific reason he was released. I think
16 he was released from court. I think the -- and, Madam President, this is
17 speculative, because I can't remember the particular press report,
18 whether he was released -- he was released from court because of lack of
19 evidence or something.

20 PRESIDING JUDGE TRENDABILOVA: You just give us an answer what
21 you remember.

22 THE WITNESS: I do not remember.

23 MR. ADENIRAN:

24 Q. Did Mr. Kenyatta publicly denounce the Mungiki in 2002?

25 A. Yes, I recall that Mr. Kenyatta did publicly denounce the Mungiki

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1 in 2002.

2 Q. What was the denouncement in response to?

3 A. Madam President, the denouncement was in response to certain
4 Mungiki members claiming they wanted to support him for his presidential
5 candidacy.

6 Q. Does Mr. Kenyatta regularly denounce the Mungiki?

7 A. I can remember that particular instance. I have not been
8 monitoring, but he has on a number of occasions denounced the Mungiki.

9 Q. Do you know Professor Peter Kagwanja?

10 A. Yes, Madam President. I have had occasion to see
11 Professor Peter Kagwanja within the PNU coalition party.

12 Q. What does he do? What is his function?

13 A. I believe, Madam President, he is a political strategist within
14 the PNU coalition.

15 Q. Are you familiar with the Mount Kenya Foundation?

16 A. Madam President, I have heard of the Mount Kenya Foundation, but
17 I am not familiar with them.

18 Q. Do you know if Professor Kagwanja is a member of the
19 Mount Kenya Foundation?

20 A. Madam President, I am not aware that Professor Kagwanja is a
21 member of the Mount Kenya Foundation.

22 Q. When you say he's a strategist, what does he advise on,
23 Professor Kagwanja?

24 A. Madam President, in the PNU coalition, there are two or three
25 political scientists who normally advise on political strategy.

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1 Q. What is the general calibre of individuals hired by the PNU as
2 advisors?

3 A. I know specifically, Madam President, that Kagwanja is a
4 professor, and I know that normally he -- the time he has made
5 presentations to the PNU coalition he has done PowerPoint presentations,
6 and he normally does it with another gentleman who's a lawyer.

7 Q. Is he a respected individual?

8 A. Madam President, I do not know the background of Kagwanja besides
9 the one that he has introduced himself to us when we're in panel, and he
10 specifically states that he has, I think, an organisation, I could be
11 wrong in its naming, but it's African Policy Institute based somewhere in
12 Johannesburg.

13 Q. Are you familiar with some of his writings?

14 A. No, Madam President, I'm not familiar with his writings.

15 Q. In one of his books, and I would like to mention the -- or it's
16 an article, rather. I would like to give you the title of the article,
17 "Power to Uhuru: Youth Identity and Generational Politics in Kenya's
18 2002 Elections." Have you heard of this article before?

19 A. No, Madam President. I have not heard of that article before.

20 Q. Do you know if Mr. Kenyatta has read or heard about this article
21 before?

22 A. I would have no idea to that answer, Madam President.

23 MR. ADENIRAN: No further questions.

24 PRESIDING JUDGE TRENDABILOVA: Thank you --

25 MR. ADENIRAN: Thank you.

1 PRESIDING JUDGE TRENDAFILOVA: -- Mr. Adeniran. Please take a
2 seat.

3 I see that Mr. Anyah is standing up.

4 MR. ANYAH: Yes, Madam President. I would like to make an
5 application to ask questions of this witness. As is the typical case,
6 the application is brought with a view towards the personal interests of
7 my clients, and I make it pursuant to Rule 91(3)(a), implicating, of
8 course, Article 68(c). The witness has testified to various issues that,
9 in my view, concern my clients. In particular, the trip he took by
10 helicopter with George Saitoti to Karangita (* sic), I think it is
11 Karagita, in Naivasha.

12 PRESIDING JUDGE TRENDAFILOVA: Well, thank you. Let me shortly
13 consult my colleagues.

14 (The Pre-Trial Chamber confers)

15 PRESIDING JUDGE TRENDAFILOVA: Of course, Mr. Anyah, you have
16 substantiated your request. The only request on behalf of the Chamber is
17 that your questions always are based on the interests of the victims so
18 that we do not see a very remote link to the interests of those that you
19 represent. Please go ahead.

20 MR. ANYAH: Thank you, Madam President. Thank you, your Honours.

21 PRESIDING JUDGE TRENDAFILOVA: We shall be very much appreciated
22 if in 15 minutes you could finish.

23 MR. ANYAH: I will.

24 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Anyah.
25 Thank you.

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- 1 MR. ANYAH: You're welcome. Fine, thank you.
- 2 Questioned by Mr. Anyah:
- 3 Q. Good evening, Mr. Nguyai.
- 4 A. Good evening I believe it's Mr. Anyah.
- 5 Q. Thank you.
- 6 A. Thank you.
- 7 Q. You know I represent the victims and I have a few questions for
- 8 you. The trip you took to Karagita, how many days did you spend in
- 9 Naivasha?
- 10 A. Madam President we took a helicopter trip and spent the whole day
- 11 and proceeded back to Nairobi by the fall of the evening.
- 12 Q. You went with George Saitoti. Yes?
- 13 A. I went with George Saitoti.
- 14 Q. You met a Member of Parliament in Karagita when you got there?
- 15 A. I met -- Madam President, by the time we landed, I don't think
- 16 the Member of Parliament was aware that we were coming, but he met us at
- 17 Karagita as we had already started talking to the crowd.
- 18 Q. What is the name of that Member of Parliament?
- 19 A. Madam President, his name is Honourable Michael Mututho.
- 20 Q. You mentioned going to several locations in Naivasha. The first
- 21 place I believe you spoke of, you described a scene where one side of the
- 22 road were Kikuyus with a few police trying to contain them, and on the
- 23 other side was a flower farm with a fence enclosed in which were
- 24 non-Kikuyu civilians; correct?
- 25 A. Madam President, the only correction is where you say a few

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1 police. There were sufficient police.

2 Q. I appreciate that. I will come to that, because when you started
3 testifying, and I listened closely, you said reinforcements came, but in
4 the first instance when you got there, there were a few police, true?

5 A. Madam President, I said there were police. I did not say few,
6 and I said that when we were on the other side of the highway,
7 reinforcements were brought.

8 Q. You said that the persons who were non-Kikuyus to whom you spoke
9 Swahili, they wanted to go to the police station for safety, yes?

10 A. Yes, Madam President. They requested to be given escort to go to
11 the police station for safety.

12 Q. Approximately how many people are we talking about?

13 A. Madam President, I would say about 300. And there were many more
14 when we went to the police. I think these are the ones who had been
15 blocked and unable to get to the police station.

16 Q. What was the predominant ethnic group amongst the 300?

17 A. Madam President, I would not tell, and that would be a
18 speculative answer, but I know they were not speaking in Kikuyu, and
19 that's why we spoke to them in Swahili.

20 Q. You said you went to the police station at some point?

21 A. Thereafter, as soon as we left Karagita, Madam President, we went
22 to the police station.

23 Q. Were there internally displaced persons at the police station,
24 and, if so, how many?

25 A. Madam President, there were very many displaced persons at the

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1 police station. Some of them had injuries, and in fact I remember we
2 having to ask for supplies from the district hospital within Naivasha.
3 They weren't very severe injuries, but I'd say there were about probably
4 a thousand, 2.000. I wouldn't tell the number.

5 Q. What was the predominant ethnic group amongst those you met at
6 the time police station?

7 A. Madam President, we spoke -- the only time we spoke in Kikuyu was
8 at Karagita and that was because we heard them shouting Kikuyu slogans on
9 one end. When we went to the Naivasha police station we spoke in
10 Swahili, but even in Swahili there were accents, and I can remember they
11 were most likely Luos, Luhyas. Those are the ones I can remember,
12 because I can remember two particular ladies who had specific pleas.

13 Q. And just going back to Karagita for a moment, is it the case
14 that -- and I think this appears obvious from your evidence but I'll ask
15 it again, is it the case that the Kikuyus were the aggressors?

16 A. Madam President, the place where we saw real aggression was not
17 in Karagita. It was at the Nairobi-Nakuru highway, and at the
18 Nairobi-Nakuru highway, the main aggressors were obviously Kikuyu.

19 Q. Thank you for answering part of the question. Were you able to
20 tell who were the aggressors in Karagita?

21 A. In Karagita, there were more of demonstrations on both sides. I
22 would not say that even the ones who were behind the farms were pacified,
23 because at one instant at a point in time as we were addressing the
24 people who were on the Karagita side, we started receiving hailstones
25 from inside the farm, and the police had to go and make sure that they

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1 weren't throwing stones at us.

2 Q. The persons you met at the police station, the IDPs, do you know
3 how it came to be that they ended up at the police station?

4 A. Madam President, they told us that it was out of fear that they
5 had decided to seek refuge at the police station, particularly after the
6 incident that I believe had occurred a day or two earlier where a house
7 had been burnt and a family had burnt inside.

8 Q. Who were they afraid of? Who was the source of the threat that
9 they were running from?

10 A. Madam President, it was the local residents who the majority were
11 Kikuyu, and, Madam President, they -- since the people who got burnt in
12 the house were not the majority in Naivasha, they were afraid of the
13 majority who they believed were now taking action against the
14 non-Kikuyus.

15 Q. You said you went to the house that was burnt, and you could
16 still smell corpses. The occupants of that house, do you know if there
17 was a pregnant woman amongst them?

18 A. Madam President, from the reports that we received, we are told
19 that is so.

20 Q. Do you know whether children were amongst them?

21 A. Yes, Madam President, we do. I do.

22 Q. Do you know whether the assailants, the persons who set fire to
23 the house, locked all the doors and windows of the house from the outside
24 or blocked them, if you will, before lighting the house on fire?

25 A. Madam President, I do not have the investigation report, but I

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1 have seen press statements to that effect.

2 Q. You mentioned coming up with a plan of action with a district
3 commissioner about how to assist the persons at the police station.

4 A. Yes. I recall that, Madam President.

5 Q. Who was the district commissioner?

6 A. Madam President, I can't recall his name, but he is probably a
7 person my age with a slightly larger build.

8 Q. The plan of action, how long was it to unfold for, that is, did
9 it have a time-frame in which it was to take effect?

10 A. Madam President, the first plan of action was to organise, to
11 have water and sanitation as other arrangements were made. The second
12 one was to ensure that there were tents and chairs and -- and shelter.
13 And the third one, and they were very insistent on that, is they wanted
14 to be relocated. And I can remember the DC had certain duties he would
15 have to carry out, specifically getting the various government agencies
16 to work that out.

17 Q. The various components of this plan of action you have
18 articulated, you would agree that it would be impossible to accomplish
19 those in one day, yes?

20 A. Yes, Madam President. The plan of action was first to make sure
21 that there's water, and that was to be provided by funding that would
22 ensure that tanks were erected where they could get water. Then it's
23 rolled out to a number of days with certain components each being rolled
24 out in each of those days.

25 Q. So by the time you had left Naivasha in the evening, the plan of

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1 action had not been executed.

2 A. Yes, Madam President. By the time we left the police station to
3 go to the other two scenes, one was the scene of the fire and to the
4 highway, what we had left was the plan of action completed in terms of
5 planning but not in terms of implementation. It had not commenced.

6 MR. ANYAH: I see that my time is almost up but I have a few more
7 questions.

8 PRESIDING JUDGE TRENDAFILOVA: Yes, go ahead, Mr. Anyah.

9 MR. ANYAH:

10 Q. I will leave the plan of action because I am running short of
11 time. You mentioned the Naivasha-Nairobi highway. You mentioned seeing
12 police attempting to disperse people and you now say were the Kikuyus as
13 the aggressors with tear gas. When you left Naivasha and you went back
14 to your constituency, do you know what happened to those people at the
15 police station?

16 A. Madam President, I do not know what happened to the people in the
17 police station, because very soon after the crisis in Kikuyu started.

18 Q. You spoke of -- well, we saw a video of you and Mr. Kenyatta on a
19 motor vehicle, apparently at the Limuru-Nairobi highway attempting to
20 disperse some Kikuyu youth. What day and what month did that event take
21 place?

22 A. Madam President, it was towards the end of January. My --
23 specifically, I don't know if it was the 30th or 31st or 1st of February,
24 but it was one of the three days. And it was not exactly on the
25 Nairobi-Nakuru highway. It was about a kilometre off in the main town

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1 called Kikuyu in Kikuyu constituency.

2 Q. Do you know whether during this period of time Mr. Kenyatta made
3 trips to Naivasha or Nakuru?

4 A. Madam President, I am not aware if he made any trips to Naivasha
5 or Nakuru.

6 Q. I want to read an answer you gave earlier today. It's at page 25
7 of the Transcend transcript, lines 7 to 19. You spoke of a
8 Jeremiah Kioni calling you, and this was when the chaos was moving its
9 way in the Kikuyu area, and you said he told you:

10 "We should meet and work out a strategy as leaders and how we are
11 going to contain the violence from spilling over, particularly to
12 Nairobi, and spreading from Naivasha to the Kikuyu area."

13 My question is this: You had violence occurring from the
14 Rift Valley, and that violence is moving in a south-easterly direction.
15 It starts at Molo, it gets to Makuru, it gets to Naivasha, and at the
16 time Kioni calls you there's concern it's coming to Kikuyu. Will you
17 agree with that?

18 A. I agree with that.

19 Q. And after Kikuyu is Nairobi, yes?

20 A. Yes, Madam President. I'm trying to keep the five-second pause.

21 Q. Thank you. And in Nairobi is the seat of government with the
22 President Kibaki shortly after a contested election, yes?

23 A. Yes, Madam President.

24 Q. At that point in time, did you and the other MPs essentially view
25 Naivasha, view Nakuru as lost causes and focus your attention only on

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1 Kikuyu?

2 A. Madam President, first and foremost, the violence in Naivasha had
3 been contained, and that can be evidenced by the fact that we went there
4 and left a huge security presence. I believe the violence in Nakuru even
5 before we went to Naivasha we had good information that it had been
6 contained. The areas where there was no violence is where now it was
7 starting to erupt, and as a matter of fact, by the time we were going to
8 Kikuyu, Honourable Kioni himself had to go back to Ndaragwa and did not
9 accompany us because of the same problems.

10 Q. One last question, if I may. You just said first and foremost
11 the violence in Naivasha had been contained. A few minutes I asked you
12 about the police station and you said you didn't know what happened to
13 the people there. So on what basis do you say the violence in Naivasha
14 had been contained?

15 A. I would say that with the presence of a lot of security in
16 Naivasha. And I will indicate here I went to Naivasha numerous times
17 after that. I went to both the internally displaced IDP camps in the
18 police station together with the other camps. For that instant we
19 thought that it was more important for it to be a police issue in
20 Naivasha and more of leaders and political issues where violence had
21 erupted.

22 MR. ANYAH: I do not have any more time.

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

25 Questioned by the Court:

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1 PRESIDING JUDGE TRENDAFILOVA: Mr. Nguyai, I would like to ask
2 you some questions, short questions, and I'm asking you for short
3 answers.

4 You said today about your meeting for the first time with these
5 two Mungiki members, that you kept their telephone numbers because you
6 said it would be prudent to have their telephone numbers. Why?

7 A. Madam President, I wanted to know through caller ID who is
8 calling and be able to identify them instead of not having -- having an
9 anonymous number each time I get surprised that they're calling me. So I
10 felt it was more for my security to save their telephone numbers.

11 PRESIDING JUDGE TRENDAFILOVA: But you gave your telephone number
12 as well to them.

13 A. They asked me for my telephone number. They wanted, one, to know
14 how their brother was doing. At that instant in time, I didn't feel that
15 it would be a risk to give my telephone number, because I had security.
16 And, Madam President, I would want to point out that sometimes
17 information is power in terms of knowing who you are dealing with,
18 because I didn't know whom Mungiki was. I was threatened by them, and I
19 felt it was more important to know more about them than anything else.

20 PRESIDING JUDGE TRENDAFILOVA: Thank you. You also said that you
21 did not put these two Mungiki members in contact with Mr. Kenyatta.
22 Didn't you warn him about their interest in getting into contact with
23 him?

24 A. Madam President, I did not have Uhuru Kenyatta's mobile number,
25 the one that is his private line. So each time I tried to call, I used

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1 to try and call a number that ended with 91, and it would always go to
2 his personal assistant.

3 PRESIDING JUDGE TRENDAFILOVA: So you didn't inform him about --

4 A. I never informed him at any one time.

5 PRESIDING JUDGE TRENDAFILOVA: Two more questions that are
6 related. You said that these two Mungiki members told you that they have
7 a plan to end the violence. Do they have the -- the means? Do they have
8 the -- the structure, the organisation to put an end to a violence that
9 has erupted and spread all over the country, or at least over quite of
10 the territory of the country?

11 A. Madam President, I did not believe that they had the means or the
12 organisation. People who normally ask you for small tokens of the
13 equivalent of less than 10 euros to go home with bus fare obviously do
14 not have that capacity.

15 PRESIDING JUDGE TRENDAFILOVA: And final question: You also said
16 that what they wanted was to extend their fight. Does this imply that
17 the Mungiki were engaged in fights?

18 A. Madam President --

19 PRESIDING JUDGE TRENDAFILOVA: When the question was related to
20 the funds that they were seeking from -- from you, from other wealthy
21 people.

22 A. Madam President, I would want to indicate that in one of the
23 discussions they had, we had with them, they told me that, "Whether you
24 want to believe it or not, we are at war and this is a war situation."
25 So that, I believe, was the response that when they were saying they

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1 wanted to extend the fight means that they were already feeling that they
2 were in a war situation.

3 PRESIDING JUDGE TRENDAFILOVA: So thank you. Thank you very
4 much, Mr. Nguyai.

5 And now if someone from the Defence teams would like to address
6 the witness. Mr. Monari. I'm sorry, Mr. Khan, Mr. Monari stood up
7 first. Please.

8 MR. MONARI: (Microphone not activated) ...

9 PRESIDING JUDGE TRENDAFILOVA: It's up to you.

10 MR. MONARI: Mr. Khan, proceed, please.

11 MR. KHAN: Madam President, your Honours, I'm most grateful for
12 the exceptional courtesy of my learned friend Mr. Monari, as always.

13 With your leave, we have questions for about five minutes, and
14 Ms. Venkateswari Alagendra will put the questions.

15 PRESIDING JUDGE TRENDAFILOVA: Yes, please.

16 MS. ALAGENDRA: Good evening, your Honours.

17 Questioned by Ms. Alagendra:

18 Q. My name is Venkateswari Alagendra. Good evening, sir.

19 A. Good evening.

20 Q. I have a few questions for you on behalf of the Defence team of
21 Ambassador Muthaura. Earlier you told the Court that you were present at
22 the swearing-in ceremony of his Excellency President Kibaki on
23 30th December 2007 at State House. Do you recall that
24 Ambassador Muthaura was present?

25 A. Madam President, I do remember Ambassador Francis Muthaura being

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1 present.

2 Q. Do you recall what role, if any, Ambassador Muthaura played at
3 this event?

4 A. Madam President, from the way I view it, he was more of the
5 co-ordinator or the master of ceremony for the event.

6 Q. Sir, you testified that the minister for internal security during
7 his visit to Naivasha gave instructions to the police to disperse the
8 people who were blocking the Nairobi-Nakuru highway. Who was the
9 minister of internal security that you were referring to?

10 A. Madam President, it is Honourable George Saitoti.

11 Q. Did Ambassador Muthaura have any role whatsoever in the PNU
12 campaigns in 2007/2008?

13 A. Madam President, I have never seen Ambassador Muthaura playing
14 any role within the campaigns of 2007/2008.

15 Q. Sir, apart from what you may have read in the media about this
16 case in the International Criminal Court, did you ever hear that
17 Ambassador Muthaura was in any way involved in planning violence in
18 Naivasha and Nakuru?

19 A. No, Madam President, I have never heard prior to the announcement
20 of the case.

21 MS. ALAGENDRA: Thank you, I have no further questions,
22 your Honours.

23 PRESIDING JUDGE TRENDABILOVA: Thank you, Ms. Alagendra. Now,
24 Mr. Monari, the floor is over to you.

25 MR. MONARI: Thank you, Madam President. Your Honours, just a

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1 few questions.

2 Questioned by Mr. Monari:

3 Q. Honourable Lewis Nguyai, I believe I have pronounced your name
4 correctly for the first time. Lewis Nguyai, you said -- you talked about
5 extrajudicial killings. Did you have any evidence yourself of the
6 existence of extrajudicial killings?

7 A. Madam President, the word "extrajudicial killings" was used by
8 the gentleman who talked to me and used to talk to me and, in fact, if I
9 was to relate that statement, I would have put it in inverted commas
10 because that's what it is. I have no evidence.

11 Q. But did you, yourself, have any evidence that related to
12 judicial -- extrajudicial killings?

13 A. No, Madam President.

14 Q. Who did you attribute in your own estimation who was responsible
15 for these extrajudicial killings?

16 A. Madam President, first and foremost, I said I had no evidence. I
17 do not attribute it to anybody as far as extrajudicial killings
18 occurring.

19 Q. And in his discussions with you, did he give you any evidence of
20 extrajudicial killings?

21 A. Madam President, when this gentleman who comes from my
22 sub-location used to call me, he would tell me there is a boy by this
23 name from this locality within or outside Kikuyu who has gone missing.
24 Then after a week or so, in two of the instances, he would tell me the
25 boy was found alive, and I think in two or three of the instances he told

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1 me that the boys were found dead.

2 Q. Am I correct to say that what you heard from this, and I'm afraid
3 to call him gentleman, were just rumours?

4 A. Madam President, one, I have absolutely no evidence whether those
5 people died. I have no evidence whether they were lost. I have no
6 evidence whether they were found. He would only call me and make those
7 insinuations and allegations and ask if I could assist, but I was not
8 even a Member of Parliament. I had no way of assisting.

9 Q. Okay. You spoke about Mungiki fighting each other and that they
10 occasionally -- what sort of fight do you mean? Was it a leadership
11 struggle? Was it a shoot-out that they had? What sort of fight do you
12 mean?

13 A. Madam President, even the witnesses that I came into contact with
14 I think first told me sometime later they had left the organisation.
15 Then sometime later they told me that they are taking over the
16 organisation and they were going to take over from Maina Njenga, then
17 they told me that the organisation had split into three parts. So I
18 believe there was a power struggle within Mungiki itself.

19 Q. If I were to give you the -- the notion that Mungiki, Mungiki
20 members were killing each other as a result of a power struggle within
21 them, is that an assertion you will agree to?

22 A. Madam President, there is a huge possibility that that could have
23 been happening.

24 Q. You visited Maina Njenga at Naivasha prison. Are you aware why
25 he was at Naivasha prison?

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1 A. Madam President, I do not know the specific charges that had been
2 put forward to him, but I know that they had huge links to having a
3 firearm, I believe, and being a member of an unlawful organisation.

4 Q. You're correct.

5 THE INTERPRETER: Message from the English booth,
6 Madam President. Could a pause please be observed. Thank you.

7 MR. MONARI:

8 Q. Because he was found in possession of an illegal firearm. Are
9 you aware or were you aware at that time that a lot of Mungiki members
10 had firearms with them, illegal firearms?

11 A. Madam President, when we did a tour of the Central Province and
12 we visited many police stations, we found that to be the case, and even
13 by the time we got to Naivasha prisons we knew that there were members of
14 Mungiki who were in possession of firearms.

15 Q. It has been asserted by the Office of the Prosecutor that Mungiki
16 somehow got into an organisation with the Kenya police to assist the PNU
17 retain power.

18 Given your history or the history you know of the Mungiki and the
19 history of the relationship between Mungiki and the police, is that an
20 assertion that you can attest to?

21 A. Is it not possible for that to happen. First and foremost, I
22 know that the Mungiki doesn't have the capacity whatsoever to assert
23 power or help the government hold power, and I strongly believe and have
24 confidence that the Kenya government has the capacity and the means to
25 manage security situations within the country.

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1 Q. So if I said that Mungiki -- there's no way the Kenya police will
2 co-operate with Mungiki, will I be correct?

3 A. You are very correct, Madam President.

4 Q. Are you aware that the leader, the foremost leader of Mungiki,
5 Maina Njenga, the one you visited in prison, had been arrested by the
6 police?

7 A. Yes, Madam President, I am aware that he had been arrested by the
8 police.

9 Q. Are you aware that he was also prosecuted by the Kenya police?

10 A. Yes, Madam President, I am also aware that he was also prosecuted
11 by the police.

12 MR. MONARI: Thank you, Mr. Nguyai.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Monari.

14 Finally the floor is again over to you, Mr. Kay, for last
15 questioning, if you wish so.

16 MR. KAY: Only a few questions, your Honour.

17 PRESIDING JUDGE TRENDAFILOVA: Yes, please.

18 Further Questioned by Mr. Kay:

19 Q. The information you were just giving us about the Mungiki and
20 your knowledge about it, does that come from your role on the
21 parliamentary committee?

22 A. Madam President, the majority of the information I have about the
23 Mungiki is because of being in two committees, the security committee and
24 the select parliamentary committee on organised gangs. That's where I
25 would say the basis of my knowledge of the Mungiki comes from more than

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1 anywhere else.

2 Q. Thank you. And the length of time you were on the government
3 committees, parliamentary committees, was for how long?

4 A. It was from, I would say, 2008 when parliament started sitting,
5 which would be around about April, for a year up to May 2009 when I
6 became an assistant minister.

7 Q. Are these mixed committees with politicians from different
8 parties, MPs from different parties included within the committees?

9 A. Yes, Madam President. They are mixed committees, and ideally
10 they have 15 members, sometimes a little more, but the representation is
11 meant to be on a 50/50 basis. If the parliamentary committee has the
12 majority, then normally it's not by -- by more of understanding and
13 democracy the chairmanship comes from the minority.

14 Q. The central case theory here in the ICC from the Prosecutor is
15 that the Mungiki you were dealing with in these government committees had
16 been used by the PNU to retain power. Was that ever an issue that you
17 discovered during your experience on those parliamentary committees?

18 A. Madam President, at no time within both the public and private
19 sittings with the Mungiki within the committees did I ever hear such a
20 point that the Mungikis had been used to retain power.

21 Q. And that's the whole structure of the Mungiki as the allegation
22 here was used in that way. Would you agree or disagree with that?

23 A. Madam President, I would disagree with that.

24 Q. Just dealing again with resources. These individuals you saw, X
25 and 12, in January and February 2008, did they look like men in

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1 possession of 30 million shillings at the time?

2 A. Madam President, they did not look like people who were endowed
3 financially, and they sometimes asked for transport money to go back to
4 where they had come from. So they would not have been in possession of
5 30 million.

6 Q. I'll scale it down to 3 million, then, 10 per cent of that. Did
7 they look as though they were in possession of 10 per cent of 30 million?

8 A. Madam President, they would not have been in possession of either
9 300 or 30.000.

10 MR. KAY: I have no further questions. Thank you very much.

11 PRESIDING JUDGE TRENDAFILOVA: Thank you Mr. Kay.

12 Mr. Nguyai.

13 THE WITNESS: Nguyai.

14 PRESIDING JUDGE TRENDAFILOVA: This was a difficult name. I'm
15 sorry. But this does not mean that the Chamber does not appreciate your
16 trip to The Hague, appearing before us, and spending this afternoon with
17 us. We do not have any more questions for you. And on behalf of the
18 Bench, of my colleagues and myself, we wish you a safe back to -- to
19 Kenya.

20 THE WITNESS: Thank you very much.

21 PRESIDING JUDGE TRENDAFILOVA: So on Monday, we shall proceed
22 with the Defence team of Mr. Ali.

23 MR. KEHOE: Yes, your Honour.

24 PRESIDING JUDGE TRENDAFILOVA: And we shall start at 9.30 with
25 five sessions in order to end up as planned. So be ready, the whole day

1 will be just for you, Mr. Kehoe and Mr. Monari.

2 MR. KEHOE: We will be ready, your Honour.

3 PRESIDING JUDGE TRENDABILOVA: Yes, thank you. I would like to
4 thank everyone participating in today's hearing. I would especially like
5 to thank the interpreters, the stenographers, the court reporters, the
6 security officers, everyone who is assisting us in our work, everyone who
7 is in the public gallery, and I wish you a nice weekend. We shall meet
8 at 9.30 on Monday in this same courtroom.

9 The hearing is adjourned.

10 COURT USHER: All rise.

11 (The witness withdrew)

12 The hearing ends at 7.28 p.m.

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