

Trial Hearing  
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap  
5 Sang - ICC-01/09-01/11  
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion  
7 and Judge Robert Fremr  
8 Trial Hearing  
9 Monday, 14 October 2013  
10 (The hearing starts in open session at 9.39 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
15 Court officer, please announce the case.  
16 THE COURT OFFICER: (Interpretation) Good morning. Situation in the  
17 Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto and  
18 Joshua Arap Sang, ICC-01/09-01/11. We are in public session.  
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
20 Appearances?  
21 MR OMOFADE: Your Honours, it's safer if I announce the entire Prosecution team  
22 because there's been so much change. The Prosecution today is represented by:  
23 Mr Lucio Garcia, trial lawyer to my left; Mr Lorenzo Pugliatti, associate trial lawyer;  
24 Yulia Nuzban, legal assistant; Meder Begaliev, legal assistant; and Grace Goh, our  
25 case manager; and myself, Ade Omofade, trial lawyer. Mr Steynberg is indisposed

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1 today and won't be in the courtroom.

2 PRESIDING JUDGE EBOE-OSUJI: Defence?

3 MR KHAN: Good morning, Mr President, your Honours. There's no changes to  
4 the composition of the Defence team of Mr William Ruto.

5 MR KIGEN-KATWA: Mr President and your Honours, Mr Sang's team remains the  
6 same, except that Mr Bosek is not present today. Thank you, Mr President and your  
7 Honours.

8 PRESIDING JUDGE EBOE-OSUJI: Sorry, who is present?

9 MR KIGEN-KATWA: Mr Bosek is not present today, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Oh, not present. Okay, thank you.

11 MR NARANTSETSEG: Mr President, Orchlon Narantsetseg from the OPCV. Our  
12 case manager, Carolin Herzig, will join us in a few hours.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

14 Yesterday we left off after the -- at the close of the day on Friday with Witness 326, so  
15 there remained the question whether Mr Kigen-Katwa should be allowed more time  
16 to ask questions before we go to the Prosecutor for re-examination. Mr Kigen-Katwa  
17 had protested that she was -- he was rushed and I did say there are times when we  
18 have to move on. Sometimes it appears that way, but that wasn't the intent to rush  
19 anyone. But, yes, justice has to be dispatched with speed sometimes.

20 And, Mr Kigen-Katwa, you were addressing the question, but we ran out of time  
21 literally because the tape that records what we say as back-up had run out and so we  
22 said we will take up the matter this morning.

23 So we would like to hear from you, but perhaps you let me know whether we need to  
24 go into closed session to discuss, or rather private session to discuss this. I would  
25 like to know specifically what issues - further issues - you want to address.

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1 With that in mind, I would also like to hear from you what is it that this witness has  
2 done to your client forensically that makes you want to keep on asking him questions  
3 in cross-examination? So you let me know whether you can safely discuss that in the  
4 public session, or whether it is safer to go into private session.

5 With particular regard to the last question I asked you, "What exactly is the damage  
6 done to your client by this witness?", I am not saying he did or he did not. It's just a  
7 neutral question that will guide the determination of whether or not you should you  
8 be allowed to ask more questions and how much time you'll be given to do that.

9 MR KIGEN-KATWA: Mr President, I stand to request for more time to  
10 cross-examine this witness, and I propose to cover only four areas in his  
11 cross-examination and I expect not to take longer than 15 minutes, Mr President,  
12 subject to the witness answering the questions.

13 Mr President, I am aware of the question you asked me, being what exactly those  
14 issues relate to my client. Mr President, the witness adduced evidence of an event,  
15 which according to him my client was in attendance and was asked to communicate  
16 certain attendance by the first accused.

17 Mr President, the questions I want to ask him relate specifically to the people who  
18 were present in that occasion to confirm whether or not that occasion actually took  
19 place, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: It looks like this is something we need to do in  
21 private session so that you can speak more clearly.

22 Court officer, can we move into private session briefly. Thank you.

23 (Private session at 9.45 a.m.)

24 (Redacted)

25 (Redacted)

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3 (Redacted)

4 (Open session at 9.53 a.m.)

5 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. As I said in private  
7 session, Mr Kigen-Katwa would be given 30 minutes and no more to ask further  
8 questions in cross-examination, but to do that we will need to bring in the -- bring  
9 down the blinds and bring the witness in so that his examination may continue.

10 (Closed session at 9.54 a.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 9.56 a.m.)

16 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back to the witness stand.

18 You are still under oath and also remember what I had advised you in the course of  
19 your testimony, to listen carefully to questions before answering them and also to  
20 take it easy during your answers to not move too fast, take pauses, and also allow  
21 gaps between the question and the answer you give, to assist the interpreters and the  
22 court reporters to record your testimony.

23 Mr Kigen-Katwa has been given permission to ask you more questions for 30 minutes  
24 to -- he will continue.

25 Mr Kigen-Katwa, at 10.25 we will stop you.

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1 MR KIGEN-KATWA: I'm much obliged, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: And we are in open session, Witness.

3 MR KIGEN-KATWA: Mr President, as I take on the first question, I would request  
4 that the witness be given the PIS. And to the Defence side also, from the Prosecution,  
5 I think.

6 WITNESS: KEN-OTP-P-0326 (On former oath)

7 QUESTIONED BY MR KIGEN-KATWA: (Continuing)

8 Q. Now, Mr Witness, you -- how are you?

9 A. Fine.

10 Q. Now, on 8 October 2013, you testified before this Court and said that in the  
11 meeting you said my client met the first accused and one Honourable Henry Kosgey.  
12 The following media houses were present: KTN, Nation TV, Citizen, K24, Ramogi,  
13 Kass FM, Kameme, Inooro, Radio Citizen, and Radio Maisha. Do you recall that,  
14 Mr Witness?

15 A. I do recall.

16 Q. Now, Mr Witness, I would like you to tell the Court who came from the KTN  
17 station.

18 A. I can't recall the name of the person who represented KTN.

19 Q. Thank you. I understand you to be saying you can't recall. If you could just  
20 speak a little bit louder. Now, what of Nation TV, Mr Witness?

21 A. Same, I can't recall.

22 Q. (Microphone not activated)

23 THE INTERPRETER: Microphone, please.

24 MR KIGEN-KATWA: I'm sorry, Mr President. May I ask the question again?

25 Q. Who came from Citizen TV?



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1 A. I can't recall the name.

2 Q. (Microphone not activated)

3 THE INTERPRETER: Microphone.

4 MR KIGEN-KATWA:

5 Q. -- for TV?

6 A. Also I can't recall.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, instead of listing, why don't  
8 you just put your proposition to the witness, what you're driving at.

9 MR KIGEN-KATWA: I would really have wished to ask the way I am, Mr President.  
10 I appreciate the pressure of time. I will cut it -- I'll -- just allow me to ask this one,  
11 Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, it's not just the pressure of time.  
13 This proceeding needs to be managed efficiently. Thank you.

14 MR KIGEN-KATWA:

15 Q. Now, Mr Witness, you also mentioned Ramogi FM, Kameme FM, Inooro FM,  
16 Radio Citizen, and Radio Maisha. Can you tell the Court any journalist from any of  
17 those other stations that you recall was in attendance at that press conference?

18 A. I can recall the name Nimrod Taabu.

19 Q. And he was from which station, Mr Witness?

20 A. KTN.

21 Q. Do you remember any other?

22 A. I don't remember their names.

23 Q. Thank you. Thank you, Mr Witness.

24 I want to ask you a different question. If you looked at the PSI --

25 PRESIDING JUDGE EBOE-OSUJI: PIS.

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1 MR KIGEN-KATWA:

2 Q. PIS, Mr Witness, I want you to look at item number 20 --

3 MR OMOFADE: Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade is on his feet.

5 MR OMOFADE: I wonder if a spelling could be elicited for the name mentioned. I  
6 don't think it's a name that we've heard before.

7 MR KIGEN-KATWA:

8 Q. Mr Witness, could you confirm that the following spelling I'm saying are the  
9 spelling of the name of the journalist you've just said, Nimrod Taabu? Nimrod is  
10 N-I-M-R-O-D; is that correct, Witness?

11 A. Yes.

12 Q. And Taabu is T-A-A-B-U, isn't it?

13 A. Yes.

14 Q. Thank you, Mr Witness. Now, you've seen the witness marked as number 20  
15 in the PIS, isn't it?

16 A. Yes.

17 Q. Now, you say this is the person who told you of the conversation between  
18 Mr Sang and Honourable Ruto, and Honourable Henry Kosgey, isn't it?

19 A. Yes.

20 Q. Now, Mr Witness, would you be surprised that that person says that you had  
21 no such conversation with them?

22 A. We had such conversation.

23 Q. Could you tell the Court again when was it that you had that conversation,  
24 Mr Witness? Or could I just -- I could pose the -- I could give you the date because  
25 you had said. Do you recall that you'd said it was on 25 December 2007?

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1 A. Yes, we had a conversation on that day.

2 Q. And this conversation was held in Nairobi or elsewhere, if you could tell us,  
3 Mr Witness?

4 A. In Nairobi --

5 PRESIDING JUDGE EBOE-OSUJI: Wait, wait. The lawyer's question is simply "in  
6 Nairobi or elsewhere?" He hasn't asked you for further follow-up, and the reason I  
7 intervened is we don't want you to start saying things and then that may lead to  
8 compromise of your identity. Just answer the question he asked you.

9 MR KIGEN-KATWA:

10 Q. Now, Mr Witness, would you be surprised that that witness says she or he was  
11 not in Nairobi on that day at all?

12 A. She was in Nairobi.

13 Q. Would you be surprised also, Mr Witness, that the place where you say you had  
14 that conversation with that witness and where you say that conference was held was  
15 actually closed on that day?

16 A. It was open.

17 Q. Would you surprised also that she says she had no personal relationship with  
18 you to the extent of such conversations?

19 PRESIDING JUDGE EBOE-OSUJI: The question is overruled. Counsel, can you ask  
20 another one.

21 MR KIGEN-KATWA:

22 Q. Did you, other than being -- did you have any sort of acquaintance with this  
23 person you said translated these -- a late meeting, other than being merely  
24 workmates?

25 A. We were workmates and we could talk close.

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1 Q. Now, Mr Witness, I would like to invite you to what you told the Prosecution,  
2 and I --

3 MR KIGEN-KATWA: Mr Witness, I have particular reference to paragraph 101 of  
4 his statement.

5 Q. And, Mr Witness, I would like to read the paragraph to you and you confirm if  
6 that's what you told the Prosecution.

7 "The investigator showed me a document KEN-D11-0005-0200 entitled 'Executive  
8 brief on the positioning and marketing of Orange Democratic Movement, the People's  
9 President, Honourable Raila Odinga,' dated 8 September 2007. This is the first time I  
10 have seen this document."

11 This is what you say: "This is the first time I have seen this document. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Do you recall that, Mr Witness?

20 A. When I was -- saw that document -- they are not pastors there. Some of them  
21 you call them pastors, were professor.

22 Q. Okay. That's okay. You mean where you have written "PR," you meant  
23 "Professor"?

24 A. I never wrote "PR." They are professor.

25 Q. Now, Mr Witness, that's not so much my question, it's not so much the people.

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1 Just do you recall that document, Mr Witness?

2 A. I request it to be shown so that I can know what kind of document you are  
3 talking about.

4 MR KIGEN-KATWA: Mr President, I'm referring to document KEN-D13-0005-0201,  
5 and with your permission, Mr President, I could give a hard copy to the witness so  
6 that we can move faster.

7 PRESIDING JUDGE EBOE-OSUJI: Not so we can move faster. I think it would  
8 have been appropriate to do that in any event.

9 MR KIGEN-KATWA: If the court officer could assist, Mr President.

10 Q. Mr Witness, you've seen that document?

11 A. Yes.

12 PRESIDING JUDGE EBOE-OSUJI: I hope this is not going out.

13 THE COURT OFFICER: (Interpretation) Your Honour, the document  
14 KEN-D13-0005-0200, page 0201, confidential document, is being shown inside the  
15 courtroom only and is not shown outside of the courtroom.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Mr Kigen-Katwa, have you directed him to the specific paragraph you were reading?

18 MR KIGEN-KATWA: I'd given him a moment to look at it, Mr President. I can  
19 now take him to this document.

20 Q. Now, Mr Witness, we can see a table there written on one corner, "confidential,"  
21 "strengths" and then on the other side, "weaknesses"; you can see that?

22 A. There is not that table.

23 MR KIGEN-KATWA: Sorry, Mr President, I gave him the first page. I wonder if I  
24 could give him the other page.

25 Court officer, please.

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1 Q. Now, Mr Witness, my question is fairly straight and focused. You've seen the  
2 document, isn't it?

3 A. Yes, I've seen the document.

4 Q. And you recall having been shown that document?

5 A. Yes.

6 PRESIDING JUDGE EBOE-OSUJI: By who?

7 MR KIGEN-KATWA:

8 Q. You recall having been shown that document by the Prosecution when you  
9 were taking your statement, isn't it, Mr Witness?

10 A. Yes.

11 Q. Now, Mr Witness, were you told or otherwise are you aware that that document  
12 was produced for the first time by the PNU in their submission to the Waki  
13 Commission?

14 A. I was not told.

15 Q. And, Mr Witness, your position in your statement and in your testimony today  
16 in court is that that document is not genuine?

17 A. Not.

18 Q. (Microphone not activated)

19 THE INTERPRETER: Microphone.

20 MR KIGEN-KATWA: Could you answer -- yes, sorry, Mr President.

21 Q. What is your answer? Is it genuine, or it's not genuine?

22 MR OMOFADE: Your Honours, the reason I rise is the proposition that's being put  
23 to the witness is not the proposition contained in the statements, and I think it's only  
24 fair that what was said in the statement is what is put to the witness. There was no  
25 issue of genuineness of the documents.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go into private session for a  
2 minute or two.

3 (Private session at 10.14 a.m.)

4 (Redacted)

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6 (Redacted)

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- 25 (Open session at 10.17 a.m.)



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- 1 THE COURT OFFICER: (Interpretation) We are in public session, your Honours.
- 2 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, do you mind if I ask this
- 3 witness this question?
- 4 MR KIGEN-KATWA: No, Mr President, I don't mind you asking it.
- 5 PRESIDING JUDGE EBOE-OSUJI: Witness, you've heard the portion of the
- 6 document - the portion of your statement - that counsel read out when we were just
- 7 in private session. You have also seen the document that the discussion concerns.
- 8 The question is this: In your opinion, or according to you, are you saying the
- 9 document is genuine or not genuine, or are you saying it is official or not official?
- 10 What are you saying?
- 11 THE WITNESS: Not genuine.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 MR KIGEN-KATWA:
- 14 Q. Lastly, Mr Witness, you have no recollection of any journalist having been in
- 15 that session because it never took place, isn't it, Mr Witness?
- 16 A. I have a recollection.
- 17 Q. Mr Witness, the only reason why you can recollect only Mr Sang, and you have
- 18 pulled in Mr Nimrod Taabu now, is because if you were not going to say the name of
- 19 Mr Sang you would have lost relevance for the Prosecution, isn't it, Mr Witness?
- 20 A. No.
- 21 MR KIGEN-KATWA: Mr President, that should be all from me. Thank you,
- 22 Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: Thank you and you have five minutes left.
- 24 MR KIGEN-KATWA: I can carry it forward, Mr President.
- 25 PRESIDING JUDGE EBOE-OSUJI: No, do not.

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1 Prosecutor, did you say you have questions in re-examination and how much time do  
2 we -- do you expect doing that in?

3 MR OMOFADE: Your Honours, my questions are very brief. I think in the space of  
4 about ten or possibly 15 minutes. Of course it depends on the responses, but I don't  
5 anticipate going over 20 minutes.

6 PRESIDING JUDGE EBOE-OSUJI: It's not always the witness's  
7 question -- responsibility. Sometimes questions themselves can cause a witness to  
8 respond the way they do, but you can proceed.

9 MR OMOFADE: And the entirety of my questions will be in private session, your  
10 Honour.

11 PRESIDING JUDGE EBOE-OSUJI: We will then go into private session.

12 (Private session at 10.21 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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- 10 (Open session at 10.37 a.m.)
- 11 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 Witness, we've come to the end of your testimony and I wish to thank you especially
- 14 for coming to assist us with our inquiry into what happened in the wake of the Kenya
- 15 elections in 2007. The -- we know that the experience has been difficult, not only
- 16 because you had to travel far to come but also because lawyers do ask these questions
- 17 that sometimes the average witness is wondering: What is this all about? And
- 18 sometimes wondering whether this is not just there to abuse you. That wasn't the
- 19 case. All the lawyers asking you questions are doing their work, and we thank you
- 20 for doing yours in helping to come and answer those questions. We wish you good
- 21 luck as you travel back. Thank you.
- 22 We will bring down the blinds and then escort the witness out of the courtroom.
- 23 (Closed session at 10.39 a.m.)
- 24 (Redacted)
- 25 (Redacted)



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- 20 (Open session at 10.42 a.m.)
- 21 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 23 Prosecutor, the next witness is 189, is that it?
- 24 MR GARCIA: Good morning, your Honours. That's correct.
- 25 PRESIDING JUDGE EBOE-OSUJI: While we wait for the witness to be brought in,

1 we will attend to a certain ruling of the Chamber. The ruling is in relation to witness  
2 protection measure on the stand.

3 In the Chamber's decision of 3 September 2013, the Chamber deferred its ruling on  
4 protective measures in the courtroom. The Chamber required both the Prosecution  
5 and the Victims and Witnesses Unit to provide additional information and updated  
6 information that will help in the assessment of the needs of the witness for protection  
7 in the courtroom, in particular in light of any views expressed by the witness upon  
8 arrival at The Hague. The Prosecution was directed to consult with the Victims and  
9 Witnesses Unit and, where appropriate, to notify the witness of this pending  
10 application upon arrival. The Victims and Witnesses Unit was asked to transmit to  
11 the Chamber the witness's views, as well as the unit's own updated information on  
12 the witness's security and psychological well-being.

13 On 9 October 2013, the unit sent its security assessment to the Chamber. In the  
14 assessment the unit recommended the usual menu - "usual" is not supposed to  
15 trivialise or routinise the measures - but in particular the unit recommended image  
16 and voice distortion, the use of pseudonyms, limited private sessions and redaction to  
17 public records where necessary to prevent identification.

18 Having considered the recommendation of the unit, the Chamber hereby grants the  
19 request for protection measures in the courtroom to the extent recommended by the  
20 Victims and Witnesses Unit; that is to say image and voice distortion, use of  
21 pseudonym, redaction to public records and limited private sessions where there's a  
22 risk that the testimony may be of a unique nature which may as such reveal the  
23 identity of the witness to the wider public.

24 That is the Chamber's ruling.

25 (Microphone not activated)

1 MR GARCIA: Your Honours, it's always an estimate obviously. I predict that,  
2 depending on how the witness testifies, it should take no more than a day-and-a-half  
3 of examination-in-chief.

4 PRESIDING JUDGE EBOE-OSUJI: Try and make it less than that.

5 Also, have you advised the witness of the obligation?

6 MR GARCIA: Yes, your Honour, the obligation to tell the truth and the fact that  
7 there is a criminal offence of perjuring yourself, not saying the truth whilst testifying,  
8 has been stated to the witness and the witness states she understands it.

9 PRESIDING JUDGE EBOE-OSUJI: I know I have not asked you this question in the  
10 past, but you should also make it part of the preparation requirement of Rule 74  
11 about the need -- I think personally it's an odd thing to have to tell a witness coming,  
12 but the Rules indicate that it needs to happen, about self-incrimination and the right  
13 to object when questions might lead to self-incrimination.

14 Did you happen to do that as well?

15 MR GARCIA: No, your Honours, we did not do that. I know there's a list of  
16 witnesses that would be concerned by this rule against self-incrimination and clearly  
17 we will do that for those witnesses; witnesses who are deemed to be insiders.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Do that outside the courtroom,  
19 alongside the reminder of the obligation to tell the truth and the perjury thing.

20 MR GARCIA: Indeed, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: And that also goes for Defence.

22 When it's your turn, it's best to do these things before the witnesses come in.

23 MR KHAN: Your Honour, for the Defence, we actually tell witnesses at the time we  
24 speak to them. We don't leave it so late.

25 Your Honour, given what my learned friend has said, we intend to give any material

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1 we would use in cross-examination by about 2.30 today.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Mr Narantsetseg, is this a witness of interest to you from the perspective of victims?

4 MR NARANTSETSEG: Mr President, if you allow me, I will consult my colleague  
5 for a few minutes?

6 PRESIDING JUDGE EBOE-OSUJI: Well, you have -- you can do that later, all right?  
7 You don't have to do it immediately --

8 MR NARANTSETSEG: Right.

9 PRESIDING JUDGE EBOE-OSUJI: -- but in the course of the Prosecution's  
10 examination-in-chief you can let us know.

11 MR NARANTSETSEG: I'm grateful, your Honour. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: We will now bring down the blinds and lead the  
13 witness on to the stand.

14 (Closed session at 10.50 a.m.)

15 (Redacted)

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18 (Redacted)

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21 (Redacted)

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24 (Redacted)

25 (Redacted)

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6 (Redacted)

7 (Open session at 10.52 a.m.)

8 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 Madam -- before I talk to the witness and give her advice, can we please have her take  
11 her oath, but I will thank -- I will welcome you on the stand to begin with please.

12 WITNESS: KEN-OTP-P-0189

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

15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Madam, and welcome to  
16 the courtroom.

17 THE WITNESS: Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: And, as I have said to witnesses who have  
19 appeared before you, when I say "Welcome to the courtroom," I do not want to make  
20 you feel like a stranger to the courtroom. The reason I say "welcome" is that the  
21 Judges here and the lawyers work here every day, so we -- that sense that we say  
22 "welcome" to people who join us. So welcome.

23 This is a public courtroom. It belongs to you too, as much as it does to any one of us  
24 in this courtroom.

25 We thank you for coming to assist us in our inquiry. What is required of you is no

1 more or no less than what your oath says to you, which is to tell the truth and nothing  
2 but the truth. This requires that you concentrate only on what you perceived as a  
3 witness, what you saw, what you heard, what you smelled and what you sensed in  
4 any way.

5 Try not to get drawn into drawing inferences that, because something happened and  
6 something else happened, something else would have been the case. That is a job for  
7 lawyers to do. Just limit yourself to telling us what you observed yourself.

8 Try not to guess at answers. If you must do that inevitably it is best for you to signal  
9 that you are guessing only, but try not to guess.

10 It's important again that you listen very carefully to the questions the lawyers would  
11 ask you before answering. First, the Prosecution would ask you questions - the same  
12 rule applies, listen carefully before answering, make sure you understand their  
13 question before you answer - and then counsel for the Defence, perhaps

14 Mr Kigen-Katwa for Mr Sang might go first this time, and then after him Mr Khan  
15 representing Mr Ruto. Again, at all times listen very carefully to the questions you  
16 are being asked.

17 It is often the case that people who are coming to court will think that the lawyers  
18 who are cross-examining them are there to abuse them. That is not the case and in  
19 this courtroom we will not let that happen. So concentrate on telling us the truth  
20 and the Court will do what it must do to make sure that the questions you're asked  
21 are asked fairly.

22 I will leave you with those admonitions to begin with, but before I let you -- let the  
23 lawyers start asking questions, there's one little matter. There are people who are  
24 sitting up there and here. These are the interpreters and the court reporters. Their  
25 job is to take down your testimony. It is important that you assist them in that job,

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1 because it is important that everything you say be recorded accurately. That  
2 requires that you speak slowly and speak in chunks of information, observing logical  
3 pauses between sentences to allow them to catch up with their work. Also, there's  
4 something we call a "five-second rule." Keep that in mind. What it means is a  
5 certain pause that must be observed between the questions you're asked and you  
6 starting to answer. That also makes -- enables the transcript to be recorded carefully.  
7 It avoids overlapping of speakers. When he's asking you a question and you start  
8 asking -- answering immediately, there will be a clash and the court reporters will not  
9 hear you.

10 THE WITNESS: Okay.

11 PRESIDING JUDGE EBOE-OSUJI: So with that out of the way, Mr Garcia, the  
12 witness is yours.

13 MS ALAGENDRA: Your Honours, if I may? Your Honours, just so the witness is  
14 not disorientated later, we just want to make it clear that from the Defence that the  
15 Ruto Defence will start the questioning first and I will be questioning the witness on  
16 behalf of this team.

17 PRESIDING JUDGE EBOE-OSUJI: You've heard that little bit of correction, Witness.  
18 Yes, the Ruto Defence will start. When it's their turn to start cross-examining,  
19 Ms Alagendra will ask you questions when the time comes. Thank you.

20 MS ALAGENDRA: And also, your Honour, if we can be given the PIS form?  
21 Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I understand the PISs have not been  
23 distributed?

24 MR GARCIA: That's correct, your Honour. I have them right here in my hand.  
25 I'm soliciting the help of the court officer to distribute them.

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1 I also note, your Honours, the time. It's 10.59, from what I see. I can obviously  
2 introduce myself to the witness, but afterwards I'm going to solicit a private session  
3 regarding some confidential information. So what I would -- I think that it would be  
4 an appropriate time to rise at this point and come back at 11.30, and I can start out  
5 with the private session if the Chamber sees it fit?

6 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you're asking to go into private  
7 session?

8 MR GARCIA: Yes, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into private session then.

10 (Private session at 11.00 a.m.)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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22 (Open session at 11.06 a.m.)

23 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

25 Madam, I know it must sound to you as a surprise, that you just arrived and then we

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1 are rising again. These things happen. We had been dealing with some other  
2 matters before your arrival. So we will take the morning break and we will come  
3 back to continue with your testimony.

4 The Court will rise after the witness has been let out of the courtroom. We will rise  
5 and then return at 11.35.

6 (Closed session at 11.07 a.m.)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Recess taken at 11.08 a.m.)

14 (Upon resuming in private session at 11.39 a.m.)

15 (Redacted)

16 (Redacted)

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12 (Redacted)  
13 (Redacted)  
14 (Open session at 11.46 a.m.)  
15 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.  
16 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
17 Madam, we are now in public session and what that means is you need to be careful  
18 about putting into your answers information that may reveal who you are,  
19 information not only about your name, where you live and names of relatives and  
20 friends, but also information that you may be the only one who knows it and there is  
21 somebody else who knows that you are the only one who knows that sort of  
22 information, so then when they hear it they may know that you are the one testifying.  
23 Now, be careful about giving those sorts of information. Usually the safest way to  
24 do this is to listen carefully to the questions the lawyers ask you and to answer only  
25 those questions. When you begin to add more information in your answer than the

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1 question requires, chances are that you may start revealing this additional  
2 information that may be difficult because the lawyers didn't anticipate that you  
3 would do that. So it's important for you to listen carefully to the questions they ask  
4 and answer just that.

5 Now, in front of you, beyond the microphone, you would see a light. It's like a  
6 partial traffic light. Can you look? It's alight now. It's red. This is something  
7 there, a contraption that has two lights. One is red. The other when we are in  
8 private session will light up green. Are you seeing that button?

9 All right. When it's red, it means we are in public session. It means danger.

10 Danger does not mean do not speak the truth. It's something to remind you about  
11 your own protection, so do not give more information that will identify who you are.

12 All right. So we will begin now -- continue with your questioning.

13 One more thing. You've been saying "Yeah" when you're answering questions. Try  
14 to say "Yes," if that is what you mean, because "Yeah" may be ambiguous.

15 Somebody may not -- reading this thing later on, the transcript, may not -- it may not  
16 be clear what you mean. So try to say "Yes" or "No," if you mean those. Thank you.

17 MR GARCIA:

18 Q. Now, Madam Witness, I'm going to be asking you some questions about the  
19 time period before the elections of 2007 in Kenya. I'm gonna start out with those  
20 questions.

21 My first question is: Can you tell us if you were doing any kind of political work in  
22 the lead-up to the 2007 elections?

23 A. Yes.

24 Q. Can you please tell the Court exactly what type of work you were doing?

25 A. I was mobilising youths to campaign for Mr Kibaki.



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1 Q. And, Madam Witness, were you part of a group or a movement of any sort?

2 A. Yeah.

3 PRESIDING JUDGE EBOE-OSUJI: You mean "Yes"?

4 THE WITNESS: Yes, sorry.

5 MR GARCIA:

6 Q. And, Madam Witness, what was the name of this group or movement that you  
7 were part of in what I understand campaigning for Mr Kibaki?

8 A. Waremba na Kibaki in Eldoret.

9 Q. I'm not sure if the interpreters have caught that. Can you just say it one more  
10 time? I understand that you've just told us the name of the group in Swahili, is that  
11 possible?

12 A. Yes.

13 Q. Now, can you please slowly just tell us exactly what are the words that you just  
14 mentioned before?

15 A. Waremba na Kibaki in Eldoret.

16 Q. And just for the court record, can you just explain to us what those words  
17 mean?

18 A. Ladies mobilising for Kibaki in Eldoret.

19 Q. Thank you, Madam Witness, for that clarification. And when did you start  
20 mobilising for the Kibaki campaign? In what year?

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, before you ask that question, you see  
22 in line 15 there is a spelling. Is that the correct spelling of the movement?

23 Madam, why don't you spell the movement you gave us in Swahili? Can you spell it  
24 for the record, please?

25 THE WITNESS: W-A-R-E-M-B-O. Waremba.

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1 PRESIDING JUDGE EBOE-OSUJI: Keep going, thank you. What is the other one?

2 I think it was more than just Waremba?

3 THE WITNESS: Na.

4 PRESIDING JUDGE EBOE-OSUJI: That's N-A?

5 THE WITNESS: Yeah.

6 PRESIDING JUDGE EBOE-OSUJI: And then Kibaki?

7 THE WITNESS: Yes, Kibaki.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Mr Garcia, please proceed.

10 MR GARCIA: Thank you, your Honour.

11 Q. Madam Witness, can you please tell the Court when you started campaigning  
12 for Kibaki? In what year?

13 A. 2006.

14 Q. And could you just explain to us briefly what that entailed, the campaigning?

15 Would this mean going to different places and having rallies? Is that what you  
16 would do? What exactly would you do?

17 A. Yeah. Yes, we would go around to the rallies and we would campaign for  
18 our -- for our member. Like now Mr Kibaki, we will sell his -- we will sell his -- what  
19 I mean is we will campaign for him.

20 Q. Could you tell us, Madam Witness, what was the ethnic composition of this  
21 group and of the people like you who would go out and campaign for Mr Kibaki?  
22 What ethnic group were they from?

23 A. There was no ethnic group. We were mixed.

24 Q. And can you just tell us what ethnic groups exactly?

25 A. There were some Kalenjins, Kikuyus, Luos, Luhyas and a few Kisiis.

1 Q. And, Madam Witness, can you tell us what towns, what places, you visited for  
2 this campaigning prior to the elections?

3 A. In Eldoret town, Kimumu area, Munyaka, Cheptiret and also Langas.

4 Q. Can you tell us, Madam Witness, when you did this campaigning, was it -- were  
5 you always well-received? Was it peaceful in the end, or was there some opposition  
6 to your campaigning for Kibaki?

7 A. At first there was no problem. The months goes by, it was tough. It was not  
8 calm on our side.

9 Q. I understand that, Madam Witness. I'm just going to read what you've stated  
10 and what appears on the transcript. You say, "As the months went back, it was  
11 tough. It was not calm on our side." Can you just give us more, elaborate on that?  
12 What do you mean? "It was not calm," what was happening exactly?

13 A. There were some areas we could go and you could be told this is not our  
14 territory, or area, so we are not supposed to campaign here and so we have to leave.  
15 And sometimes we would be stoned. Sometimes they would block the road so that  
16 we should not -- we should not -- we may not pass.

17 Q. Now, do you recall any specific incidents in specific places, villages or towns,  
18 that you can tell the Court about?

19 A. Yeah. There was a time we went to Chiptiret area and when we stopped the  
20 women came and they were shouting. Later we were forced to leave the place  
21 because we were told this is not our area.

22 Q. Now, Madam Witness, before we just -- before I continue asking you questions  
23 on this incident, just for the court record, so it can accurately reflect what you're  
24 telling us, line 23 you said, "There was a time we went to ..." and here it is indicated  
25 "Kipchiri," K-I-P-C-H-I-R-I. Is that the correct spelling of the place that you went to

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1 and, if not, can you give us the correct spelling?

2 A. No.

3 Q. Madam Witness, can you just please tell us exactly what the correct spelling of  
4 the place is?

5 A. Cheptiret. C-H-E-P-T-I-R-E-T. Cheptiret.

6 MS ALAGENDRA: Your Honour, may I suggest that the witness be given a paper  
7 and a pen to assist her?

8 PRESIDING JUDGE EBOE-OSUJI: That's a very good suggestion. In the meantime  
9 can the court officer please facilitate that, a pen and a sheet of paper.

10 Madam, the idea there is that, if you need to spell any of these words, if it's easier for  
11 you to write them down so you can better spell. That's why you would have a sheet  
12 of paper and a pen. It looks like you already have that.

13 THE WITNESS: Yeah.

14 PRESIDING JUDGE EBOE-OSUJI: Oh, good. And also can you please lean  
15 forward towards the microphone. If you need to move your chair closer, you may  
16 do that.

17 MR GARCIA:

18 Q. Now, Madam Witness, in relation to this incident at Cheptiret, do you recall  
19 exactly when this would have occurred? In what year?

20 A. It was in 2006.

21 Q. Would you be able to recall how many of you were travelling to Cheptiret on  
22 this occasion? I don't need an exact number, just an estimate.

23 A. Around 50 girls and around 20 men.

24 Q. And Madam Witness, Cheptiret, for those of us in the Court here, can you tell  
25 us is this a village or a town? Can you just give us an indication as to that?

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1 A. It's a village.

2 Q. Can you tell us about the ethnic composition of this village? What are the  
3 ethnic groups that live in Cheptiret, or that used to live in Cheptiret at that time?

4 A. The majority are the Kalenjins.

5 Q. Were you in fact able to campaign there on that day in Cheptiret?

6 A. No.

7 Q. And since I'm on the same question, do you remember what month this would  
8 have occurred in 2006?

9 A. No.

10 Q. And can you just explain to us briefly why is it that you weren't able to  
11 campaign there in Cheptiret on that occasion?

12 A. We were not able to campaign because when the women screamed, telling us  
13 this is not our area, we were afraid, maybe we going to be attacked; told this is not  
14 our area so we should move.

15 Q. And would you be able to tell us of what ethnicity these women were that were  
16 screaming or telling you it was not your area?

17 A. They were screaming using their language.

18 Q. I understand, their language. What language would that be?

19 A. Kalenjin.

20 Q. Thank you, Madam Witness. Was there anything else that these women would  
21 say to you?

22 A. No.

23 Q. Now, you also mentioned at one point, if I'm not correct, something about  
24 roadblocks as well; is that correct?

25 A. Yes.

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1 Q. And are you able to give the Court an example of a situation where there was a  
2 roadblock that was employed?

3 A. Yes.

4 Q. Can you please do so?

5 A. Yes. Okay, there was a day also we went to a place called Sinai. Sinai, it's  
6 also located in Kimumu area. That was the place where there were roadblocks,  
7 couldn't pass through.

8 Q. And just so that we're all clear, what is Sinai? Is that a village? A town?

9 A. It's also a village.

10 Q. And in terms of proximity, is that near Eldoret?

11 A. Yes.

12 Q. Approximately how much time would it take from Eldoret to Sinai if you were  
13 to travel by vehicle?

14 A. Around 15 minutes.

15 Q. Now, if you could just help us and tell us how many of you were travelling to  
16 Sinai on the day that this incident occurred.

17 A. That day we were many because we had big lorries.

18 Q. Okay. So you mentioned that you had -- you were many because you had big  
19 lorries. Approximately how many people were with you on that occasion?

20 A. Around 200 to 300 people.

21 Q. And I understand that at one point you encountered a roadblock; is that correct?

22 A. Yes.

23 Q. Now, just so that we can be clear on this matter, was the roadblock on the  
24 highway or was it in Sinai itself?

25 A. Okay. Sinai, it's an area, so the roadblock is on Eldoret-Iten highway.

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1 Q. I understand, and just for the record and so that we can understand better, the  
2 Eldoret-Iten highway is a highway that goes from Eldoret to a village or a town called  
3 Iten; is that correct?

4 A. Yes.

5 Q. Now, could you, Madam Witness, describe to the Court exactly who you saw  
6 manning the roadblock?

7 PRESIDING JUDGE EBOE-OSUJI: Counsel, sorry to again interrupt, but these  
8 things are not small, the spelling of places and names. Sinai, was it spelled --

9 MR GARCIA: Madam --

10 PRESIDING JUDGE EBOE-OSUJI: Now we have Iten.

11 MR GARCIA: I can -- thank you, your Honour. I can do that.

12 Q. Madam Witness, am I correct in stating that "Sinai" would be spelled S-I-N-A-I?

13 A. Yes.

14 Q. Am I also correct in stating, Madam Witness, that the name "Iten" would be  
15 spelled I-T-E-N; is that correct?

16 A. Yes.

17 Q. Thank you, Madam Witness.

18 Now, when you did arrive at this roadblock on the highway, could you describe to us  
19 the scene, what you saw at this roadblock.

20 A. Okay. They had to block the road with wooden structures and some stones  
21 and logs.

22 Q. All right. I'm reading from the transcript. You've stated that "They had to  
23 block the road with wooden structures and some stones ..." Who are you referring  
24 to when you speak about "they"?

25 A. The ODM supporters.

1 Q. I understand you're referring to them as ODM supporters, but for the record can  
2 you tell us of what ethnicity these people were that were there at the roadblock on  
3 that day?

4 A. They were mixed. They are Kalenjins, Luhyas, Luos.

5 Q. Now, you've mentioned there were Kalenjins, amongst others. Can you please  
6 explain to the Court how you came to this or arrived at the conclusion that they were  
7 indeed of Kalenjin ethnicity, some of the people that were there at the roadblock?

8 A. Okay. From the looks I can tell this is a Luhya and this is a Luo and this one is  
9 a Kalenjin.

10 Q. Now, specifically in regards to the Kalenjin, you've mentioned that because of  
11 the look, what exactly -- what characteristics would you be able to tell us here in  
12 Court made you think or believe that they were Kalenjin? Take your time.

13 A. Kalenjin has tall, thin, slim, black.

14 Q. Now, you've mentioned, Madam Witness, the different people that were there  
15 at this roadblock. Can you give an estimate of the amount of people that were there  
16 manning the roadblock at that time?

17 A. I can range them at around a hundred youths.

18 Q. And could you tell us approximately what age group these youths were?

19 A. They don't have the ages because they are mixed.

20 Q. I'm sorry, Madam Witness, I should have been maybe clearer. Were there  
21 younger people or older people amongst this group of people, a hundred people, that  
22 were at the roadblock? What age were they approximately?

23 A. Between 20 and above.

24 Q. Now, when you and your group of campaigners arrived at the roadblock, what  
25 happened exactly?



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1 A. They shouted at us and they also stoned at us.

2 Q. Do you recall exactly what they were shouting at you?

3 A. Yeah. Still that is not our area, "You should not campaign there."

4 Q. Now, Madam Witness, just so that we can understand this well, when these  
5 people are saying it's not your area, can you explain to the Court what you took that  
6 to mean?

7 A. Meaning we are not supposed to be in that place to campaign.

8 Q. Now when you say, "we," you are referring to who exactly?

9 A. We, the lobby group of the Warembu.

10 Q. All right. Now -- and I understand that you're -- what you're stating is that  
11 you're not supposed to be in that place, but why not exactly? Explain that a little bit  
12 more to the Court.

13 A. Because that is a Kalenjin territory area and majority of the people who'd  
14 campaign on that place at that time were only the ODM supporters.

15 Q. Do you remember, Madam Witness, if these individuals that you've estimated  
16 at approximately a hundred, if they were -- if they had any type of weapons?

17 A. No.

18 Q. And, Madam Witness, were you, in fact, impeded from going to campaign in  
19 Sinai --

20 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, can you hold that question.

21 Madam, when you said "no" to that question, are you saying "no" to what? Are you  
22 saying that you cannot remember if they had weapons or are you saying "no," they  
23 did not have weapons?

24 THE WITNESS: No, they did not have weapons.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MR GARCIA:

2 Q. Madam Witness, just actually on that question, you mentioned that there  
3 was -- that they threw stones at you; is that correct?

4 A. Yes.

5 Q. Now, was anyone injured by these stones in your group?

6 A. Yes, only one person.

7 Q. Now, Madam Witness, I understand that you were confronted with a roadblock.  
8 Did this, in fact, impede you from campaigning in Sinai on that day?

9 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase the question, counsel, using  
10 different words.

11 MR GARCIA:

12 Q. Madam Witness, I'm going to make my question less complicated. But were  
13 you able to campaign on that day?

14 A. No.

15 Q. Now, just in terms, Madam Witness, of the date that this occurred, do you  
16 remember in what year specifically it happened?

17 A. The same year, 2006.

18 Q. Now, Madam Witness, I just want to go back to the incident that you described  
19 to us previously that occurred at Cheptiret. One last question I had on that issue is,  
20 were the people there -- did they have any type of weapons with them, people that  
21 were shouting at you?

22 A. No, they did not have any weapons.

23 Q. Were you able, Madam Witness, you and the people of your group, to continue  
24 campaigning for Kibaki in 2007 prior to the -- just prior to the elections?

25 A. Yeah, we continued, but within the town centre, not outskirts of the town.

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1 Q. And just so that it can be clear for the record, when you're speaking about the  
2 town centre, are we speaking about Eldoret town centre?

3 A. Yes.

4 Q. And, Madam Witness, why is it that you were unable to or unwilling to go  
5 outside of the town centre to do your campaigning in that period?

6 A. Because it has become difficult for us to pass through, or maybe to campaign, so  
7 we decided not to go outside the town again.

8 Q. Okay. Just so it can be a little bit more clear, you say that, "Because it has  
9 become difficult for us to pass through ..." To pass through where, or what places?

10 A. Okay. Like Cheptiret we couldn't campaign. If we wanted to campaign  
11 around Kimumu area, it had been difficult for us. So that's the reason why we  
12 couldn't go outside the town any more.

13 Q. And why had it become difficult for you to campaign in these areas?

14 A. Because the area was an ODM stronghold.

15 Q. And what would happen, Madam Witness, if you attempted - you and your  
16 group of campaigners - to campaign in these ODM strongholds?

17 A. They would shout at us and sometimes we would be forced to get out of their  
18 area.

19 Q. You mentioned to us, Madam Witness, incidents that occurred in 2006. Were  
20 there any incidents that you could relate to the Court that happened in 2007, during  
21 your attempts at campaigning for Kibaki?

22 A. No.

23 Q. And as for the campaigning that you would do within the town centre  
24 itself - Eldoret town centre - could you tell us how that would go? Would it go  
25 peacefully, or was that -- was that fine, as opposed to going out of the area?

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1 A. Some sites it was okay, but there was another place we campaigned and it was  
2 terrible.

3 Q. What other place would this be, Madam Witness?

4 A. It was around Barngetuny area.

5 Q. Madam Witness, if you could just for the record -- I'm not sure that this has been  
6 captured, but could you just spell out the area that you have just mentioned to us in  
7 testimony?

8 A. Okay, B-A-R-G-E-T-U-N-Y (sic). Barngetuny.

9 Q. Just so that I can be clear on this, Madam Witness: Barngetuny, is this an area  
10 within Eldoret or the Greater Eldoret region?

11 A. It's an area within Eldoret town.

12 Q. Now, Madam Witness, did you attempt to campaign there, in Barngetuny, at  
13 some point?

14 A. Yeah, we had these big lorries and we would move around the town  
15 campaigning. Then when we come on this route, we couldn't even pass because we  
16 were attacked by ODM members.

17 Q. Can you explain to us what happened exactly? You say that you were  
18 attacked?

19 A. They shouted at us. It's an area where vehicles are being made, like garage,  
20 and so they came with hammers and some -- I think I can sum them as like a hammer  
21 and start pumping the lorries, beating the lorries.

22 Q. Okay. So from what I understand from your testimony, it's they  
23 started -- these individuals, ODM members, came pumping? I imagine you mean  
24 strike at the lorry --

25 A. Yeah.

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1 Q. -- with their hammers; is that correct?

2 A. Yeah. Yes.

3 Q. Now, once again you're using the term "ODM members." Could you help us  
4 with the ethnicity of these people that were striking at the lorry?

5 A. Okay. That area it's mixed, but the majority are Luos.

6 Q. Were there other ethnic groups involved?

7 A. I couldn't -- I couldn't tell.

8 Q. I'm just going to ask you, Madam Witness, just take your time and wait until  
9 I've asked my question and wait a couple of seconds so that we can facilitate things  
10 for the interpreters. Sometimes it's my fault. Thank you, Madam Witness.

11 Now, Madam Witness, immediately prior to the election day, which I understand was  
12 27 December, was there any campaigning done prior in the month of December 2007?

13 A. No.

14 Q. And can you tell us about how were the relations between the different ethnic  
15 groups immediately preceding the elections in the month -- in the month of December  
16 2007?

17 A. Actually, there was no problem between the groups and the people.

18 Q. And can you tell the Court when the problems started?

19 A. Okay. After the voting and maybe the coming few days after the voting, that's  
20 where the problem started.

21 MR GARCIA: I'm going to ask the Court if I could go into private session for a  
22 minute or two, very brief?

23 PRESIDING JUDGE EBOE-OSUJI: Let's go into private session.

24 (Private session at 12.23 p.m.)

25 (Redacted)

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14 (Open session at 12.26 p.m.)

15 THE COURT OFFICER: (Interpretation) We are in public session.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Mr Garcia, please proceed.

18 MR GARCIA:

19 Q. Now, Madam Witness, you mentioned Brookside Dairy. Can you tell us -- you  
20 mentioned actually a problem at Brookside Dairy. Can you tell us exactly what was  
21 this problem about?

22 A. There were some rumours that there had been stolen election papers and they're  
23 being hidden at the Brookside.

24 Q. And just so we can be clear on this matter, the stolen -- I understand that there  
25 were rumours, but these stolen election papers they would have related -- who would

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1 have been hiding, or why were they being hidden at Brookside Dairy, if you can  
2 explain that to us to the best of your recollection?

3 A. They thought the PNU supporters had stolen ballot papers and they're hiding  
4 them at the Brookside Dairy.

5 Q. Now, just to be even more clear, when you say, "They thought the PNU  
6 supporters had stolen ballot papers ...", who are you referring to when you are  
7 speaking about "they"?

8 A. The PNU supporters.

9 Q. I'm sorry, Madam Witness. Maybe I wasn't clear.

10 PRESIDING JUDGE EBOE-OSUJI: Who was it that thought that PNU members had  
11 stolen the ballot papers?

12 THE WITNESS: Okay, the ODM supporters.

13 MR GARCIA:

14 Q. Thank you, Madam Witness. Now, can you tell me where these rumours were  
15 coming from? Do you have knowledge on that?

16 A. No.

17 Q. And due to the fact that the ODM supporters thought that the PNU supporters  
18 had stolen ballot papers and hiding them, what happened according to the  
19 information you had at the Brookside Dairy?

20 A. They threatened to burn down the dairy.

21 Q. Now, once again, when you're saying "they," did you say "They returned to  
22 burn down the dairy"? Is that --

23 A. The ODM supporters threatened to burn down the dairy.

24 MR GARCIA: I think that's "threatened" and not "returned," if I'm correct.

25 Q. "Threatened," is that the word you used? Because I'm seeing "returned" here,



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1 but I'm hearing you say "threatened"; is that correct?

2 A. Yes.

3 Q. And from the information you obtained, Madam Witness, did they indeed burn  
4 down the dairy, or what happened exactly?

5 A. No, they didn't burn down, but they destroyed a few things over there.

6 Q. Was there, Madam Witness, a verification inside the dairy to see if there indeed  
7 were stolen ballot papers to what you remember?

8 A. I don't remember.

9 Q. And just before we go on, once again a clarification. You say "ODM  
10 supporters," "members." These ODM supporters, of what ethnicity were they?

11 A. They're mixed Kalenjin, Luos, Luhyas, a few Kisiis, but they were the majority.

12 Q. And now this information, where did you obtain this information from? I'm  
13 sorry, Madam Witness, please do not answer that question. I will reserve that  
14 question for private session. That's my fault, Madam Witness.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough. That was a good recovery, but --

16 MR GARCIA: I'll be coming --

17 PRESIDING JUDGE EBOE-OSUJI: -- who did she mean when she said they were the  
18 majority?

19 MR GARCIA:

20 Q. I'm sorry, Madam Witness, in response to one of my questions, which was,  
21 "And just before we go on, once again a clarification, you say ODM members,  
22 supporters, members, these ODM supporters, of what ethnicity were they?" And  
23 you said: "They're mixed: Kalenjin, Luos, Luhyas, a few Kisiis, but they were the  
24 majority." When you're saying, "But they were the majority," what ethnic group are  
25 you referring to?

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1 A. Luos, Luhyas, and then Kalenjins.

2 Q. Okay, Madam Witness. So, from what I understand, you're not able to tell me  
3 exactly or tell the Court actually which group was -- which ethnic group was in the  
4 majority on that day?

5 MS ALAGENDRA: Your Honour, I think that's a bit unfair. I think she's answered  
6 the question quite clearly. She said it's a mix of three ethnic groups, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: We can move on.

8 MR GARCIA:

9 Q. Madam Witness, to your knowledge were there any incidents on that day and  
10 the day prior to the elections?

11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: Let's stop, let's stop.

13 MR GARCIA:

14 Q. Madam Witness --

15 PRESIDING JUDGE EBOE-OSUJI: Can we go into private session for --

16 MR GARCIA: Yes, your Honours, if we could and I'll try to make it as brief as  
17 possible, and we may be able to cover other subjects at the time. Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: How long are you then anticipating? I was  
19 going to say we go into private session for a minute for this answer, but you seem to  
20 want to take some other things in as well while in private session, so that how many  
21 minutes are you looking at in private?

22 MR GARCIA: Yes, at a maximum, four or five minutes, your Honour. I'm striving  
23 to keep this as much publicly.

24 PRESIDING JUDGE EBOE-OSUJI: Yes.

25 MR GARCIA: But as the Court can see, it is difficult at times because obviously the

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1 responses are not what we're expecting sometimes. So, private session for a  
2 maximum of five minutes and, if need be, after we've gone back into public, I'll ask  
3 for leave of the Court to go back into private for certain issues. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Let's go to private session.

5 (Private session at 12.33 p.m.)

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5 (Open session at 12.45 p.m.)

6 THE COURT OFFICER: (Interpretation) Mr President, we're in public session.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, please proceed.

8 MR GARCIA:

9 Q. Now, Madam Witness, during the private session you've spoken to us about an  
10 incident at the Brookside Dairy, about people threatening to burn the Brookside Dairy.  
11 You've also spoken to us about an incident at the police station. Now I'd like to turn  
12 your attention to election day, that's 27 December.

13 PRESIDING JUDGE EBOE-OSUJI: Right, and for the completeness of the exercise,  
14 the witness had testified that from her -- from the information relayed to her, that  
15 Mr Ruto was at the scene and the purpose of his presence was to calm down the  
16 situation and calm down the youth.

17 Mr Garcia, you may proceed.

18 MR GARCIA: Just one clarification, your Honour, for the record. The witness  
19 stated - unless I'm incorrect - that Mr Ruto was at the scene of the police station, not at  
20 the Brookside Dairy, from what I understood of her testimony. She can confirm.

21 Q. Is that correct, Madam Witness?

22 A. Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Fair enough. The point being that he was there  
24 to calm down the situation. I think that's what the Defence appear to be interested in.



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1 MS ALAGENDRA: That is correct, your Honour. Thank you.

2 MR GARCIA:

3 Q. Now, Madam Witness, I'd like to turn your attention to 27 December 2007. I  
4 understand -- you told us already that you voted on that day. I don't want to go  
5 back to that specific event. What I'd like to know from you actually is, what was the  
6 mood like where you were at the time when you did go to vote amongst the different  
7 ethnic groups?

8 A. It was calm.

9 Q. I understand. Can you please tell us what exactly you did after you went to  
10 vote? Just remember that you are in public session, and if you need to refer to the  
11 PIS document, please do so.

12 A. Okay. After I voted, I went back at number 1's place.

13 Q. Can you tell us why you went back to number 1's place?

14 PRESIDING JUDGE EBOE-OSUJI: Before you answer that question, Counsel, are  
15 you sure it's safe to ask that question in open session?

16 MR GARCIA: It should be, your Honour. It's relating to a specific issue. I'm not  
17 sure -- I don't think that that will cause any problems.

18 PRESIDING JUDGE EBOE-OSUJI: Is this something you anticipate you can lead?

19 MR GARCIA: We can lead, your Honour, on that matter. I can go about it that  
20 way if it pleases the Court, and Defence counsel doesn't have any objections  
21 obviously.

22 MS ALAGENDRA: We don't object, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: So why don't you then lead the information you  
24 want precisely.

25 MR GARCIA:

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1 Q. Now, Madam Witness, you went -- you indicated that you went to number 1's  
2 residence. Were you there obviously -- am I correct in stating that you were there to  
3 follow the results of the elections; is that correct?

4 A. Yes.

5 Q. And, Madam Witness, am I correct in stating that you stayed there from the  
6 27th and you were also there on 28 and 29 December 2007; is that correct?

7 A. Yes.

8 Q. Now, Madam Witness, on 30 December 2007, the day that the election results  
9 were given out or were publicised, do you remember that day?

10 A. Yes.

11 Q. Do you remember at what time approximately these results were  
12 publicised -- I'm sorry, started being publicised?

13 A. From noon.

14 Q. And, Madam Witness, while these results were being publicised, were you still  
15 at number 1's house, following what was going on on the TV?

16 A. Yes.

17 Q. Now, once these results were publicised, what was the consequence of that?  
18 Did you see anything in your area?

19 A. No.

20 MR GARCIA: Your Honours, if we could just go for one minute into private session  
21 with the witness. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Let's go into private session then.

23 (Private session at 12.52 p.m.)

24 (Redacted)

25 (Redacted)

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12 (Open session at 12.53 p.m.)

13 THE COURT OFFICER: (Interpretation) Mr President, we're in public session.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MR GARCIA:

16 Q. Now, Madam Witness, were you able to celebrate when the election results  
17 started coming through?

18 A. No.

19 Q. Now, could you explain to the Court why you weren't able to celebrate?

20 A. Because the commotion of -- commotion of the area was not good.

21 Q. Now, Madam Witness, I'm just going to ask you to clarify that because -- you've  
22 stated "Because the commotion of the area was not good." What exactly was this  
23 commotion about? Who was involved in this commotion?

24 PRESIDING JUDGE EBOE-OSUJI: One second. First, what was it about? And  
25 then who was involved, if you know? Let's take the first question. What was this

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1 commotion you were talking about, what was it?

2 THE WITNESS: During those nights when there were -- there was still the tallying  
3 of the votes, from a distance you would hear gun-shots, people are screaming from  
4 far. You would hear the place, it's so noisy. That was the reason why we couldn't  
5 went into our celebration mode because we never knew what would happen and  
6 what is going to happen.

7 MR GARCIA:

8 Q. Now, Madam Witness, just an additional question on that. You say, "because  
9 we never knew what would happen or what is going to happen." What is it that you  
10 were fearing would happen?

11 A. We were fearing maybe we could be driven back and maybe there going to be a  
12 colliding of the groups, the ODM supporters and the PNU supporters.

13 Q. And just to be even more clear, you said, "We were fearing maybe we could be  
14 driven back." Could you explain to us what you mean by "driven back"?

15 PRESIDING JUDGE EBOE-OSUJI: Again, is it safe to ask these sort of questions in  
16 the public session?

17 MR GARCIA: I'm in the Court's hands. I'm quite confident that it -- it's fine to ask  
18 this question in public session. Again, I'm trying -- I'm striving obviously, the  
19 Prosecution is striving to have this as public as possible and --

20 PRESIDING JUDGE EBOE-OSUJI: You can be in the Court's hands, but the Court  
21 also needs assistance from counsel in these things. So that's it. You need to think  
22 about the questions you ask and the likelihood of questions in public provoking  
23 certain unintended -- I mean answers that you may not have anticipated would  
24 compromise the witness's identity. That's all I'm talking about here.

25 MR GARCIA: Your Honours, I'm going to modify my question and this might be

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1 more simple for the witness.

2 Q. Madam Witness, when you said that there was going to be a colliding of the  
3 groups, the ODM supporters and the PNU supporters, can you explain to that just a  
4 bit more, what do you mean by the colliding?

5 A. What I meant, it's because the PNU were leading with the votes and the ODM  
6 are down, so the two groups might fight and get on each other over the election  
7 outcome.

8 PRESIDING JUDGE EBOE-OSUJI: When you say "fight," Madam, do you mean  
9 violently fight, with violence?

10 THE WITNESS: Yes.

11 MR GARCIA: Your Honours, I'm going to ask that we go into -- I'm not sure if it's  
12 even, it's 12.57 -- I need to go back into private session for a couple of minutes to  
13 clarify -- to obtain certain responses. We can do that right now, it will take three to  
14 four minutes, and then obviously the Court rises after lunch, we can go back into  
15 public session.

16 PRESIDING JUDGE EBOE-OSUJI: Right. So we will go back into private session  
17 and take it there to the lunch break. So we go back into private.

18 (Private session at 12.58 p.m.)

19 (Redacted)

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21 (Redacted)

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24 (Redacted)

25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0189

(Private Session)

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Witness: KEN-OTP-P-0189

(Private Session)

ICC-01/09-01/11

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- 2 (Closed session at 1.01 p.m.)
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- 9 (Redacted)
- 10 (Redacted)
- 11 (Recess taken at 1.02 p.m.)
- 12 (Upon resuming in private session at 2.40 p.m.)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
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Trial Hearing  
Witness: KEN-OTP-P-0189

(Private Session)

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- 12 (Redacted)
- 13 (Open session at 2.42 p.m.)
- 14 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 16 Mr Garcia, we now -- you may proceed.
- 17 Witness, we're back in the public session.
- 18 MR GARCIA:
- 19 Q. Madam Witness, just to situate you, before we took the lunch break you were
- 20 speaking to us about Junction and we had also spoken about disturbances or noises
- 21 that you had heard coming from the Junction area on the night of 30 December 2007.
- 22 Do you recall that?
- 23 A. Yes.
- 24 Q. Now, Madam Witness, are you able to tell the Court exactly if you found out
- 25 what these -- what these noises or disturbances were that were coming from the



Trial Hearing  
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1 Junction area on that specific evening?

2 A. Yeah. (Redacted), number 3, came back and he informed us there  
3 was a -- there was a commotion at the Junction.

4 Q. Okay, Madam Witness. Now, when you say, "... there was a commotion at the  
5 Junction," can you just tell us -- can you describe to us a little bit more about what this  
6 commotion was about?

7 A. The ODM supporters, they were -- they were destroying other people's property,  
8 especially for the Kikuyus.

9 Q. Now, Madam Witness, at this Junction area, was there property belonging to  
10 Kikuyu; people of Kikuyu ethnicity?

11 A. Yes.

12 Q. What kind of property exactly?

13 A. Houses, shops and others are like posho mills.

14 Q. And can you just explain to us, Madam Witness, what happened to these houses  
15 and these shops that belonged to Kikuyus on that night?

16 A. On the shops, they would break the shops and loot. In the houses, they would  
17 also break into, loot and then burn them down. In the posho mills, they would put  
18 the stones to be grinded.

19 Q. I just want to --

20 PRESIDING JUDGE EBOE-OSUJI: Can you spell the mills you are talking about?

21 A. The posho mill. P-O-S-H-Zero -- O. Posho. Mills, M-I --

22 PRESIDING JUDGE EBOE-OSUJI: It's all right.

23 THE WITNESS: Okay.

24 PRESIDING JUDGE EBOE-OSUJI: You can leave it there.

25 THE WITNESS: Okay. Okay, thank you.

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1 MR GARCIA:

2 Q. And, Madam Witness, in this same area were there any Kikuyu shopping  
3 centres, or shopping centres that were owned by Kikuyu?

4 A. Yeah, majority of the shops there are owned by Kikuyu.

5 Q. And what would happen to the shopping -- what happened to the shopping  
6 centres?

7 A. They would -- they looted and burnt, but they burnt only the Kikuyu  
8 belongings.

9 Q. And just on that response, what about the belongings -- the houses or the  
10 shopping centres that belonged to other ethnic groups? Were they touched in any  
11 which way, or affected?

12 A. No.

13 Q. Can you tell us at approximately what time this happened on 30 January (sic)?  
14 Was it during the day, or in the evening?

15 A. During the day a few and during the evening majority.

16 Q. Were you able to step outside on that evening on 30 January (sic) -- pardon me,  
17 on 30 December?

18 A. But -- stepping out from the house, but not going away. Just being within.

19 Q. And why is it that you were unable to step outside from your house?

20 A. I was afraid.

21 Q. Now, I know you've mentioned -- a couple of times already you've referred to  
22 the people as being ODM supporters. Now, in this particular case, the people that  
23 were burning and looting the shops, houses, did you receive any information as to  
24 what ethnicity these people were?

25 A. When it comes to looting, the Luos and the Luhya were the ones who were

1   looting, but when it comes to burning the houses, it was the Kalenjins who were  
2   burning the houses.

3   Q.   Now, Madam Witness, just to give us an idea, can you tell me approximately  
4   how many houses - Kikuyu houses - were burnt on that evening of 30 December  
5   2007?

6   A.   The only one that I can say about that I knew of that was burnt is one of a  
7   person in --

8   Q.   Madam Witness, just before, just remember that we are in private session.   If  
9   the name does not appear on the list before you then I'd rather you not mention the  
10   name of the person, but if it's just to tell us that it's a person of a certain ethnicity - of  
11   Kikuyu ethnicity - then that's fine?

12   A.   Okay.   There was a Kikuyu lady.   Her shop in a hotel in her accommodation  
13   was burnt down.   That is the only one that I knew.

14   PRESIDING JUDGE EBOE-OSUJI:   Mr Garcia, I know in this Court there is no ban  
15   on hearsay evidence, but we have to exercise some discretion in how much of it we  
16   bring in, especially if we are not being told what may be hearsay and what may be  
17   directly perceived evidence.   I thought I'd mention that.   I know counsel have not  
18   been objecting on either side about hearsay, but let's just keep a handle on that.

19   MR GARCIA:   Certainly, your Honour.   I'm mindful of the fact that it is hearsay  
20   evidence.   There is no rule obviously prohibiting the Prosecution from leading that  
21   type of evidence, but there is also direct evidence that the witness will be able to  
22   provide for this Chamber.

23   Your Honours, I'd solicit a -- to go into private session I would say for ten to 15  
24   minutes.   I'm gonna try and keep it as short as possible, as brief as possible - I'm  
25   mindful of the fact that there are people in the public gallery as well - and if need be I

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- 1 can summarise the major points when we do come back into public session.
- 2 PRESIDING JUDGE EBOE-OSUJI: We will see whether there's a need to summarise
- 3 in every case, it may not be necessary, but it depends on what it is that we heard in
- 4 private session and whether there is a need to summarise them.
- 5 We will go into private session now.
- 6 (Private session at 2.52 p.m.)
- 7 (Redacted)
- 8 (Redacted)
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(Private Session)

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17 (Redacted)  
18 (Open session at 3.04 p.m.)  
19 THE COURT OFFICER: (Interpretation) We're in public session, Mr President.  
20 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Garcia.  
21 MR GARCIA:  
22 Q. Madam Witness, I'm going to ask you the question again. Would you be able  
23 to tell us approximately - I'm not asking for obviously a precise number - but  
24 approximately how many of these people you've described were on top of the lorries  
25 you saw that day?



1 A. Around a hundred, 200 people.

2 Q. And you're speaking about lorries, obviously. Are these -- are these lorries  
3 such as buses or are they trucks or what kind? Can you describe to us these lorries?

4 A. We can't call it a truck and we can't call it a bus. These are medium lorries  
5 which are used to carry and ferry things.

6 Q. Now, did the lorries have -- I understand they're used to carry things, but did  
7 they have a cover at the back or was it without a cover?

8 A. The cover is just half of it, but on the rear of it, it's the rods, it's open.

9 Q. Now you've said, Madam Witness, that the people that were on these lorries  
10 were painted with chalk. What can you tell us -- are you speaking about their face?  
11 Or where was the chalk exactly?

12 A. Their faces and their hair, it's white.

13 Q. Could you tell us whether these people, from what you saw on that day, were  
14 armed, whether they had any weapons on them?

15 A. Yeah. Yes, they had bows and arrows.

16 Q. Can you tell us of what ethnic group these people were?

17 A. They were Kalenjins.

18 Q. I'd like to -- just on the tail end of that question, you say that they're Kalenjins.

19 Can you explain to us why it is that you arrive at the conclusion that they're Kalenjin?  
20 On the basis of what do you arrive at that conclusion?

21 A. From the sound they were making, that made me know they were Kalenjins.

22 Q. What sound were they making exactly?

23 A. They were shouting with a -- with a voice, Kalenjin voice.

24 Q. Now, just so that it can be clearly, obviously, when you say they were shouting  
25 with Kalenjin voice, are you saying that they were shouting in Kalenjin?

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1 A. Yeah -- yes.

2 Q. Now, Madam Witness, I notice that when you're describing these people you  
3 say that they have bows and arrows; that's correct?

4 A. Yes.

5 Q. Now, to your knowledge, do Kalenjin -- people of Kalenjin ethnicity have bows  
6 and arrows?

7 A. Yes, they do.

8 Q. Now, you said that these people were shouting. Do you remember anything of  
9 what they were saying?

10 A. No. Since they were shouting in Kalenjin, I couldn't tell what they were  
11 saying.

12 Q. And, Madam Witness, can you tell us of how they were dressed? Do you have  
13 any details to provide us on that matter?

14 A. They wore torn clothes, badly ones.

15 Q. Would you be able to tell us, Madam Witness, from what direction these lorries  
16 were coming from?

17 A. Yes. These lorries were coming from the direction of Marura.

18 Q. And just so that it can be clear on the record, Marura is M-A-R-U-R-A. Can  
19 you tell us where Marura is? Is it on a highway?

20 A. Yes, it is on the highway.

21 Q. Is it on the Iten highway?

22 A. Yes.

23 Q. Now, just so that I can understand clearly, and the Chamber as well,  
24 Madam Witness, when you saw the lorries, I understand you said they were coming  
25 from the direction of Marura. Did you see what happened when the lorry stopped?

Trial Hearing  
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1 A. Yes. When the lorry stopped, the Kalenjin youths got off.

2 Q. Do you know in what direction the Kalenjin youths were going in?

3 A. They headed on the route of -- just nearby Junction.

4 MS ALAGENDRA: Your Honour, perhaps my learned friend wants to check the  
5 spelling of the location. If I can assist, your Honour, I think it's spelled

6 M-A-R-U-L-A.

7 MR GARCIA: Your Honours, maybe I can clarify this. It's in the witness  
8 clarification, actually. Marula is not with an "L" but with an "R." The witness has  
9 cleared that up already with us, and that's why -- actually, it's been -- the spelling that  
10 there is in the transcript was accurate initially. So it is M-A-R-U-R-A. I'm grateful  
11 in any case for my colleague trying to help out.

12 PRESIDING JUDGE EBOE-OSUJI: Again, maybe this is one instance in which it  
13 might be good to check whether there are two places with two different spellings so  
14 that there is no confusion later on.

15 MR GARCIA:

16 Q. Madam Witness, just so that we can be clear on the matter, you've mentioned  
17 Marura, M-A-R-U-R-A; is that correct?

18 A. Yeah.

19 Q. Now, I understand that there's also a question of Marula, M-A-R-U-L-A. Are  
20 these places the same or are they two different places, just to be clear?

21 A. It's the spelling, but it's the same place.

22 Q. Thank you, Madam Witness. Now, Madam Witness, I understand that you  
23 saw these -- actually, on these -- the question of these people, these Kalenjin, would  
24 you be able to tell us of what age group they were in? What was their age  
25 approximately?

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1 A. They were young youths, at around 18 and above.

2 Q. Now, just so we can understand, were you able to determine where they were  
3 going when they left -- when they disembarked from the lorries?

4 A. No.

5 MR GARCIA: Your Honours, I'd like to go into private session for five to ten  
6 minutes. I'll be as brief as possible.

7 PRESIDING JUDGE EBOE-OSUJI: Fair enough, but let me -- let me clarify one  
8 matter.

9 Witness, you -- we have been hearing about lorries. Now, one of those vehicles that  
10 we are discussing and calling lorries, from your own estimation, how many people  
11 would one of those vehicles ordinarily carry?

12 THE WITNESS: Around a hundred people.

13 PRESIDING JUDGE EBOE-OSUJI: For one of those vehicles?

14 THE WITNESS: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Okay. Thank you. We can now go into the  
16 private session.

17 (Private session at 3.14 p.m.)

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4 (Open session at 3.33 p.m.)

5 THE COURT OFFICER: (Interpretation) Your Honour, we are in public session.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Please proceed, Mr Garcia.

8 MR GARCIA:

9 Q. Now, Madam Witness, you're describing to us how you were at the time on 31  
10 December 2007 in the compound of number 6. Now, can you please explain to us  
11 briefly what happened?

12 A. Okay. When we were still there, we heard some shoutings. The shoutings  
13 were being shouted by Kikuyus in Kikuyu name.

14 Q. Just so that it be clear, Madam Witness, when you said, "... shouted by Kikuyus  
15 in Kikuyu name," you mean in Kikuyu language?

16 A. Yes.

17 Q. And what was all this shouting about?

18 A. "They are coming."

19 Q. Can you tell us who was coming?

20 A. The Kalenjins.

21 Q. So if I understand you correctly, it was Kikuyus shouting that the Kalenjins  
22 were coming; is that correct?

23 A. Yes.

24 Q. And tell us what you saw? What happened?

25 A. It was the Kikuyu were running away from the Kalenjin, heading towards

1 direction of Munyaka.

2 Q. Now, was that the first time on that day that you had seen these Kikuyu; the  
3 Kikuyu that were running away?

4 A. Yes.

5 Q. Do you know where they were coming from, the Kikuyu?

6 A. They were coming from the -- they were coming from the direction of the  
7 Betafarm.

8 Q. And how many of these Kikuyu were there, approximately?

9 A. There were around 50 to a hundred youths.

10 Q. Were they armed? Did they have any weapons?

11 A. Yes.

12 Q. What kind of weapons, Madam Witness?

13 A. They had runkus.

14 Q. Anything else?

15 A. And pangas.

16 Q. Now, just for the record, you said that they had runkus. Is that R-U-N-G-U-S?  
17 Is that correct?

18 A. Yes, it is.

19 Q. Can you just briefly tell us what a runku is?

20 A. It's a log, kind of round.

21 Q. Is it made out of wood?

22 A. Yes.

23 Q. You've also mentioned "pangas." Can you just describe to us what a panga is?

24 A. It's a sharp used -- a sharp, sharp object which can be used to cut something.

25 Q. And now you were saying that these Kikuyus, were they -- you were saying "...

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1 50 to a hundred youths," so they were youths. When you saw them for the first time,  
2 where were they -- what were they doing exactly?

3 A. They were running. They were not seated, but they were running towards the  
4 Munyaka direction.

5 Q. Was anyone following them?

6 A. Yes.

7 Q. Who was following them?

8 A. The Kalenjin youths.

9 Q. Now, I'd like for you to tell us a little about these Kalenjin youths that were  
10 running after the Kikuyus. Do you remember approximately how many Kalenjin  
11 youths we're talking about that you saw on that day?

12 A. I can't tell how many were there, but there were many.

13 Q. Just in case, if you are able to answer, were there more or less than a hundred  
14 approximately, if you can answer?

15 A. A hundred approximately.

16 Q. Now, from what I understand, this is something that you observed with your  
17 own eyes; is that correct?

18 A. Yes.

19 Q. Just to be clear that, when you observed this, you were inside the compound of  
20 number 6; is that correct?

21 A. Yes.

22 Q. Now, Madam Witness, regarding these Kalenjin youths, can you tell us whether  
23 they were armed or not? Did they have any weapons?

24 A. Yes, they had. They had bows and arrows.

25 Q. Could you describe them to us? How were they dressed?

1 A. They were white and face headed, torn clothes, tall, slim and dirty.

2 Q. Now, just to clear up their description, line 104 -- actually, page 104, line 6, you  
3 said, "They were white and face headed ..." Can you just explain was their face  
4 visible, or their hair?

5 A. Yes.

6 Q. And what is the white that you're saying?

7 A. What I meant is their head was white, their face was white.

8 Q. And in regards to their clothing, what kind of clothing were they wearing?

9 A. They wore torn clothes.

10 Q. What about their age?

11 A. 18 and above.

12 Q. Now, you said that these Kalenjin youths were chasing the Kikuyu youth.

13 What happened?

14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, can you hold that question please.

15 Witness, earlier on when you were asked to describe Kalenjins you said they were

16 black, and now you're giving us testimony and telling us that Kalenjins whose face

17 was white and the head was white. What are you telling us about the head and face?

18 THE WITNESS: Okay. What I meant is a Kalenjin is a black person, tall, slim, but

19 while they were on the battle-field they were all in chalk, head and face.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Another question for you: You

21 had also said earlier that some people were armed with rungas and pangas and also

22 another group were asked -- armed with bows and arrows. What are you telling us?

23 THE WITNESS: What I'm saying is the Kalenjin youths were the ones with white

24 face and white head, but the Kikuyus were the ones with rungas and I can tell a

25 Kikuyu.

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1 PRESIDING JUDGE EBOE-OSUJI: Right. So what you're saying is that the Kikuyu  
2 youths were armed with rungas and pangas and the Kalenjin youths were armed  
3 with bows and arrows; is that what you're saying?

4 THE WITNESS: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR GARCIA:

7 Q. Now, Madam Witness, you said that the Kalenjin youths were chasing the  
8 Kikuyu youths. Can you explain to us what happened? Did they manage to chase  
9 them all away, or not?

10 A. Yes. After a long run with them away from Betafarm, behind Munyaka route  
11 there is a boundary between the Kalenjin and the Kikuyu. When the Kikuyu  
12 arrived -- reaches their destination, a Kalenjin cannot enter the hood of a Kikuyu. So  
13 after the Kikuyus managed to get the other side, the Kalenjins has to come back.

14 Q. So just to be clear, when you're referring to "the other side," that's the boundary  
15 between what is Kalenjin area and Kikuyu area; is that correct?

16 A. Yes.

17 Q. Now, just before we continue -- you continue telling us what exactly happened,  
18 I just need one clarification. You mentioned Munyaka. Can you tell us what ethnic  
19 groups live in Munyaka?

20 A. Kikuyu were the majority.

21 Q. And from what I understand of your testimony, Munyaka is that an area, a  
22 town, a village? What kind of a place is this?

23 A. It's a village.

24 Q. Thank you, Madam Witness. Now, you said that you saw the Kalenjin youths  
25 chasing the Kikuyu youths. Were any of the -- was anyone injured or struck in any



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1 which way during this chase?

2 A. I couldn't tell.

3 Q. Now, what happened after that?

4 A. Then the Kalenjin youths came back. Number 6's place was the first home in  
5 that area from Munyaka going back to Betafarm, so it was the first place they attacked  
6 first.

7 Q. Now, can you describe to us how that attack took place? What happened  
8 exactly?

9 A. Okay. Back in the compound I was with number --

10 PRESIDING JUDGE EBOE-OSUJI: Okay, wait.

11 Mr Garcia, are you sure about this?

12 MR GARCIA: We can -- your Honours, if we are cautious, overly cautious, we can  
13 go into private session, but I'm confident that with the list of persons list we can go  
14 through a certain amount of this information. I'll try and guide the witness so that  
15 we don't have any problems.

16 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

17 Okay.

18 MR GARCIA:

19 Q. Now, Madam Witness, just -- I just want you to just realise that we are in public  
20 session and so please try and resort to the numbers whenever you can, and if you  
21 can't then I will solicit leave from the Court to go into private session so you can  
22 explain it more fully. But I understand - and correct me if I'm wrong - that you were  
23 inside number 6's place when the youths came back to the compound; is that correct?

24 A. Yes, it is correct.

25 Q. Now, can you explain to us: This compound, is there a gate or any kind of

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1 door securing the entrance to it?

2 A. Yes, there is a gate.

3 Q. And just so we understand and can picture it a little bit better, is this a gate with  
4 steel bars, or is it a wooden gate? What kind of a -- can you see through the gate?

5 A. No, you can't see through, but there is a small hole you can peep. It's a steel  
6 gate.

7 Q. Now, when these Kalenjin youths returned, were you -- where were you?  
8 Were you behind this gate?

9 A. I was still in the compounds -- inside the compound.

10 Q. Now, were the Kalenjin youths able to get in through the gate?

11 A. At first they couldn't, because number 6 had to persuade them not to.

12 MR GARCIA: Your Honours, I'm going to ask that we go into private session. In  
13 this matter I'll be able to lead, obviously if Defence counsel doesn't have any objection,  
14 and we can get through this a little more efficiently.

15 PRESIDING JUDGE EBOE-OSUJI: We go into private session then.

16 (Private session at 3.48 p.m.)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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1 (Redacted)

2 (Open session at 4.00 p.m.)

3 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

5 Again, to members of the public, these things happen. There are, as you know by  
6 now, occasions when we must listen to testimonies in private session out of a need to  
7 protect witnesses who are testifying.

8 We now come to the end of today's proceedings. We will reconvene tomorrow at  
9 9.30 and hopefully Mr Garcia will ask more questions in public session tomorrow.

10 We will bring down the blinds, escort the witness out of the courtroom and then the  
11 Court will adjourn after that.

12 (Closed session at 4.02 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (The hearing ends in closed session at 4.03 p.m.)