

Trial Hearing
Witness: KEN-OTP-P-0189

(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 Wednesday, 16 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, case reference ICC-01/09-01/11.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Appearances remain the same?
21 MR GARCIA: Good morning, your Honours. For the Prosecution, the appearances
22 remain the same.
23 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?
24 MR KHAN: Mr President, your Honours, good morning. Just one addition. Our
25 legal assistant, Ms Leigh Lawrie, at the back. I'm grateful.
26
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1 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

2 MR KIGEN-KATWA: Mr President, my team remains the same, except that
3 Caroline Buisman will join us a little later.

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

5 We adjourned yesterday on a note of the evidence - the videos, of course - and,
6 Mr Khan, you said you were going to check something.

7 MR KHAN: Mr President, your Honours, we are grateful. We have checked the
8 videos. Some videos, for example the swearing-in, she clearly said she saw on
9 television. Others she didn't see, but she authenticated, we say, the content by
10 saying that the items reported therein are matters that she knew about at the time.
11 But, your Honours, we are mindful of the Court's instruction that we stick to our time
12 limits, so in these circumstances what we propose to do is simply seek that they all be
13 marked for identification. We don't want unnecessary controversy. We'll put in a
14 Bar table motion and it may be, once those arguments are considered, all parties will
15 have clear guidelines as to the way we move forward from now on.

16 So, your Honours, that's what we propose with your leave.

17 PRESIDING JUDGE EBOE-OSUJI: That is very good. That also means that, even
18 though you are not pushing to tender now, even this video of swearing-in --

19 MR KHAN: I think all of them can be marked for identification --

20 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

21 MR KHAN: -- and we will seek their admission in totality at one time.

22 PRESIDING JUDGE EBOE-OSUJI: Fine, that's good.

23 Prosecutor, did you indicate you have something else you want to raise as well, apart
24 from this? This has been resolved and so let's not debate this. Is there something
25 else?

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1 MR GARCIA: Yes, just one matter, your Honours, but it has to be done in private
2 session. Five minutes, approximately. No more than that.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 Mr Kigen-Katwa, I didn't call on you. Do you have any addition on this, in addition
5 to what Mr Khan has indicated?

6 MR KIGEN-KATWA: I'm agreeable with the proposal to use a Bar table,
7 Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Then let us go into a private session and hear what the Prosecutor has to say.

10 *(Private session at 9.42 a.m.) Reclassified as Open session

11 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

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

13 Mr Garcia?

14 MR GARCIA: Yes, your Honours. Now, this concerns the item of evidence that the
15 Defence has given to us in a list and that they want to show to obviously show or put
16 to the witness during the cross-examination.

17 Normally if we have any objection we would do it at the moment that the witness is
18 being cross-examined and the Defence counsel wishes to put a document or a video to
19 the witness, but in this particular case, given the nature of the item of evidence, we
20 thought it would be much better if we could do this in private session.

21 Our main concern -- there's two items of evidence that concern us. Number 26 on
22 our list -- and just for the record it's KEN-OTP-0113-0053.

23 (Redacted)

24 (Redacted)

25 Now, our objection is twofold. First of all, we feel that there is no connection

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1 between this witness, her testimony and this item of evidence and we don't see what
2 relevance there could be for the Defence, or for the Court, (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 There's also item number 24, which is KEN-D09-0022-0030, and we have looked at

8 this and (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 That's why we thought it would be preferable to raise this with the Court prior to the
14 witness being cross-examined and prior to these documents or videos being put to the
15 witness.

16 PRESIDING JUDGE EBOE-OSUJI: Just so I understand the factual matter, you're
17 saying the two items are the same?

18 MR GARCIA: From what we can see, your Honour, item 0113-00053 is the video
19 and D09-0022-0030 are screen shots of that video, so basically they're the same.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

21 MS ALAGENDRA: Good morning, your Honours.

22 Your Honours, if I may just say a few words on those items? Firstly, your Honours,

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 But, your Honour, on another note, I think sometimes it's very helpful for counsel to
3 speak to each other because, if my learned friend had spoken to me this morning, he
4 would have been informed that we don't intend to use those items, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: So the bottom line is you will not be using those
6 items.

7 MS ALAGENDRA: No, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: So that ends the whole matter.

9 MS ALAGENDRA: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Indeed, counsel on both sides, as you know this
11 particular Chamber has stressed the need for counsel to try and resolve issues among
12 themselves before occupying the Court's time with litigation that need not be done,
13 and here is a classic example of that sort of thing.

14 It may be, as is often the case, that in the period leading up to the trial, with all the
15 anxieties and tensions and the workload that you must both be tackling at the time
16 and the stresses involved in doing that, tempers might be short, sleepless nights can
17 result in people not entertaining each other as civilly as can be, although that's not an
18 excuse, but it is always important to keep a handle on this thing. Try to talk to one
19 another and try to resolve this thing in the best traditions of the legal profession so we
20 can move on. We stress that very much.

21 I must say that we are glad to know that to a larger extent the -- I do not want to use
22 the word "hostility," that's too strong a word, but you know what I mean. That that
23 was the case in the pre-commencement of trial phase has ebbed considerably in the
24 course of this case and we -- it's something that we have noticed and we encourage
25 that development.

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1 In that spirit please continue to discuss with one another in the best spirits of the
2 profession and resolve these things before we litigate them unnecessarily, but that's
3 preaching to the choir, I'm sure.

4 So we will bring the witness in then and we continue with the cross-examination.
5 The blinds will come down.

6 *(Closed session at 9.49 a.m.) Reclassified as Open session

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

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

10 Let's then bring in the witness.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE EBOE-OSUJI: Welcome back, madam. Ms Alagendra will
13 continue with her cross-examination of you today.

14 Do we remain in -- blinds up, first of all, and then would you go into public, or in
15 private for now?

16 MS ALAGENDRA: Public session, please, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Right, let us then go into -- go straight into the
18 public session.

19 (Open session at 9.51 a.m.)

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, please continue.

21 MS ALAGENDRA: Thank you, your Honours.

22 THE COURT OFFICER: (Interpretation) Just for the record, we are now in public
23 session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Indeed, it's proper to
25 reflect that on the record.

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1 Ms Alagendra, we are now in public session. Please continue.

2 Witness, we are in public session now. Again, remember the admonition given to
3 you earlier to -- when we are in public session to listen carefully. You will always
4 have to listen carefully anyway, but just make sure that your answers do not inject
5 information that is unique to you that will make it easier for people to identify who
6 you are, members of the public, okay?

7 WITNESS: KEN-OTP-P-0189 (On former oath)

8 QUESTIONED BY MS ALAGENDRA: (Continuing)

9 Q. A very good morning to you, madam.

10 A. Good morning.

11 Q. I hope you rested well?

12 A. Yes.

13 Q. Madam, this morning what I'd like to discuss with you is the PNU structure and
14 campaigns, okay?

15 A. Yes.

16 Q. Madam, you told the Court yesterday - the day before in fact - that you were
17 part of the Waremba na Kibaki campaign group, am I right?

18 A. Yes.

19 Q. And, madam, the presidential campaign secretariat is called Kibaki tena, isn't it?

20 A. Yes.

21 Q. And that means Kibaki again, am I right?

22 A. Yes.

23 Q. And under the Kibaki tena you have various groups - campaign groups - am I
24 right?

25 A. Yes.

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- 1 Q. And one of those groups, madam, was the Waremba na Kibaki, yes?
- 2 A. Yes.
- 3 Q. And just for the understanding of the Court, could you tell the Judges, please,
- 4 what Waremba means?
- 5 A. Young Ladies Campaigning for Kibaki.
- 6 Q. And there is also the Vijana na Kibaki, am I right?
- 7 A. Yes.
- 8 Q. And who were they?
- 9 A. Young Men Campaigning for Kibaki.
- 10 Q. And there was also Wamama na Kibaki; correct?
- 11 A. Yes.
- 12 Q. And, madam, am I right that the Kibaki tena campaign secretariat was based in
- 13 Nairobi during the 2007 campaign period?
- 14 A. Yes.
- 15 Q. And would I be right to say that you have a basic understanding of the structure
- 16 of Kibaki tena, yes?
- 17 A. Yes.
- 18 Q. And am I right, madam, that the chairman of the Kibaki tena was one Mr Lee
- 19 Karuri? Am I right?
- 20 A. In Nairobi?
- 21 Q. Yes.
- 22 A. In Nairobi, or in Eldoret?
- 23 Q. In Nairobi, madam.
- 24 A. In Nairobi, I don't know.
- 25 Q. And, madam, there were also other officials that were part of the Kibaki tena

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1 campaign structure in Nairobi. One other individual would be a Mr William Kirwa.

2 Do you recall that name?

3 A. No.

4 Q. But from his name would you agree with me he's a Kalenjin?

5 A. Yes.

6 Q. Now, madam, do you recall somebody by the name of John Kipkorir Kiptoo?

7 A. No.

8 Q. If I can remind you, he was part of the PNU Presidential Elections Board and he

9 was also co-ordinating the election campaigns and PNU nominations in the North

10 Rift region. Does that help you remember him?

11 A. Still no.

12 Q. But from his name --

13 PRESIDING JUDGE EBOE-OSUJI: I don't want to interrupt, but you might want to

14 spell that name.

15 MS ALAGENDRA: I will, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Okay. It's up to you when you do that.

17 MS ALAGENDRA: I will, your Honour.

18 Q. And, madam, from his name, John Kipkorir Kiptoo, am I right he's a Kalenjin?

19 A. Yes.

20 MS ALAGENDRA: And, your Honour, for the record Kipkorir is spelled

21 K-I-P-K-O-R-I-R and Kiptoo is K-I-P-T-O-O.

22 Q. Madam, do you recall that the PNU Director of Elections in 2007 was Ken

23 Nzioka?

24 A. No, I can't recall.

25 MS ALAGENDRA: And for the record, Nzioka is N-Z-I-O-K-A.

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1 Q. And, madam, from his name are you able to say he was a Kamba?

2 A. Yes.

3 Q. Madam, you will agree with me that there was a Vijana na Kibaki group based
4 in Nairobi, am I right?

5 A. Yes.

6 Q. Did you know some of the individuals who were part of the Vijana na Kibaki in
7 Nairobi?

8 A. Yes.

9 Q. Could you assist the Court, please, with the names of the people you knew that
10 were part of this group?

11 MR GARCIA: Your Honour, I am sorry to interrupt, but I just want to point out that
12 we are in public session. So if the question is some of the people that the witness
13 personally knew, that might not be -- it might not be the best decision to do this
14 publicly and we should go into private session.

15 MS ALAGENDRA: Your Honours, these are individuals that anyone involved in the
16 PNU campaign would know. It will not single the witness out in any way.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, what you will do is, if you know the
18 names, just say the names. Do not add anything like whether you know them
19 personally, or whether they are related to you, even though we do not have that sort
20 of information, but just if you have any names just give them.

21 Can you repeat the question?

22 MS ALAGENDRA:

23 Q. Madam, I was asking you to please assist the Court with the names of some of
24 the people who were part of Vijana na Kibaki in Nairobi?

25 A. George Morara.

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- 1 Q. And am I right that Morara is M-O-R-A-R-A?
- 2 A. Yes.
- 3 Q. Is there anybody else you knew, madam?
- 4 A. Joseph Njoroge.
- 5 Q. And Njoroge is spelled N-J-O-R-O-G-E, am I right?
- 6 A. Yes.
- 7 Q. Do you recall any others?
- 8 A. No.
- 9 Q. These two individuals, madam, George Morara, what was his ethnicity?
- 10 A. He's a Kisii.
- 11 PRESIDING JUDGE EBOE-OSUJI: You might want to lead.
- 12 MS ALAGENDRA: Your Honour, to be quite honest I didn't know that myself.
- 13 PRESIDING JUDGE EBOE-OSUJI: Oh, a dangerous thing to do in
- 14 cross-examination.
- 15 MS ALAGENDRA: I took the risk, your Honour.
- 16 Q. And, madam, Joseph Njoroge is a Kikuyu, isn't he?
- 17 A. Yes.
- 18 Q. Madam, do you recall somebody by the name of Evans Gor Semelang'o, who
- 19 was part of Vijana na Kibaki in Nairobi?
- 20 A. No.
- 21 MS ALAGENDRA: For the record, Evans and Gor is spelled G-O-R and Semelang'o
- 22 is spelled S-E-M-E-L-A-N-G-'-O.
- 23 Q. Do you want to write the name, madam? Should I spell it for you again?
- 24 Evans E-V-A-N-S, Gor G-O-R and Semelang'o S-E-M-E-L-A-N-G-'-O?
- 25 A. You went too fast.

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1 Q. S-E-M-E-L-A-N-G-'-O. Does that name ring a bell? Does that name mean
2 something to you?

3 A. No.

4 Q. Still not. And am I right, madam, that from the sound of his name it's clear
5 he's a Luo?

6 A. Yes.

7 Q. The next person, madam, Jack Wamboka, W-A-M-B-O-K-A. Do you recall him
8 being part of Vijana na Kibaki in Nairobi?

9 A. No.

10 Q. But from the sound of his name you're able to tell he's a Luhya, isn't it?

11 A. Yeah. Yes.

12 Q. The next person, Thomas Mbewa, M-B-E-W-A. Does that name mean
13 something to you?

14 A. No.

15 Q. And I'm correct he's a Luo, am I not, madam?

16 A. That one I can't say "Yes."

17 PRESIDING JUDGE EBOE-OSUJI: Did you say that one you are unable to say "Yes"?

18 THE WITNESS: Yes.

19 MS ALAGENDRA:

20 Q. Madam, I would like to now ask you some questions about the PNU campaign
21 organisations in the North Rift Valley region, okay?

22 A. Yes.

23 Q. I think you might be able to provide more information about that, since it's in
24 your area. Now, madam, am I right there was a Kibaki tena secretariat for the North
25 Rift region that was situated in Eldoret?

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- 1 A. Yes.
- 2 Q. And am I right that the PNU regional coordinator for Kibaki tena in the North
3 Rift was Abraham Limo?
- 4 A. Yes.
- 5 Q. He's a Kalenjin, isn't he, madam?
- 6 A. Yes.
- 7 Q. And, madam, the PNU -- (the first name for the record, your Honour, is
8 Abraham Limo.) Madam, the PNU coordinator for Eldoret North constituency, his
9 name was William Rono, am I correct?
- 10 A. Yes.
- 11 Q. He was a Kalenjin, was he not, Madam?
- 12 A. Yes.
- 13 Q. And, madam, the Vijana na Kibaki co-ordinator for Mosop constituency was
14 Samuel Kimeli Kosgei, am I right?
- 15 A. Yes.
- 16 Q. Also a Kalenjin?
- 17 A. Yes.
- 18 Q. The PNU deputy organising secretary for Eldoret North constituency was
19 Mr Bethwell Ruto, am I right?
- 20 A. Yes.
- 21 Q. And, madam, Mr Stephen Tarus, T-A-R-U-S, in the 2007 elections he was
22 contesting for the Emgwen seat on a PNU ticket, was he not?
- 23 A. Not familiar with that.
- 24 Q. But you've heard of Stephen Tarus?
- 25 A. Yes.

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1 Q. A PNU politician in the area?

2 A. Yes.

3 Q. And do you recall, madam, that during the 2007 campaigns, Mr Bethwell Ruto
4 was actively campaigning for Mr Stephen Tarus? You recall that, don't you?

5 A. No.

6 Q. Madam, the PNU secretary in Kiplombe ward was Mr Sammy Kiptanui
7 Kosgey - Kiptanui spelled K-I-P-T-A-N-U-I - am I right?

8 A. I cannot tell.

9 PRESIDING JUDGE EBOE-OSUJI: Counsel, the Mr Bethwell Ruto you mentioned,
10 any relation of your client -- your client?

11 MS ALAGENDRA: No, your Honour.

12 Q. Madam, the constituency secretary for the PNU in Eldoret North was
13 Mr Meshack Yebei, am I right?

14 A. Still I can't tell.

15 Q. Madam, from the names I've mentioned, Bethwell Ruto, Sammy Kiptanui
16 Kosgey, Meshack Yebei, Stephen Tarus, I am correct, am I not, that they are all
17 Kalenjin?

18 A. You are correct.

19 Q. Madam, you're familiar with the PNU politician, a lady by the name of Jane
20 Wangoi, are you not?

21 A. I am.

22 Q. She was contesting for the position of councillor of Market ward on a PNU
23 ticket in the 2007 elections, am I correct?

24 A. Yes.

25 Q. And after the elections, madam, she was appointed as a woman leader for the

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- 1 PNU; correct?
- 2 A. Correct.
- 3 Q. Madam, could I trouble you to help me spell Wangoi please?
- 4 A. Okay, W-A-N-G-O-I.
- 5 Q. Thank you. Madam, am I correct that during the 2007 elections the PNU was
- 6 reaching out for the votes of every Kenyan across Kenya? Am I correct?
- 7 A. Yes.
- 8 Q. The PNU wanted the Kalenjin vote, the Luo vote, the Luhya vote, the Kisii vote?
- 9 They did, didn't they?
- 10 A. Yes.
- 11 Q. And, madam, in the same way the ODM also wanted the votes of every Kenyan
- 12 across Kenya. Am I right, madam?
- 13 A. Yes.
- 14 Q. They wanted the Kikuyu vote, didn't they, madam?
- 15 A. Yes.
- 16 Q. They wanted the Luo vote?
- 17 A. Yes.
- 18 Q. The Kisii vote?
- 19 A. Yes.
- 20 Q. And, madam, you will agree with me that in the 2007 elections the ODM
- 21 portrayed itself as a multi-ethnic party? Would you agree with that?
- 22 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase?
- 23 MS ALAGENDRA:
- 24 Q. The ODM wanted to portray itself as a party which encompassed all ethnicities,
- 25 or more ethnicities, would you agree?

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1 A. Yes.

2 Q. You are familiar with the Pentagon within the ODM, are you?

3 A. Yes.

4 Q. And you will agree with me that the following people that I will name were
5 members of the Pentagon: Honourable Raila Odinga, he was part of the Pentagon,
6 wasn't he?

7 A. Yes.

8 Q. He's a Luo?

9 A. Yes.

10 Q. Charity Ngilu, she is a Kamba?

11 A. Yes.

12 PRESIDING JUDGE EBOE-OSUJI: Counsel, is that in dispute, all those propositions?
13 Are they in issue, so that we do not overwork the witness in terms of her testimony?
14 It's not just about how long we stay here.

15 MS ALAGENDRA: Your Honour, perhaps the Prosecution may want to stipulate to
16 that, your Honour?

17 PRESIDING JUDGE EBOE-OSUJI: As to the members of the Pentagon and their
18 ethnicities?

19 MS ALAGENDRA: Yes, your Honour.

20 MR GARCIA: Your Honours, if the Defence had come to us at an appropriate time
21 we might be able to stipulate, but to do that right now on the spur of things it's
22 difficult for the Prosecution to stipulate to these things.

23 PRESIDING JUDGE EBOE-OSUJI: Then continue.

24 MS ALAGENDRA: Your Honour, this is my difficulty. If you will allow me, your
25 Honour, to proceed? Thank you.

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- 1 Q. We spoke about Charity Ngilu, didn't we, Witness?
- 2 A. Yes.
- 3 Q. William Ruto, he's a Kalenjin, is he not?
- 4 A. Yes.
- 5 Q. Musalia Mudavadi, he's a Luo -- Luhya, I'm sorry?
- 6 A. Yes.
- 7 Q. Najib Balala is from the Coast Province?
- 8 A. Yes.
- 9 Q. Joseph Nyagah is from the Central Province, am I right, madam?
- 10 A. Yes.
- 11 Q. And you will agree that there were also other prominent Kikuyus who were
- 12 part of the ODM?
- 13 A. Yes.
- 14 PRESIDING JUDGE EBOE-OSUJI: Counsel, somebody from the Coast Province, can
- 15 that person not be a Kikuyu and somebody from Central Province can that person not
- 16 be a Kalenjin? I don't know. It seems to me that you were eliciting ethnicities, but
- 17 that question is begged and so maybe you can deal with it later.
- 18 MS ALAGENDRA: Your Honour, I can either deal with it later, or if your Honours
- 19 will permit me I'll ask my learned senior counsel, Katwa Kigen, to assist me to answer
- 20 that question, your Honour.
- 21 PRESIDING JUDGE EBOE-OSUJI: It's not from your -- you don't need to give
- 22 evidence as counsel. I am saying evidence that needs to be on the record, it will not
- 23 come from counsel.
- 24 MS ALAGENDRA: Your Honour, we will explore this with other witnesses.
- 25 Thank you, your Honour.

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1 Your Honours, I would request that we go into a private session for five minutes or
2 less.

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

4 *(Private session at 10.17 a.m.) Reclassified as Open session

5 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Ms Alagendra, please continue.

8 MS ALAGENDRA:

9 Q. Madam, we are in a private session and so please feel free to answer my
10 question and even mention names. Is that okay? (Redacted)

11 (Redacted)

12 (Redacted)

13 A. (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: Is he on the list. Is that number 5?

15 MS ALAGENDRA: Number 5, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, yes.

17 MS ALAGENDRA:

18 Q. And, madam, am I correct that (Redacted)

19 A. Yes.

20 Q. And, madam, am I correct that (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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Witness: KEN-OTP-P-0189

(Private Session)

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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 A. Yes.
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 (Redacted)
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 A. (Redacted)
- 18 MS ALAGENDRA: (Redacted)
- 19 (Redacted)
- 20 Q. That's correct, isn't it, Witness?
- 21 A. Yes.
- 22 MS ALAGENDRA: (Redacted)
- 23 (Redacted)
- 24 Q. (Redacted)
- 25 (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. (Redacted)
- 8 Q. (Redacted)
- 9 (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. Will you repeat?
- 13 Q. Do you want me to repeat? (Redacted)
- 14 (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 (Redacted)
- 18 A. (Redacted)
- 19 Q. (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. (Redacted)
- 8 PRESIDING JUDGE EBOE-OSUJI: Counsel, one second. We are in private session.
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 THE WITNESS: (Redacted)
- 14 PRESIDING JUDGE EBOE-OSUJI: Okay. So now with that out of the way, but is
- 15 that person related to you?
- 16 THE WITNESS: No.
- 17 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 MR GARCIA: (Redacted)

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- 1 (Redacted)
- 2 (Redacted) We apologise.
- 3 PRESIDING JUDGE EBOE-OSUJI: No need to apologise. That was a good move, a
- 4 good suggestion, but I thought that as well and that is precisely why I did not think
- 5 we should redact it.
- 6 Please proceed.
- 7 MS ALAGENDRA:
- 8 Q. (Redacted)
- 9 (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 A. I will try.

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- 1 MS ALAGENDRA: Thank you.
- 2 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 MS ALAGENDRA: Your Honour, I anticipate that the questions would come in a
- 6 later session, not this session, your Honour, and --
- 7 PRESIDING JUDGE EBOE-OSUJI: So you will not be asking the questions right
- 8 now?
- 9 MS ALAGENDRA: Not right now, your Honour.
- 10 PRESIDING JUDGE EBOE-OSUJI: But when you do, how many questions are you
- 11 looking at?
- 12 MS ALAGENDRA: Your Honour, I'll take a gamble and say about ten questions, but
- 13 I ask that I not be held to that please.
- 14 PRESIDING JUDGE EBOE-OSUJI: All right. The reason I say that is: Is it possible
- 15 to use the PIS to ask that question to avoid any slip-ups?
- 16 MS ALAGENDRA: Yes.
- 17 PRESIDING JUDGE EBOE-OSUJI: You've flagged it.
- 18 MS ALAGENDRA: Yes.
- 19 PRESIDING JUDGE EBOE-OSUJI: And then when we're (indiscernible) look at
- 20 number 5 on the list and then we do that. I think it's safer to proceed in that way.
- 21 MS ALAGENDRA: (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 MS ALAGENDRA: I'm guided, your Honour, and in fact that's exactly how I'm
8 going to do it.

9 PRESIDING JUDGE EBOE-OSUJI: Then, Mr Garcia, you were on your feet?

10 MR GARCIA: Yes. If I may, your Honour, I think that what the Defence wants to
11 do is a very delicate exercise. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 MS ALAGENDRA: Can I just say something, your Honour? It's that what I ask
25 first of all, your Honour, is for my learned friend to trust me. I may have limited

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1 experience, your Honour, but I have handled these kind of situations before and I
2 will --

3 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra - Ms Alagendra - you keep saying
4 you have limited experience. You've been proceeding impressively and I need not
5 say that, but I am bound to, but --

6 MS ALAGENDRA: And, your Honour, if you would allow me to give it my best
7 attempt, your Honour, I'm confident that it will go in the way I anticipate.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 MS ALAGENDRA: The topic.

18 PRESIDING JUDGE EBOE-OSUJI: -- one or two topics ahead, if you let us know.

19 MS ALAGENDRA: I will certainly -- I will do that, your Honour. Thank you.

20 Your Honour, could we go into a public session please?

21 PRESIDING JUDGE EBOE-OSUJI: We will now go into public session.

22 (Open session at 10.33 a.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

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1 MS ALAGENDRA:

2 Q. Madam, I want to move on and speak to you about PNU campaign rallies and
3 campaign meetings, okay? Madam, am I correct that in the North Rift area and
4 elsewhere it was common practice to hold campaign meetings - PNU campaign
5 meetings - in a variety of locations: Hotels, homes of politicians, public places? Am
6 I right?

7 A. Yes.

8 Q. And am I right, madam, that in the 2007 campaign period, the PNU held
9 meetings in the Noble Restaurant in Eldoret? Do you recall that?

10 A. Yes.

11 Q. The Racecourse Inn in Eldoret?

12 A. Yes.

13 PRESIDING JUDGE EBOE-OSUJI: You need to spell Nogo (sic).

14 MS ALAGENDRA: The first one was Noboe Restaurant, N-O-B-L-E.

15 PRESIDING JUDGE EBOE-OSUJI: Oh, Noble.

16 MS ALAGENDRA:

17 Q. The Relax Inn in Eldoret?

18 A. Yes.

19 Q. The Sirikwa Hotel in Eldoret?

20 A. Yes.

21 MS ALAGENDRA: Sirikwa is spelled S-I-R-I-K-W-A.

22 Q. What about the Wagon Restaurant?

23 A. That one I can't say.

24 MS ALAGENDRA: And Wagon is W-A-G-O-N.

25 Q. And the Highlands Inn, do you recall that being a venue?

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1 A. Yes.

2 Q. Madam, am I right that your campaign activities was to mobilise youth to
3 attend PNU meetings and rallies? Am I right?

4 A. Yes.

5 Q. And it is also common practice during election campaigns that, when youth are
6 mobilised to attend meetings and rallies, party officials would give out T-shirts?

7 Money?

8 A. Yes.

9 Q. Caps?

10 A. Yes.

11 Q. And at these gatherings and meetings, when the youths gather and they attend,
12 it is also common practice that food is served? Am I right, madam?

13 A. No.

14 Q. Does it sometimes happen where people are given food?

15 A. No.

16 Q. And isn't it also common practice that they are given a token sum of money as
17 an allowance when they come to these meetings?

18 A. Yes.

19 Q. And was it normally a fixed figure of how much is given, or it varies?

20 A. It varies.

21 Q. Could you give the Court an indication, madam, as to what kind of amounts we
22 are talking about for youths and others who attend these campaign meetings and
23 rallies? If you can give a range?

24 A. Okay. For the officials, it's higher to their -- the rest of them.

25 Q. For the officials, madam, what kind of figure are we looking at?

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1 A. Around 500 to 1,000.

2 Q. And for the youths?

3 A. 500.

4 Q. And, madam, am I correct to say that these allowances and T-shirts, caps and
5 others items, this is a practice that was common in most political parties when they
6 hold their meetings and rallies? Am I correct?

7 A. Yes.

8 Q. For instance, the ODM politicians and supporters, they did the same thing,
9 didn't they, madam?

10 A. Yes.

11 Q. And, madam, would I be correct to say that these items are normally given out
12 to encourage people to come and attend these gatherings; political gatherings?

13 A. Yes.

14 Q. And am I also correct that very often the youths and the people used to go to
15 these gatherings because they wanted to get those things? Am I right?

16 A. Yes.

17 Q. Now, madam, would I be correct to say that during the 2007 elections, it was
18 not unusual for individuals to support Mwai Kibaki for president and at the same
19 time support an ODM politician for the parliamentary or civic seats? That was
20 happening, wasn't it?

21 A. Can you repeat the question?

22 Q. What I'm trying to say, madam, is when people were voting in 2007, it did not
23 mean that if they voted for Mwai Kibaki of the PNU for president that that
24 automatically meant that they were also supporting the PNU candidates for the other
25 positions, MP, councillor? Am I correct?

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1 A. Yes.

2 Q. And am I correct, madam, that in the Eldoret North constituency there were
3 people, voters, who supported Mwai Kibaki for president, but they voted for William
4 Ruto for member of parliament for Eldoret North? Am I correct?

5 A. Yes.

6 Q. And many of these people, madam, were also Kikuyus, am I right?

7 A. Yes.

8 Q. Who voted for Mr William Ruto for MP Eldoret North in the 2007 elections?

9 A. Yes.

10 Q. Now, madam, you testified at length about what was taking place during PNU
11 campaign trails, when you were going around campaigning, and you spoke about
12 PNU supporters being attacked by ODM supporters when they went into ODM
13 territory. Am I correct?

14 A. Yes.

15 Q. Madam, did you hear during this period that the ODM campaigners were being
16 attacked by PNU supporters?

17 A. Yes.

18 Q. Do you recall in which areas it happened?

19 A. In Huruma.

20 PRESIDING JUDGE EBOE-OSUJI: Can you spell that, please?

21 MS ALAGENDRA:

22 Q. Shall I help you, Witness?

23 A. Okay.

24 Q. It's H-U-R-U-M-A. Did I get it right?

25 A. Yes.

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1 Q. Madam, can you tell the Court very briefly about this incident in Huruma when
2 the PNU supporters attacked the ODM campaigners, as best as you can recall?

3 A. I was not in that place, but I heard they were attacked.

4 Q. And do you recall any detail that you were told about that attack?

5 A. No.

6 PRESIDING JUDGE EBOE-OSUJI: For the transcript, at line 19, the witness said that
7 she heard they were attacked.

8 Please proceed.

9 MS ALAGENDRA:

10 Q. Madam, just for the understanding of their Honours, where is Huruma,
11 madam?

12 A. It's in Eldoret Town.

13 Q. Madam, the same way you heard about this attack, did you hear about an
14 incident when Mr William Ruto and other ODM leaders were attacked during a
15 campaign event in September 2007 by PNU supporters, and this attack took place in
16 the presence of senior government ministers and it has been alleged that the attack
17 was at the instigation of this particular minister?

18 PRESIDING JUDGE EBOE-OSUJI: There are three propositions there.

19 MR GARCIA: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: Can you break them up, Ms Alagenda?

21 MS ALAGENDRA: Your Honours, in fact I was trying to put it forward as
22 one -- one event, because there may have been others but this was the only event of
23 my interest, but I will -- I will do so, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Fair enough. If you are basically telling her an
25 event and the components of it, then you can do that and then see if she recalls.

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- 1 MS ALAGENDRA: That's exactly what I was doing. Your Honour, I will try.
- 2 Q. Madam, do you recall the event that I have just described?
- 3 A. Yes.
- 4 Q. Do you remember where it happened?
- 5 A. No.
- 6 Q. It happened in Kisii. Do you recall that, madam?
- 7 A. No.
- 8 Q. And the minister I'm referring to, madam, is Simeon Nyashe. Do you recall?
- 9 A. I recall Mr Nyashe.
- 10 Q. And do you recall the incident I am talking about, where it was said that
- 11 Mr Ruto and other ODM leaders were attacked at the instigation of this minister?
- 12 A. Yes, I do.
- 13 Q. And do you recall now, madam, that it happened in Kisii?
- 14 A. Yes.
- 15 Q. And, madam, are you aware that at this incident Mr William Ruto was in fact
- 16 badly injured?
- 17 A. No.
- 18 Q. Do you recall that he was hit in the knee by an arrow and he was hospitalised as
- 19 a result of this attack? Do you recall?
- 20 A. No.
- 21 Q. How did you come to know about this attack, madam? Did you see it on the
- 22 TV?
- 23 A. No.
- 24 Q. How did you hear about it?
- 25 A. From my group members.

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1 Q. Madam, I'm going to play you a short video and I would like you to have a look
2 at the video and I may pose some questions after that, okay?

3 A. Yeah.

4 MS ALAGENDRA: Your Honour, we have discussed amongst ourselves and with
5 the legal officers that for this witness we will continue as we have been, with the court
6 officers playing the video, and moving forward for future witnesses we will come to a
7 better solution, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

9 MS ALAGENDRA: May I ask that video KEN-D09-0022-0014 be played? And it
10 can be in public, please, and the whole video.

11 (Viewing of the video excerpt KEN-D09-0022-0014)

12 MS ALAGENDRA:

13 Q. Madam, did you have a good look at the video?

14 A. Yes.

15 Q. And did you observe that the person limping with his injured knee is
16 Mr William Ruto?

17 A. Yes.

18 Q. And, madam, what you saw on this video, it is consistent with what you heard
19 about this incident, am I right?

20 A. Yes.

21 MS ALAGENDRA: Your Honour, may I request that this video be given an MFI
22 number, your Honour?

23 PRESIDING JUDGE EBOE-OSUJI: Any objection?

24 MR GARCIA: No objection.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

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- 1 MR KIGEN-KATWA: Yes, Mr President, no objection.
- 2 PRESIDING JUDGE EBOE-OSUJI: The video will be marked MFI next in the series
- 3 for the Ruto Defence.
- 4 Please proceed.
- 5 MS ALAGENDRA:
- 6 Q. Madam, I'm going to move to a different issue and I'd like to -- I'd like you to
- 7 confirm for the Court that in 2007/2008 the OCPD of Eldoret Police Division was
- 8 Mr Angelus Karuru, am I correct?
- 9 A. Yes.
- 10 MS ALAGENDRA: Angelus is spelled A-N-G-E-L-U-S and Karuru K-A-R-U-R-U,
- 11 and your Honours OCPD is the acronym, if I may provide the full version, your
- 12 Honour, for Officer Commanding Police Division.
- 13 Q. Madam, am I correct that Mr Angelus Karuru is a Kikuyu?
- 14 A. He's not a Kikuyu.
- 15 Q. What do you say is his ethnicity, madam?
- 16 A. He's either a Meru or an Embu.
- 17 Q. A Meru or an ...?
- 18 A. Embu ethnicity.
- 19 Q. Embu.
- 20 PRESIDING JUDGE EBOE-OSUJI: How do you spell that?
- 21 MS ALAGENDRA: Meru is M-E-R-U.
- 22 PRESIDING JUDGE EBOE-OSUJI: Yes, the second one.
- 23 MS ALAGENDRA: And Embu is E-M-B-U.
- 24 Q. And, madam, am I correct that the OCS of Eldoret police station was one
- 25 Mr Mwanja, M-W-A-N-I-A?

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- 1 A. Yes.
- 2 Q. Would I be right this time if I said he's a Kikuyu?
- 3 A. The name sounds like a Kikuyu, but I don't think he's a Kikuyu too.
- 4 Q. What do you think is his ethnicity, madam?
- 5 A. It's either he's also a Meru, or an Embu.
- 6 Q. And the OCS of Langas police station was Mr Gennaro Mwangi, am I correct?
- 7 A. Yes.
- 8 MS ALAGENDRA: Gennaro is spelled G-E-N-N-A-R-O and Mwangi is
- 9 M-W-A-N-G-I.
- 10 Q. And, madam, I have got it right this time. He's a Kikuyu, isn't he?
- 11 A. Yes.
- 12 Q. And, madam, Mr Bernard Njue Kinyua, he was the district commissioner of
- 13 Uasin Gishu district, and it's Bernard, Njue is N-J-U-E and Kinyau is K-I-N-Y-U-A?
- 14 A. Yes.
- 15 Q. Madam, what is his ethnicity, please?
- 16 A. He's a Kikuyu.
- 17 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, it looks like the transcript has
- 18 difficulty with the district; the spelling of the district. "Uasin Gishu" I believe you
- 19 said?
- 20 MS ALAGENDRA: I did, your Honour, and just to assist it's U-A-S-I-N and the
- 21 second word is G-I-S-H-U.
- 22 Q. And, madam, the district officer - DO - of Turbo division was one Madam
- 23 Rebecca Muturi, am I correct?
- 24 A. That one I can't answer because I don't come from Turbo.
- 25 Q. And from the name, madam, Muturi, can you help us with the ethnicity please?

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1 A. It can be termed as a Kikuyu, or as a Meru. We share the names.

2 Q. And, madam, the reason that the Embu, Meru and Kikuyu share names are
3 because you're all members of GEMA, am I right?

4 A. No.

5 Q. But am I right that Embu, Meru and Kikuyu are all part of the GEMA?

6 A. Yeah, they are part of GEMA.

7 MS ALAGENDRA: Your Honour, perhaps this would be the right time to break,
8 your Honour?

9 PRESIDING JUDGE EBOE-OSUJI: Indeed, it is 11 o'clock and the Chamber will rise
10 and return at 11.30.

11 The blinds will come down first and then the witness will be escorted out and we will
12 rise after that.

13 *(Closed session at 11.00 a.m.) Reclassified as Open session

14 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Please escort the witness out.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: The Chamber will rise.

19 THE COURT OFFICER: (Interpretation) All rise.

20 (Recess taken at 11.01 a.m.)

21 (Upon resuming in open session at 11.37 a.m.)

22 THE COURT USHER: All rise.

23 Please be seated.

24 THE COURT OFFICER: We are in open session, your Honour.

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

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1 Ms Alagendra, do we go back into private?

2 MS ALAGENDRA: I can continue in open session.

3 PRESIDING JUDGE EBOE-OSUJI: We can continue in open session, all right.

4 MS ALAGENDRA: Your Honour, may I proceed?

5 Q. Madam, I'm going to move now to another topic. Madam, am I correct that the
6 first commission to look into the events surrounding the 2007 elections was a
7 commission called the Kriegler Commission? Do you recall that?

8 A. Yes.

9 MS ALAGENDRA: And for the record Kriegler is spelled K-R-I-E-G-L-E-R.

10 Q. And, madam, you'll agree with me that this commission, the Kriegler
11 Commission, was established in February 2008, am I right?

12 A. Yes.

13 Q. It was established days after the violence in Naivasha and Nakuru, am I right?

14 A. Yes.

15 Q. And, madam, the Kriegler Commission, the commissioners came to Eldoret in
16 July of 2008, more specifically 7 July 2008, am I right?

17 A. Yes.

18 Q. And there was a session they held at the Eldoret Municipal Hall, am I right?

19 A. Yes.

20 Q. Madam, you will recall that there was an incident at that session, where a PNU
21 official by the name of William Rono raised concerns about the tallying of the results
22 in relation to the seat of Madam Jane Wangoi at the Market ward. Do you recall that
23 incident?

24 A. No.

25 Q. Do you recall, madam, that William Rono addressed the Kriegler commissioners

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1 and he was trying to tell them that in fact it was not the ODM candidate, William
2 Kiptum, that had won the elections for the Market ward seat, but in fact it was
3 actually Jane Wangoi? Do you remember that incident?

4 A. No.

5 MS ALAGENDRA: And for the record William Kiptum is K-I-P-T-U-M.

6 Q. But, madam, you recall that William Kiptum was contesting that seat?

7 A. Yes.

8 Q. Madam, do you recall that, when Mr William Rono addressed the commission,
9 he was booed by ODM supporters in the audience and that was televised on TV? Do
10 you remember that incident?

11 A. No.

12 Q. Do you recall that William Rono was removed from that premises under police
13 security because the ODM supporters were going to attack him? Do you remember
14 the incident?

15 A. No.

16 Q. And, madam, the next commission that came to Eldoret after the Kriegler was
17 the Waki Commission, am I right?

18 A. Yes.

19 Q. And the Waki commissioners came to Eldoret and witnesses testified on 5 and 6
20 August, am I right?

21 A. Yes.

22 Q. But a few days before the commissioners started to hear testimony, a group of
23 lawyers came from Nairobi to Eldoret to meet with witnesses and to take statements
24 from witnesses, am I right?

25 A. I can't recall of that.

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1 Q. You don't recall, madam, that some lawyers came to Eldoret in advance of the
2 commissioners, perhaps around 2, 3 or even 4 August, to meet with witnesses and
3 take statements?

4 A. What you're trying to mean is the Waki Commission lawyers?

5 Q. Yes, exactly. That's what I mean.

6 A. Yes.

7 Q. So you agree with me that these lawyers came in advance of the commissioners,
8 the Waki Commission lawyers?

9 A. Yes.

10 Q. And am I right, madam, that amongst these lawyers were Mr Kamotho
11 Waigango? Am I right?

12 A. I can't recall him.

13 MS ALAGENDRA: And for the record it's K-A-M-O-T-H-O Waigango,
14 W-A-I-G-A-N-G-O.

15 Q. Another lawyer that came, madam, was Njenga Mwangi, am I right?

16 A. Him, I can't recall him.

17 Q. And another lawyer that came was called Mr Peter Maundu, do you recall him?

18 A. No.

19 MS ALAGENDRA: Maundu is spelled M-A-U-N-D-U.

20 Q. Another lawyer that came was by the name of George Morara, do you recall?

21 A. Yes.

22 Q. Now, madam, this group of lawyers who Mr Morara was together with, would
23 you agree with me that they were in some way associated to the PNU?

24 A. Yes.

25 Q. Now, madam, at this time in 2008, am I right that Honourable Martha Karua,

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1 she was the Minister of Justice? Am I right?

2 A. Yes.

3 Q. And I'm also right, am I not, madam, that Mr Mutea Iringo was the Deputy
4 Permanent Secretary for the Ministry of Provincial Administration and Internal
5 Security? Am I right?

6 A. I can't tell.

7 MS ALAGENDRA: And for the record Mutea Iringo is spelled M-U-T-E-A and
8 Iringo is I-R-I-N-G-O.

9 Q. Do you know --

10 PRESIDING JUDGE EBOE-OSUJI: You may also need to spell Martha Karua.

11 MS ALAGENDRA: Your Honours, I believe I spelt that earlier, but I will do so
12 again.

13 PRESIDING JUDGE EBOE-OSUJI: You may have done, but the transcript seems to
14 be struggling with it.

15 MS ALAGENDRA: Martha Karua is spelled K-A-R-U-A.

16 Q. Madam, you may not be familiar with the position he holds, but have you heard
17 of an individual by the name of Mutea Iringo?

18 A. No.

19 Q. He's a government official. He was at that time and he still is.

20 A. No.

21 Q. In fact, he is presently the Permanent Secretary for the Ministry of Internal
22 Security. Does that mean anything to you?

23 A. No.

24 Q. And, madam, at that time also you will agree with me that Madam Nancy Gitau
25 was the Director of Political Affairs in the Office of the President. Gitau is spelled

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1 G-I-T-A-U. Am I right, madam?

2 A. I can't recall.

3 Q. But do you know the person I'm speaking about, Madam Nancy Gitau?

4 A. No.

5 Q. Now, madam, you will agree with me that what was happening at the time was
6 the ODM was very eager to show that the PNU had rigged the elections. You agree
7 with that?

8 A. No.

9 Q. So you don't agree that the ODM was insisting that, "PNU, you have rigged
10 elections. That is how Mwai Kibaki is the president?" isn't that what ODM were
11 saying at the time?

12 MR GARCIA: I'm objecting, your Honour. That question was asked already and it
13 was answered clearly by the witness.

14 PRESIDING JUDGE EBOE-OSUJI: The objection is overruled. Objection overruled.
15 The witness can answer.

16 THE WITNESS: Yes, the ODM were saying so.

17 MS ALAGENDRA:

18 Q. Thank you, madam. And, madam, in the same way, am I right that the PNU
19 were saying that, "You ...," the ODM -- "You are the cause of the post-election
20 violence"?

21 PRESIDING JUDGE EBOE-OSUJI: You mean that was what --

22 MS ALAGENDRA: PNU.

23 PRESIDING JUDGE EBOE-OSUJI: -- the PNU was saying to the ODM?

24 MS ALAGENDRA: Yes, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: And not saying to the witness?

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1 MS ALAGENDRA: No, no.

2 Q. Absolutely not, madam. I'm not saying that. You agree with that?

3 A. Yes, I do.

4 Q. And, madam, in order for the PNU to be able to demonstrate what they were
5 saying, that the ODM was involved in the violence, they put together a group to now
6 start identifying witnesses and to gather information to show that it was the ODM
7 that was behind the violence, am I right?

8 A. Can you repeat the question again?

9 Q. You agreed with me that the PNU were saying that the ODM - not you, the
10 ODM - was the cause of the post-election violence?

11 A. Yes.

12 Q. And in order to show that it was the ODM that was the cause of the violence,
13 what the PNU officials and also some government officials did was they put together
14 a group of people who would assist them to locate witnesses who could provide
15 evidence to support what they were saying, that ODM was the cause of the violence.
16 You agree with that?

17 A. I cannot agree.

18 PRESIDING JUDGE EBOE-OSUJI: I think the question was quite complicated even
19 for me to follow.

20 MS ALAGENDRA: Can I try again, your Honour?

21 PRESIDING JUDGE EBOE-OSUJI: You can, but if you can simplify it.

22 MS ALAGENDRA:

23 Q. Madam, the PNU was trying to gather evidence to show that what they were
24 saying is right, that it was the ODM that had caused the violence, am I right?

25 A. No.

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1 Q. And there was a group of people that came together to assist in gathering this
2 evidence and to identify witnesses to show the ODM was involved in the violence, do
3 you agree?

4 A. No.

5 Q. Madam, when you say "No," you don't agree or you don't know?

6 A. I don't agree to what you're saying.

7 Q. And, madam, am I right that this group was comprised of some PNU officials,
8 some government officials and some lawyers?

9 PRESIDING JUDGE EBOE-OSUJI: But she disagrees with the premise of the
10 question. Can you bring any conclusion then?

11 MS ALAGENDRA: Your Honour, if I may, I'm also attempting to put my case, your
12 Honour, and the witness is free to disagree.

13 PRESIDING JUDGE EBOE-OSUJI: You can put your case, but what I'm saying is
14 that, if your case is based on a premise that the witness does not agree with, do you
15 ask the question from the perspective of a conclusion that is necessarily based on the
16 premise that the witness disagrees with, or do you formulate your conclusion as a
17 separate matter? That's all. I'm not trying to stop you from putting your case.

18 MS ALAGENDRA: Your Honours, I'll move on from this issue, but what I also
19 noticed in some of my earlier questionings is that with some further information
20 being provided the witness is able to at times recall the proposition that was put in
21 the first place; like for example the event in Kisii when Mr Ruto was attacked.

22 PRESIDING JUDGE EBOE-OSUJI: The difficulty there was that in this instance you
23 had asked her whether it's a matter of her not recalling or not, or whether it is that she
24 did not agree, and she says she did not agree. In the previous instances, it might
25 have been a matter of not recalling which she then subsequently recalled.

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1 MS ALAGENDRA: Your Honour, perhaps I'll move specifically to the North Rift
2 issues --

3 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

4 MS ALAGENDRA: -- and the witness may recall.

5 Q. Madam, now in relation to the violence that took place in the North Rift, are you
6 aware that there was a group of individuals, comprising Mr Stephen Tarus, Martha
7 Karua, Mutea Iringo, Nancy Gitau, Stephen Mugwira, Abraham Limo, William Rono
8 and Bethwell Ruto, that were working together to identify witnesses and collect
9 information to present to the Waki? Are you aware of that?

10 A. No.

11 Q. Madam, did you hear that some of the witnesses that testified before the Waki
12 Commission in relation to the violence that took place in the North Rift were later
13 taken into a witness protection programme that was managed by the Ministry of
14 Internal Security? Did you hear about that?

15 A. No.

16 Q. Madam, did you hear that for witnesses who -- or rather for some witnesses
17 who testified, or gave a statement to the Waki Commission, the monies for witness
18 protection that was being run by the Ministry of Internal Security was being
19 disbursed by Mr Mutea Iringo and Nancy Gitau? Did you hear that?

20 A. No.

21 PRESIDING JUDGE EBOE-OSUJI: Madam, can you lean forward a bit, you can
22 move your chair forward a bit, so that you're closer to the microphone. Thank you.

23 MS ALAGENDRA:

24 Q. And, madam, did you hear that the aim of some PNU officials and some
25 government officials was to blame Mr Ruto for the violence? And I'm talking about

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1 before the Waki Commission that is what they wanted to do. Are you aware of that?

2 A. Yes.

3 Q. And they wanted to blame Mr Ruto, madam, regardless of the truth. I'm right,
4 aren't I?

5 A. Yes.

6 Q. And what they wanted, madam, was to say William Ruto was responsible for
7 that post-election violence in North Rift Valley even though he had nothing to do
8 with it. I'm right, aren't I?

9 A. Yes.

10 Q. Madam, I'm going to move to another -- another topic. Madam, you recall the
11 date 2 January? Now, please just say "Yes" or "No". Don't say where you were, or
12 what you were doing. You recall that date, 2 January, don't you?

13 A. Yes.

14 Q. Madam, do you recall either hearing or seeing on TV Mr Ruto calling for peace
15 and telling people to stop looting, to stop burning and to stop killing? Do you
16 recall?

17 A. Yes.

18 Q. And, madam, you also recall, don't you, that the first time Mr William Ruto
19 returned to Eldoret since the elections was on 27 January 2008? You recall?

20 A. That one I can't say.

21 Q. If it helps, madam, 27 January was a Sunday, but perhaps I'll describe the visit
22 to you and you can see if you remember hearing about it, or seeing it on TV perhaps,
23 okay?

24 A. Okay.

25 Q. Now, madam, during this visit, Mr Ruto joined worshippers at the Eldoret AIC

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1 church to pray for peace. Do you remember such an event?

2 A. Yeah. Yes.

3 Q. And you recall that from here, Mr Ruto proceeded to the Moi Referral Hospital
4 and he went there to visit victims of the post-election violence. You recall?

5 A. Yes.

6 Q. And you recall, madam, that the victims he was visiting were there nursing
7 injuries from bullets and arrows? Am I right, madam? The victims -- shall I repeat
8 the question?

9 PRESIDING JUDGE EBOE-OSUJI: You might as well.

10 MS ALAGENDRA:

11 Q. What I'm saying is that the victims who were at the Moi Referral Hospital at this
12 time were victims who had been injured during the post-election violence. They had
13 been cut by pangas, they had bullet wounds, they had arrow wounds, burns, am I
14 right?

15 A. Yes.

16 Q. And those victims, madam, according to you, those with arrow wounds, they
17 were Kikuyus mostly, yes?

18 A. Yes.

19 Q. And, madam, you'll also recall that during this visit Mr Ruto, he spent time
20 there and he was talking to these victims and they were explaining to him what had
21 happened to them and how they lost their property, you recall?

22 A. As I was not there, I cannot tell.

23 Q. Maybe you would have heard about it?

24 A. All I heard is he was in the hospital.

25 Q. And after -- in fact, madam, am I right that what you heard was that the victims

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1 were very happy to receive Mr Ruto? They spoke to him and they told him what
2 had happened and he sympathised with them; correct? That's what you heard?

3 A. I can't say of that.

4 Q. Madam, you remember that on this occasion Mr Ruto also addressed the press
5 and he called for peace and for the violence and killings to stop? Do you recall that
6 happened?

7 A. Yes.

8 Q. Madam, I'm right, am I not, that when Mr Ruto was attending public places,
9 especially during the campaigns and during anything associated with the
10 post-election violence, that at the places he went to there was always quite a number
11 of press who were interested and who would be present, am I right?

12 A. Yes.

13 MS ALAGENDRA: Your Honours, if I may make a request, during the opening of
14 the Defence we played a video of this visit I'm referring to, but it was not included in
15 our list of evidence that we provided to the Prosecution and so I wonder if my
16 learned friend would object strenuously to me playing that video for this witness on
17 this occasion?

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

19 MR GARCIA: Could we possibly have some information on what the video is about?
20 What is the content?

21 MS ALAGENDRA: Your Honour, I believe my learned friend was at the opening
22 and he may even recall the event I'm speaking about, but I'd rather not describe it
23 before the witness sees it.

24 PRESIDING JUDGE EBOE-OSUJI: Why did you not point the Prosecutor to it this
25 time? Was it inadvertence?

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1 MS ALAGENDRA: To be very sincere, your Honours, this is a line of questioning
2 which is almost impromptu and it was not inadvertence and definitely not deliberate,
3 your Honour.

4 MR GARCIA: Your Honour, we haven't objected before. I mean, there's a certain
5 line of questioning from Defence counsel that is bordering on self-serving evidence.
6 I'm not going to get into it in front of the witness, but it certainly is possibly within the
7 scope of self-serving evidence and I don't think that type of evidence should be led, or
8 tried to be elicited through one of the Prosecution witnesses. So I'd object on that
9 ground that that video be played.

10 MS ALAGENDRA: Your Honour, if I may, one minute? Just to move things faster,
11 your Honour, so that Madam Witness can go home sooner, I think I will avoid the
12 video. I'll proceed without it, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

14 Mr Garcia, there was an admonition I gave to Mr Khan at some point. It applies to
15 you too. It does not help the proceedings if counsel sit down and don't make an
16 objection and after a while they get up and say, "There have been a series of questions
17 asked, we didn't object and so we've been good guys all along." That doesn't help us.
18 If questions -- if objectionable questions are posed, counsel who have objections and
19 think it's appropriate to make the objections must make it then and a ruling is made
20 and we move forward.

21 Please proceed.

22 MS ALAGENDRA: Your Honours, I do apologise, but Mr Khan has asked me to
23 convey that he has taken that admonition to heart.

24 PRESIDING JUDGE EBOE-OSUJI: Sometimes we have to be hard, but proceed.

25 MS ALAGENDRA:

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1 Q. Madam, yesterday you described to the Court a visit by Mr Ruto to the Eldoret
2 Showground. Do you recall?

3 A. Yes.

4 Q. And you say he was received harshly, and you said people at the showground
5 called Mr Ruto all sorts of names, including murderer, and they tried to throw things
6 at him, and you said -- you were asked what was the reason for this reaction and you
7 said they blamed Mr Ruto for the violence. Do you recall that, madam?

8 A. Yes.

9 Q. Madam, I know you were not asked by my learned friend about the date of this
10 visit, but we are interested in this, madam, and what I'm going to say to you is that
11 this visit you were referring to took place in April 2008, am I correct?

12 A. I can't recall the dates.

13 Q. Would you recall whether it was in the early part of 2008, or in the later part, or
14 in the middle, if you can try to see if you can give us some estimation of when this is
15 taking place?

16 A. It's early.

17 Q. Early?

18 A. Yeah, but not 2nd and 3rd. Maybe from four, fifth, maybe sixth month.

19 Q. So like April, May, June 2008?

20 A. Yeah.

21 Q. Thank you. And, madam, you told the Court yesterday that you did not recall
22 if anyone came with Mr Ruto. In fact, when you were asked that question you said,
23 "I can't tell." Do you remember?

24 A. Yes.

25 Q. And, madam, correct me if I'm wrong, but I'm right, aren't I, that the reason you

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1 can't tell, madam, was because you were not yourself present during the visit and the
2 information you provided was perhaps what you were told by others about the visit?
3 Could that be right, madam?

4 A. No.

5 Q. Madam, I'm going to play you a short video and I hope that will help refresh
6 your memory, okay?

7 A. Yes.

8 MS ALAGENDRA: Your Honours, may I ask that the video KEN-D09-0022-0018 be
9 played please? And, your Honour, for the assistance of the Chamber at tab 10 is a
10 transcript of the video, and for my learned friends it's KEN-D09-0022-0019.

11 PRESIDING JUDGE EBOE-OSUJI: Court officer, please play the video.

12 (Viewing of the video excerpt KEN-D09-0022-0018)

13 MS ALAGENDRA:

14 Q. Madam, you'll agree with me that that place where this event is taking place is
15 the Kipchoge Keino Stadium in Eldoret? Do you agree with that?

16 A. Yes.

17 Q. And you will agree with me, madam, that on this day, as the newsreader was
18 explaining, the group that you saw, President Mwai Kibaki, Raila Odinga,
19 Honourable George Saitoti and Mr William Ruto, they first toured the IDP camp at
20 the Eldoret Showground and then they moved to Kipchoge Keino Stadium? Is that
21 an accurate description?

22 A. But I think from the shooting the video was shot after the conciliation, but I was
23 talking about before the conciliation between the two groups.

24 Q. I'm sorry, could you explain that to me again, madam?

25 A. What I'm trying to say is, according to the video that you've shown me, these

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1 events happened after then, the conciliation of the two groups.

2 Q. So you're saying this event took place after the Eldoret Showground?

3 A. No, the showground was still there, but it's after the reconciliation between the
4 PNU and ODM.

5 Q. Are you placing it in terms of time when it happened?

6 A. No.

7 Q. Are you saying it happened at a particular time?

8 A. Yes.

9 Q. That is after reconciliation?

10 A. Yes, after the reconciliation.

11 Q. And that is the first time, madam, that William Ruto visited the Eldoret
12 Showground?

13 PRESIDING JUDGE EBOE-OSUJI: What is the first time?

14 MS ALAGENDRA: This visit that I've just played on the video.

15 Q. This we say, madam, was the first time that Mr Ruto went to visit the Eldoret
16 Showground, after which the whole entourage moved to Kipchoge Keino Stadium in
17 Eldoret. Would you agree with me?

18 A. No.

19 Q. Now, madam, what I would like to also put to you is that you are correct that
20 there was a trip when Mr Ruto came to the area and where he visited the IDPs at
21 Eldoret Showground - you're correct - and you are also correct that there was an
22 incident where IDPs were reacting to their guests negatively, but where I say you're
23 mistaken, madam, is that the place where the IDPs had this harsh reaction was in fact
24 the Kipchoge Keino Stadium and the guests who were being booed and heckled were
25 in fact President Kibaki and Kalonzo Musyoka, as you saw on that video, and not

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1 Mr Ruto, madam. Do you think you're mistaken?

2 A. No.

3 Q. But in that video that you saw, madam, will you agree that the people present
4 are IDPs?

5 A. It can be mixed.

6 Q. When you say "mixed," madam, what do you mean?

7 A. You said the meeting was in Kipchoge and so it's mixed, those who were
8 affected and those who were not affected.

9 Q. And those who were affected, that you could see, are you able to tell which
10 communities they were?

11 A. No.

12 Q. Would you accept that many of them were from the Kikuyu community?

13 A. Yes.

14 Q. And you will also accept, from what you saw, that when Mr Ruto was speaking
15 to them there was no harsh reaction? Do you accept that?

16 A. In the video I would say "Yes."

17 Q. Madam, do you recall that --

18 PRESIDING JUDGE EBOE-OSUJI: Let's get this. Did the witness say, "In the video
19 I would say 'Yes'," or did she say, "From the video I would say 'Yes'"? Witness, what
20 was your answer?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE EBOE-OSUJI: You ask the question again.

23 MS ALAGENDRA:

24 Q. Madam, I asked you that you will also accept that what you were seeing on the
25 video is in April 2008, Mr Ruto is there with Mwai Kibaki, Kalonzo Musyoka and

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1 Raila Odinga, he's addressing people who include Kikuyu IDPs --

2 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I think you're doing more than is
3 required. Let me ask the question.

4 Witness, the lawyer had asked you that would you accept, from what you saw in the
5 video, that when Mr Ruto was speaking there was no harsh reaction. Do you accept
6 that?

7 THE WITNESS: Yes, I do.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MS ALAGENDRA: Your Honours, can I ask that the witness be shown

10 KEN-D09-0022-0022? It's at tab 11, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Can we see that on the screen?

12 MS ALAGENDRA:

13 Q. Madam, can you see your screen -- what's on your screen?

14 A. Yes.

15 Q. And, madam, the visit that you saw on the video, this was the news the next
16 day describing that visit, and the reason I show this to you, madam, is for you to just
17 have a look at the top and to confirm the date written up there. Am I correct that the
18 news article, that was the newspaper for the date 25 April 2008?

19 A. Yes.

20 Q. Thank you, madam. Madam, do you recall that in 2010 Mr Ruto visited the
21 Eldoret Showground again?

22 A. No.

23 Q. Did you hear about this visit?

24 A. Yes.

25 Q. And did you hear that he was received well and he spoke to the IDPs?

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1 A. Yes.

2 Q. Madam, I'm going to show you another video and you can confirm if this is the
3 event that I'm referring to when Mr Ruto visited the Eldoret Showground in 2010,
4 okay?

5 A. Yes.

6 MS ALAGENDRA: Your Honours, can I ask that video KEN-D09-0022-0026 be
7 played please? And, your Honours, we have provided a transcript at tab 13, and for
8 my learned friends it's at KEN-D09-0022-0027.

9 (Viewing of the video excerpt KEN-D09-0022-0026)

10 PRESIDING JUDGE EBOE-OSUJI: Counsel, why are we watching this video? Let
11 me tell you where I'm going. Is this still events around April 2008, according to you?

12 MS ALAGENDRA: Your Honour, this is in fact the second and last time Mr Ruto
13 visited the Eldoret Showground and this depicts the manner in which he was
14 received by the IDPs then.

15 PRESIDING JUDGE EBOE-OSUJI: When? When?

16 MS ALAGENDRA: 2010, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: 2010? Even later. Why are we watching
18 videos of what happened in 2010? What is the relevance of that to the charge?

19 MS ALAGENDRA: Your Honour, the relevance we say is there's a lot being said
20 about the reactions of Kikuyus and PNU supporters to Mr Ruto, and this is another
21 situation where people are still in camps and this is how they were receiving them,
22 your Honour, not very much more different from the way they did in April 2008, and
23 it may also assist the witness's recollection of what she says she heard about
24 Mr Ruto's visit to the Eldoret Showground in 2010.

25 PRESIDING JUDGE EBOE-OSUJI: The worry is about spending time on matters

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1 that are not directly relevant to the charge. We can't be playing videos like this.

2 MS ALAGENDRA: Your Honours, we are faced with a situation where there is
3 allegations being made that Mr Ruto was being called a murderer by these same IDPs
4 that were at that same location. There's two occasions when Mr Ruto went there, the
5 same IDPs were there and this just demonstrates that this is the way in which they
6 welcome Mr Ruto. They did not call him a murderer and they did not throw
7 anything at him.

8 PRESIDING JUDGE EBOE-OSUJI: Proceed.

9 MR GARCIA: Your Honour, if I may? On this same subject, when you look at the
10 translation at KEN-D09-0022-0027 and you look at lines 4 and lines 14, now my main
11 concern is that from what Defence counsel is saying is this is relevant as to how the
12 IDPs would have received the -- Mr Ruto at the time, but when you look at those
13 specific lines I'm not so sure that that's clear from the translation as to who was
14 actually at the meeting and who was listening to Mr Ruto speak.

15 PRESIDING JUDGE EBOE-OSUJI: Okay, we can deal with that in submissions. We
16 will play the video, but counsel let's just be careful what we spend time on in this
17 proceeding. Please continue. How long do we have on the video?

18 MS ALAGENDRA: Not much longer, your Honour.

19 (Viewing of the video excerpt KEN-D09-0022-0026)

20 MS ALAGENDRA:

21 Q. Madam, do you recall this event?

22 A. No, because I was not there.

23 Q. Did you hear about it?

24 A. Yeah. Yes.

25 MS ALAGENDRA: Your Honour, perhaps can I request that we go into a private

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1 session, please, your Honour?

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

3 *(Private session at 12.34 p.m.) Reclassified as Open session

4 THE COURT OFFICER: We are in private session, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Ms Alagendra?

7 MS ALAGENDRA: Thank you.

8 Q. Madam, yesterday you were asked by my learned friend about (Redacted)

9 (Redacted). Do you recall that?

10 A. Yes.

11 Q. And you answered that (Redacted), do you recall?

12 A. Yes.

13 Q. My learned friend didn't go further, but we would be interested to know,

14 madam, in fact isn't it true that at that time you actually (Redacted)

15 (Redacted)

16 A. Yes, but it's before.

17 Q. And in fact (Redacted)

18 (Redacted)

19 (Redacted)

20 A. Yes.

21 Q. Then, madam, moving on, you were describing what you saw taking place

22 outside and you described seeing people running. Am I right, madam, that what

23 actually happened was what you first saw was a group of PNU supporters, you say,

24 who had come from Munyaka to help the Kikuyus (Redacted) and how they were

25 doing this is by chasing the ODM supporters; is that correct?

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1 A. No.

2 Q. Well, madam, I'm actually reading from your statement to the Prosecution and
3 this is what it says at paragraph 31, "A group of PNU supporters from Munyaka came
4 to help the Kikuyus in (Redacted) by chasing away the ODM supporters.

5 I saw them pass (Redacted). They were carrying runigus and pangas. They
6 passed by. An hour ten minutes later I heard gun-shots coming from the direction of
7 (Redacted)" Does that refresh your memory that that is what you actually saw?

8 A. No.

9 Q. So you did not see a group of PNU supporters first chasing?

10 A. They were not chasing the ODM supporters.

11 Q. So what is in your statement is incorrect, madam?

12 PRESIDING JUDGE EBOE-OSUJI: One second, Counsel. Where is this? What
13 statement?

14 MS ALAGENDRA: Your Honours, this is actually the statement that the witness
15 provided to the Prosecution.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, I know that's what you mean. What --

17 MS ALAGENDRA: I did not provide it to the Chamber, your Honour, if that is what
18 your Honour is asking of me?

19 PRESIDING JUDGE EBOE-OSUJI: Would it be 0515?

20 MS ALAGENDRA: Indeed, your Honour, it is.

21 PRESIDING JUDGE EBOE-OSUJI: And what paragraph were you referring to?

22 MS ALAGENDRA: I'm referring to para 31.

23 Q. Madam, that part I read to you is not accurate?

24 A. No.

25 Q. Now, madam, isn't it also true that in Munyaka you saw some Kikuyus burning

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1 Kalenjin houses? Is that true?

2 A. I did not saw them burning, but they were burnt.

3 Q. Now, again in your statement, madam, at paragraph 40 it reads, "I saw that
4 some Kikuyus were now burning the Kalenjin houses in Munyaka. I went then to
5 Munyaka Pentacostal Church of East Africa, where I saw (Redacted) and told her
6 what had happened."

7 PRESIDING JUDGE EBOE-OSUJI: Do we have this statement in front of the
8 witness?

9 MS ALAGENDRA: No, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: I think before we do this we must make sure
11 witnesses have their statements, because you see the idea is to refresh a witness's
12 memory. It's preferable to -- where the witness can read. I know we did it
13 differently the other time, but we need not continue to do it that way. Where the
14 witness can read, it's to give the statement to the witness to read silently and then see
15 whether that refreshes the memory. If in the course of reading it it's obvious that a
16 witness requires assistance in reading, then of course the exception can be made to
17 read it to the witness then.

18 MS ALAGENDRA: Mr President, with your permission, may I provide a copy of the
19 statement to the witness please?

20 PRESIDING JUDGE EBOE-OSUJI: Yes.

21 MS ALAGENDRA:

22 Q. Madam, I am looking at paragraph 40, and from the end of the third line it says,
23 "I saw that some Kikuyus were now burning the Kalenjin houses in Munyaka." Do
24 you see that? Paragraph 40. Four-zero.

25 A. This is incorrect.

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1 Q. Madam, the first -- just to be clear, the first information that I read to you, where
2 it said PNU supporters were running, that appears at paragraph 31. You said that is
3 also incorrect, isn't it, madam?

4 A. It is.

5 Q. Paragraph 31 is incorrect and you say paragraph 40 is incorrect. Now, madam,
6 can you have a look at paragraph 50 please? I'm reading the sentence, fifth line,
7 "(Redacted) a Kikuyu pastor from Munyaka. (Redacted) his shop had actually been
8 looted by other Kikuyus." Is that correct?

9 A. Yes, it is.

10 Q. That is true?

11 A. Yes.

12 Q. So would I be right to say, madam, that there is information in your statement
13 which is incorrect?

14 A. No, but it depends on how I'm asked and how to return my question -- my
15 answer.

16 Q. And you pointed to two occasions when it has been stated wrongly, yes?

17 A. It is the writing, but it is right.

18 MR GARCIA: Your Honours, if may I just object at this point just for one precision?
19 For the record, I understand Defence counsel stated that both paragraph 31 and 40 are
20 incorrect. I think we have to be just a little bit more precise and fair with the witness:
21 Certain portions of these paragraphs. In regards to paragraph 31, Defence counsel
22 has referred to running. I don't see the word "running" in paragraph 30 -- 31.
23 So I think what needs to be done is to give the witness a fair opportunity to look at the
24 paragraph and to ask the witness which portion exactly, or what part of that, is
25 incorrect. 31 can be read in different ways. I don't see "running." It says simply,

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1 "A group of PNU supporters from Munyaka came to help the Kikuyu in (Redacted)
2 (Redacted) by chasing away the ODM supporters," and it says, "I saw them pass by
3 (Redacted)

4 So we have to be fair with the witness. When indeed we are trying to contradict the
5 witness on specific portions, it should be read verbatim to the witness and not
6 introducing words such as "running" which don't appear in the paragraph.

7 So I think we should go through the exercise in regards to these paragraphs and ask
8 the witness clearly to read them and to see exactly which parts of these paragraphs,
9 according to the witnesses -- the witness, are incorrect. It's a question of correct
10 procedure so we can be fair with the witness.

11 MS ALAGENDRA: Your Honour, may I just say something? Your Honour, I think
12 correct procedure was actually followed. The witness had a chance to read her
13 statement and I think she has had more than one occasion, but there is information
14 contained in that paragraph which is not true. That I think, your Honour, resolves
15 the matter. I think I've been very fair to the witness in order to give her a chance to
16 read her statement and to accept as something she did not say information which is in
17 fact useful to the Defence and not useful.

18 PRESIDING JUDGE EBOE-OSUJI: The point, of course, is - and it did occur to me
19 actually at the point after you read those paragraphs - to ask the witness immediately
20 what's the correct version then of what she had said, but I didn't want to interfere
21 with your cross-examination unduly. I assumed you would return to that exercise at
22 some point, but if we have now done two or three paragraphs it becomes difficult to
23 do it at the end and so maybe we should take it one at a time.

24 Paragraph 31 -- let's start again. You can ask and give your proposition regardless of
25 the statement to the witness, then she answers and then if you need to come back to

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1 this -- these passages then we will do that.

2 (Pause in proceedings)

3 PRESIDING JUDGE EBOE-OSUJI: The court officer requests, sensibly, that the ERN
4 number of this document be given so he can upload it on the screen to assist the
5 interpreters and court reporters to record accurately what the statement says in those
6 parts.

7 MS ALAGENDRA: Your Honour, the ERN for the statement is KEN-OTP-0076-0515,
8 and I'm looking at page -- I'll deal first with page 6, which is ERN
9 KEN-OTP-0076-0520, paragraph 31.

10 PRESIDING JUDGE EBOE-OSUJI: So we go to page 6, which is 0520, paragraph 31.
11 All right.

12 Ms Alagendra, what's your question again relating to what you think --

13 MS ALAGENDRA: Your Honour, just to make it simpler, perhaps I'll ask the
14 witness to read the paragraph and she can comment whether it's correct.

15 Q. Madam, can you read paragraph 31 on the screen?

16 A. "A group of PNU supporters from Munyaka came to help the Kikuyu in
17 (Redacted) by chasing away the ODM supporters. I saw them pass by (Redacted)
18 (Redacted) They were carrying rungas and pangas. They passed by. An hour
19 ten minutes later I heard gun-shots coming from the direction of (Redacted)."

20 Q. Is the paragraph accurate?

21 A. It is.

22 Q. So it's accurate that you saw PNU supporters coming from Munyaka to help the
23 Kikuyus and they were chasing away the ODM supporters?

24 A. The purpose of Kikuyu -- I would call them Kikuyu youths, not ODM
25 supporters. Youths. The reason for that is it took -- when the Kikuyus maybe will

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1 be attacked, they will help the Kikuyus not to be attacked.

2 Q. Who will help the Kikuyus not to be attacked?

3 A. The youths.

4 Q. And this is what you say is Kikuyu youths?

5 A. Yes, that's how instead of calling them PNU supporters I'd call them youths.

6 Q. And when you spoke to the Prosecution, madam, did you call them PNU
7 supporters, or did you refer to them as Kikuyus?

8 A. I called them Kikuyu youths.

9 Q. So what you're saying is it's correct then that what you were seeing was Kikuyu
10 youths from Munyaka coming to (Redacted) to help the Kikuyus there?

11 A. They came to help the Kikuyus because the Kalenjin youths were coming to
12 attack.

13 Q. Okay.

14 PRESIDING JUDGE EBOE-OSUJI: I think that is -- that is consistent with her
15 testimony at some point, as I recall it.

16 MS ALAGENDRA: Not the testimony from previously, your Honour, because that
17 was an area which was not fully explored. It was not led.

18 PRESIDING JUDGE EBOE-OSUJI: Anyway, move on please.

19 MS ALAGENDRA:

20 Q. Madam, shall we look at paragraph 40?

21 PRESIDING JUDGE EBOE-OSUJI: And what's your question in that regard?

22 MS ALAGENDRA:

23 Q. And the sentence there I'm looking at is on the third line, paragraph

24 40 - four-zero - please. The third sentence right at the end, madam, it says, "I saw

25 that some Kikuyus were now burning the Kalenjin houses in Munyaka." Do you see

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1 that?

2 A. Yes, I see.

3 Q. Is that true?

4 A. They were not burning. The houses were already burnt.

5 Q. So when you say you saw some Kikuyus now burning Kalenjin houses, it's not
6 correct?

7 A. Yeah, it is not correct. Also in the same page, it's not Pentacostal Church. It is
8 Presbyterian Church.

9 PRESIDING JUDGE EBOE-OSUJI: But, madam, is it -- is what you're saying that
10 some Kikuyus -- and now my focus now is on the ethnicity of people who were doing
11 what at the time, or who had done what at the time. Are you saying that some
12 Kikuyus had already burned the houses of Kalenjins in Munyaka? Is that what
13 you're saying -- what you've just said?

14 THE WITNESS: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MS ALAGENDRA:

17 Q. Madam, do you recall how many houses - Kalenjin houses - were burned?

18 A. There were -- in that area there were not many, because not so many Kalenjins
19 lived around the area.

20 Q. Would you be able to estimate?

21 A. No.

22 Q. Madam, I'm going to move on now to another issue. (And, your Honours, if
23 we can continue in a private session, please?) Madam, do you know someone by the
24 name of (Redacted)

25 A. No.

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- 1 MS ALAGENDRA: (Redacted)
- 2 (Redacted)
- 3 Q. Do you know anyone by the name of (Redacted)
- 4 A. Can you repeat?
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. From?
- 9 Q. (Redacted)
- 10 A. No.
- 11 Q. Perhaps in Eldoret? Eldoret Town?
- 12 A. I don't know somebody by the name (Redacted)
- 13 Q. (Redacted) do you know him? (Redacted)
- 14 Does the name sound familiar?
- 15 A. It's familiar.
- 16 Q. Where is he from? Which area?
- 17 A. Can't tell.
- 18 Q. And how about (Redacted)? (Redacted)
- 19 (Redacted). Is that name familiar?
- 20 A. No.
- 21 Q. The fourth name, Madam, is (Redacted)? (Redacted)
- 22 (Redacted). Do you recall?
- 23 A. No.
- 24 Q. And, madam, would it assist you to remember if (Redacted)
- 25 (Redacted)? Would that assist you?

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1 A. You know, when you say a name and I don't know where it comes from, I can't
2 be able to say "Yes" or "No".

3 Q. That's fair, madam, but you said (Redacted) is familiar. Do you recall him
4 as being (Redacted)?

5 A. No, I can't say.

6 Q. Now, madam, are you aware that when violence broke out, between the first
7 and the third day the violence started, that (Redacted)
8 (Redacted)?

9 A. (Redacted)?

10 Q. Yes.

11 A. I don't know.

12 Q. And did you ever hear that (Redacted) and
13 (Redacted)?

14 A. No.

15 PRESIDING JUDGE EBOE-OSUJI: And so we have to leave it at that for the
16 lunch-break, and when we come back you had indicated before that you would be
17 wrapping it up within ten/15 minutes or so after lunch-break?

18 MS ALAGENDRA: Indeed, your Honour, and I think I can keep my word.

19 PRESIDING JUDGE EBOE-OSUJI: That is great to know.

20 We will -- we will bring down the blinds now, escort the witness out of the stand and
21 we will adjourn for lunch.

22 *(Closed session at 1.02 p.m.) Reclassified as Open session

23 THE COURT OFFICER: We are in closed session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 The witness will be escorted out now.

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- 1 (The witness stands down)
- 2 PRESIDING JUDGE EBOE-OSUJI: The Court will now rise and we will reconvene at
- 3 2.30.
- 4 THE COURT OFFICER: All rise.
- 5 (Recess taken at 1.03 p.m.)
- 6 *(Upon resuming in private session at 2.37 p.m.) Reclassified as Open session
- 7 THE COURT USHER: All rise.
- 8 Please be seated.
- 9 THE COURT OFFICER: Your Honour, we are in private session.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 11 Ms Alagendra, do we continue in private session?
- 12 MS ALAGENDRA: Yes, please, your Honour, for about one minute.
- 13 Q. Welcome back, madam. Good afternoon.
- 14 A. Good afternoon to you.
- 15 Q. I hope you had a good lunch?
- 16 A. Yes.
- 17 Q. Madam, I just wanted to clarify a few things about (Redacted)
- 18 okay?
- 19 A. Yes.
- 20 Q. Madam, am I right that the person you told the Court was together with you
- 21 when (Redacted)? Am I right, madam?
- 22 A. Yes.
- 23 Q. And am I also right, madam, that he was also (Redacted) and was part
- 24 of the (Redacted)?
- 25 A. Yes.

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- 1 Q. Madam, could you assist us with this? The reason you (Redacted),
2 (Redacted), is that on that morning you heard on the Radio
3 Kameme that Kalenjins were complaining that they had been attacked by the Kikuyus
4 and you wanted (Redacted)
5 (Redacted)? Am I right, madam? That was the reason the (Redacted)?
6 A. Yes, but it's not the (Redacted)
7 Q. Could you clarify for the Court please, madam, which (Redacted)
8 (Redacted)?
9 A. (Redacted).
10 Q. And when you say that (Redacted), am I correct
11 to understand that it was actually (Redacted), madam?
12 A. Yes.
13 MS ALAGENDRA: And just for the record my question was, "When you say that
14 (Redacted) ..." In the transcript it says "(Redacted) " just to correct that.
15 Q. Madam, was this (Redacted)?
16 A. It was not (Redacted).
17 Q. And why not, madam?
18 A. Because they never asked for it.
19 Q. But even if they did not ask you for it, madam, since it was (Redacted)
20 (Redacted), it would have been possible for them to have
21 (Redacted), am I correct?
22 A. Yes.
23 Q. Madam, you also told the Court that one of the locations you went into was the
24 Moi Referral, the mortuary, am I right?
25 A. Yes.

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1 Q. I do apologise in advance, madam, that I'm going to take you there again, but
2 could you explain to this Court? You said the bodies were all dumped and they
3 were decomposing, am I right?

4 A. Yes.

5 Q. And they were all piled up together, am I right?

6 A. Yes.

7 Q. So they were not arranged according to ethnicity?

8 A. No.

9 MS ALAGENDRA: Your Honour, perhaps I can go into a public session please?

10 PRESIDING JUDGE EBOE-OSUJI: Let's go into public session.

11 (Open session at 2.42 p.m.)

12 THE COURT OFFICER: We are in open session, your Honour.

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

14 Ms Alagendra, please proceed.

15 MS ALAGENDRA: Thank you, your Honour.

16 Q. Madam, earlier today we spoke about an incident at the Eldoret Showground,
17 do you remember, about Mr Ruto's visit?

18 A. Yes.

19 Q. Madam, was it ever reported in the press, the newspapers or the television, that
20 the IDPs called Mr Ruto a murderer and threw things at him? Was it ever reported
21 in the media, to the best of your knowledge, madam?

22 A. Since I didn't have a place to watch, I can't say.

23 Q. And, madam, finally I wanted to ask you a last question, which is that yesterday
24 and today you will have noticed I've been asking you a lot of questions on various
25 topics, do you agree?

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1 A. Yes.

2 Q. And I also showed you quite a number of videos?

3 A. Yes.

4 Q. Now, madam, during your interviews with the Prosecution, were any of these
5 questions put to you and were you shown any of these videos, madam?

6 A. No.

7 MS ALAGENDRA: Thank you, madam. That will be all my questions for you.

8 Thank you very much.

9 PRESIDING JUDGE EBOE-OSUJI: You surprised us. Finished well below
10 your -- within your indicated time. Thank you very much.

11 MS ALAGENDRA: Thank you, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

13 QUESTIONED BY MR KIGEN-KATWA:

14 Q. How are you, Witness?

15 A. I'm fine.

16 Q. Now, you recall that a question was posed to you as to whether or not you
17 know Mr Sang?

18 A. Yes.

19 Q. Do you recollect what you said about him?

20 A. Yes.

21 Q. Could you tell the Chamber, please?

22 A. I -- I once knew him when he owned a shop around 2000 to 2001/2002, based in
23 Eldoret Town.

24 Q. And did you make any reference to him -- Mr President, I would ask that we go
25 into a private session.

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- 1 PRESIDING JUDGE EBOE-OSUJI: We go into private session. For how long?
- 2 MR KIGEN-KATWA: Mr President, I shouldn't be more than seven minutes.
- 3 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 4 *(Private session at 2.45 p.m.) Reclassified as Open session
- 5 THE COURT OFFICER: We are in private session, your Honour.
- 6 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa, please proceed.
- 7 MR KIGEN-KATWA:
- 8 Q. Madam Witness, from the statement it would seem that you said something
- 9 more than that in respect to my client and I'm just wondering whether you recollect
- 10 what more you said about him?
- 11 A. Yeah.
- 12 Q. Could you please tell the Court what you said?
- 13 A. At that moment, he had a shop there. I'd go to the salon opposite his shop, and
- 14 (Redacted) He would go into his shop. He seemed to be a nice
- 15 guy. That's all.
- 16 Q. So it is your testimony that (Redacted) liked him?
- 17 A. Yes.
- 18 Q. Madam Witness, his liking for the children had no distinction in terms of tribe
- 19 or otherwise, isn't it?
- 20 A. Yes.
- 21 Q. Thank you, Madam Witness. Now, moving on to a separate issue, Madam
- 22 Witness, on 14 October you adduced evidence in terms of issues of identification.
- 23 Mr President, I would ask that we go into open session.
- 24 PRESIDING JUDGE EBOE-OSUJI: We will go into open session, but Mr Katwa
- 25 remember you have the right to constantly lead until you're asked not to lead in

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1 cross-examination. There may be instances where it may not be appropriate, but we
2 have not got there yet and so you can lead the witness to avoid difficulty with
3 including --

4 MR KIGEN-KATWA: Mr President, with your permission, what I would like to lead
5 on is not controversial and it's the last question I wish to ask her.

6 PRESIDING JUDGE EBOE-OSUJI: Okay. Well, I'm glad to hear that, that it would
7 be the last question. It's just about the identification of the witness. It's not about
8 controversy?

9 MR KIGEN-KATWA: It will not be identity of other witnesses.

10 PRESIDING JUDGE EBOE-OSUJI: Okay, fair enough.

11 We will go into public session.

12 (Open session at 2.48 p.m.)

13 THE COURT OFFICER: We are in open session, your Honour.

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

15 Proceed.

16 MR KIGEN-KATWA: Yes, thank you, Mr President.

17 Q. Madam Witness, on 14 October, at page 48, line 13, you gave this description
18 that, "Kalenjins are tall, thin, slim and black." You recall that, Madam Witness?

19 A. Yes.

20 Q. With my client standing, would you say that he falls within that definition,
21 Madam Witness, if Mr Sang could stand?

22 A. No.

23 Q. He doesn't?

24 A. He doesn't.

25 MR KIGEN-KATWA: That's all I wish to ask, Mr President.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Katwa, for keeping it short.

2 I meant the cross-examination.

3 Mr Garcia?

4 MR GARCIA: Yes, your Honour, just a couple of questions in re-examination, not
5 more than five minutes.

6 PRESIDING JUDGE EBOE-OSUJI: Please proceed. In open, or in closed session?

7 MR GARCIA: Open session will do, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

9 QUESTIONED BY MR GARCIA:

10 Q. Madam Witness, I just have a couple more questions for you, so don't be
11 worried. I will not keep you much longer. I know you've been here for a while.

12 Yesterday I asked you questions about whether any politicians had been at the
13 showground and you mentioned this incident of Mr Ruto showing up at Eldoret
14 Showground and people calling him murderer and Mr Ruto having to leave. Now,
15 I understand that --

16 MS ALAGENDRA: Your Honours, may I interrupt? Perhaps a more appropriate
17 manner of posing this question would be "Mr Ruto came there," instead of "showing
18 up," your Honour, with all due respect.

19 PRESIDING JUDGE EBOE-OSUJI: The formality of language. They insist you use
20 it, Mr Garcia.

21 MR GARCIA: I can assure the Court and Defence counsel that that's not where I'm
22 going, but I just -- I can reformulate.

23 Q. Madam Witness, when you spoke to us yesterday you said that Mr Ruto was
24 present at Eldoret Showground while you were there and that the people that were
25 there, the IDPs, called him murderer and that he had to leave and that people even

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1 threatened to throw things at him. Do you remember that?

2 A. Yes.

3 MS ALAGENDRA: Your Honour, can I also correct that please? I think she said
4 they threw things at -- in his direction, not just threatened.

5 MR GARCIA: Just on that point - and it's the transcript, yesterday's transcript - it
6 says, "They tried to throw things at him," line 8. Line 9, "What were they trying to
7 throw at him?" So it was trying.

8 Q. Now, Madam Witness, I know that Ms Alagendra has been asking you
9 questions on this topic of Ruto's visit to the Eldoret Showgrounds and my
10 question -- the objective of my question is just so that we can be clear on this whole
11 matter. My question is the following: Were you physically present there? Did
12 you see this with your own eyes, when Ruto came to Eldoret Showground and that
13 people called him murderer?

14 A. Yes, I was there.

15 Q. Thank you for that clarification, Madam Witness.

16 MS ALAGENDRA: Your Honour, can I also -- I don't want to be so stubborn about
17 this, your Honour, but I think some politeness. Mr Ruto, reference to Mr Ruto I think
18 is more appropriate, your Honour. I think some amount of respect should also be
19 forthcoming.

20 PRESIDING JUDGE EBOE-OSUJI: In the courtroom we should follow the
21 formalities for everyone, not just for Mr Ruto but for everybody, including witnesses
22 and counsel. So, yes, the title should be used, the common ones.

23 MR GARCIA:

24 Q. Madam Witness, also when you were answering questions of Defence counsel
25 today, you mentioned as a point of reference the reconciliation between the ODM and

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1 PNU. Do you remember having said that to Ms Alagendra?

2 A. Yes.

3 Q. Can you just explain to us exactly what you mean by this reconciliation between
4 the ODM and the PNU?

5 A. What I meant is the time President Kibaki and Raila and the other group agreed
6 to share the government into half.

7 Q. Now, Madam Witness, using this point of reference, to the best of your
8 recollection this whole incident of when Mr Ruto was present at the Eldoret
9 Showground and people called him murderer, did this happen before that - before the
10 reconciliation - or after?

11 A. Before.

12 MR GARCIA: Thank you, Madam Witness. I have no further questions for you.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Garcia.

14 Madam, we've come to the end of your testimony and I want to thank you very much
15 on behalf of the Judges for coming to assist us in our inquiry. We know you came a
16 long way and we know it's not an easy thing for people to come all the way here and
17 sit and answer questions from lawyers, sometimes repeating questions. You're
18 wondering where all this is going and we thank you for your patience and for coming
19 to assist us.

20 We wish you a safe journey on your travel back. You are discharged as a witness.

21 We will bring down the blinds and escort the witness off the stand. Thank you.

22 THE WITNESS: Thank you too.

23 *(Closed session at 2.55 p.m.) Reclassified as Open session

24 THE COURT OFFICER: We are in closed session, your Honour.

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

1 You may escort the witness.

2 (The witness is excused)

3 PRESIDING JUDGE EBOE-OSUJI: Can we go back into open session.

4 (Open session at 2.56 p.m.)

5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you'll be telling us who the next

6 witness is, but before we do that the court officer will need to record the material - the

7 videos - that were shown and mark them for MFI. That hasn't been done.

8 THE COURT OFFICER: Your Honour, all the documents will be having an MFI

9 number. I will start with those ones that were used yesterday. So the document

10 number KEN-D09-0022-0002 will bear number MFI-T-D09-00049. The document is

11 public.

12 The next document, KEN-D09-0019-0003, will bear number MFI-T-D09-00050. It is

13 also a public document.

14 The following, KEN-D09-0019-0138, will bear number MFI-T-D09-00051, public

15 document.

16 The following document, KEN-D09-0019-0002, will be marked for identification as

17 MFI-T-D09-00052, public document.

18 The transcript of this material, numbered as KEN-D09-0022-0043, will have MFI

19 number MFI-T-D09-00053.

20 The last document -- the last two documents of yesterday. So the one with the

21 number KEN-D09-0022-0011, will have a number MFI-T-D09-00054, public document,

22 and the last one from yesterday is KEN-D09-0022-0012 and will have a number

23 MFI-T-D09-00055. It's a public document.

24 The document shown today, number KEN-D09-0022-0014, will have a number

25 MFI-T-D09-00056. It's a public document.

1 The following one, KEN-D09-0022-0018, will have a number MFI-T-D09-00057, public
2 document.

3 The transcript to this document, which has a number KEN-D09-0022-0019, will have a
4 number MFI-T-D09-00058. It's also public.

5 Document number KEN-D09-0022-0022 will have a number MFI-T-D09-00059.

6 The following -- sorry, it's a public document.

7 The following document, KEN-D09 0022-0026, will have a number MFI-T-D09-00060,
8 public document.

9 And the last one, the transcript to this document, number KEN-D09-0022-0027, will
10 bear a number MFI-T-D09-00061.

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

12 Mr Garcia?

13 MR GARCIA: Your Honours, the next Prosecution witness will be P-0376. It's

14 Mr Anton Steynberg who will be leading that witness for the Prosecution, so we will
15 need just a couple of minutes so we can switch seats.

16 PRESIDING JUDGE EBOE-OSUJI: While you do that, I see Ms Alagendra was rising
17 before. Do you have an observation?

18 MS ALAGENDRA: Yes, your Honour. We also wanted to inform the Chamber
19 that we will also be doing some shuffling on this side.

20 PRESIDING JUDGE EBOE-OSUJI: Fair enough. While -- you can keep doing that
21 while I deliver the Chamber's decision on witness protection for this witness.

22 The Prosecutor had applied for in-court protective measures for Witness 376 in their
23 application of 7 August 2013.

24 In the Chamber's ruling on that application, that decision of 3 September 2013, the
25 Chamber deferred its decision on the application, directing the Prosecution and the

1 Victims and Witnesses Unit to provide updated information on this witness's need for
2 in-court protective measures, especially following consultation - personal
3 consultation - with the witness when the witness arrived in The Hague.

4 On 14 October the victims -- of this year, Victims and Witnesses Unit gave its report to
5 the Chamber, in which the unit recommended upon their assessment that the witness
6 should be granted protective measures in the usual manner, meaning face distortion,
7 voice distortion, use of pseudonym and limited private hearing sessions relating to
8 testimony that would run the risk of exposing the identity of the witness to the public.

9 Having considered the Prosecutor's request, coupled with the recommendation of the
10 VWU, the Chamber grants the request and orders measures in the manner
11 recommended by the Victims and Witnesses Unit.

12 That is the ruling of the Chamber.

13 Mr Steynberg, is the witness on stand-by?

14 MR STEYNBERG: I certainly hope so, your Honour. I did request it.

15 THE COURT OFFICER: Yes, your Honour, the witness is on stand-by and can
16 proceed to the courtroom.

17 PRESIDING JUDGE EBOE-OSUJI: Then we will bring down the blinds and escort
18 the witness on to the stand.

19 *(Closed session at 3.07 p.m.) Reclassified as Open session

20 MR FAAL: Good afternoon, Mr President. I was just going to suggest that, while
21 we wait for the witness to be brought in, perhaps my learned friend opposite could
22 give an indication how long they think they would spend with this witness? Thank
23 you.

24 MR STEYNBERG: Certainly, your Honour. My estimation is that this witness will
25 take approximately the same amount of time as the previous witness, also a

1 crime-base witness mainly. We estimate four to five - probably five - sessions, so just
2 about a day-and-a-half for this witness's evidence in-chief.

3 PRESIDING JUDGE EBOE-OSUJI: Very well. Have you given the witness the
4 advice on perjury and self-incrimination?

5 MR STEYNBERG: Your Honour, the warning in terms of Rule 66(3) regarding
6 perjury was indeed given. Unfortunately, your Honour's comments regarding the
7 warning in terms of Rule 74 was only brought to my attention after the witness
8 preparation session was completed and so I have not given that warning.

9 On this point, your Honour, I wonder whether I might just correct the record, with
10 respect, with regard to Witness 326. Prior to that witness testifying, your Honour
11 asked my learned friend, Mr Omofade, whether or not the witness had been warned
12 in terms of Rule 190, to which Mr Omofade replied in the affirmative. I'm sure that
13 was that your Honour just misspoke and your Honour was referring to Rule 66(3), the
14 warning in terms of perjury, and my learned friend has confirmed that certainly it
15 was that warning that was given to this witness.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Now, is there any issue taken in this
17 not having given the self-incrimination warning, or advisory?

18 MR FAAL: No, Mr President. We are not making an issue out of that, but
19 perhaps --

20 PRESIDING JUDGE EBOE-OSUJI: You are not.

21 MR FAAL: But perhaps -- I mean, we are in your hands. If you deem it necessary,
22 you might as well do it with the witness as soon as the witness walks in.

23 PRESIDING JUDGE EBOE-OSUJI: All right. I take it you also do not have an issue
24 relating to the last witness we saw?

25 MR FAAL: No, Mr President, we don't.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you. I mean Witness 326.
- 2 MR FAAL: But while I'm -- no, we don't, Mr President, but while I am on my feet
- 3 may I just ask whether it would be okay for us to submit the material we intend to use
- 4 for cross-examination tomorrow morning, if that is -- if that is all right?
- 5 PRESIDING JUDGE EBOE-OSUJI: It's up to the Prosecutor. As we said earlier, the
- 6 reason for the rule is to give the opposite side a fair opportunity. If you fall short of
- 7 that time, then you are in their hands whether or not they will not object to your use
- 8 of the material. So if both sides have spoken about this, and as we continue to
- 9 encourage counsel -- if you have spoken about it let us know and then --
- 10 MR STEYNBERG: Very well, your Honour. We will discuss it amongst ourselves.
- 11 However, based on my present advice, I doubt whether we will finish before close of
- 12 business tomorrow, if we sit the normal hours, and so if my learned friend provides
- 13 me with this material before we start tomorrow that should be in order.
- 14 PRESIDING JUDGE EBOE-OSUJI: That should be in order?
- 15 MR STEYNBERG: Yes, your Honour.
- 16 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
- 17 THE COURT OFFICER: Your Honour, just for the record we are in closed session
- 18 since fifteen hours seven minutes and the witness will be brought in.
- 19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 20 (The witness enters the courtroom)
- 21 PRESIDING JUDGE EBOE-OSUJI: Can we now go into public session.
- 22 (Open session at 3.12 p.m.)
- 23 THE COURT OFFICER: We are in open session, your Honour.
- 24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 25 And thank you, Witness, for joining us. You will be administered your oath of

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1 testimony. Can you read what's on the card?

2 WITNESS: KEN-OTP-P-0376

3 THE WITNESS: Yes, I can read.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. If you can proceed, please, and
5 read it out.

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

8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much for joining us, and
9 welcome. As I have said to the previous witnesses who testified, when I say
10 "welcome" I say that not because you should be a stranger to the courtroom. This
11 courtroom belongs to you, as it does to us. It is a public courtroom.
12 You've given your oath and what we expect of you is just that, to tell us nothing but
13 the truth. To do that, it is important that you listen carefully to the questions the
14 lawyers would ask you, make sure you understand the questions before you start
15 answering and then when you answer please try and limit yourself to only what you
16 know and what you recall. Try not to guess at answers you do not know. If you do
17 not understand the question, please ask for it to be repeated and the question will be
18 repeated.
19 You are now in public session. There will be times when we will have to go into
20 private session, and the reason why we do that is to protect your identity. The Court
21 has granted you certain protection measures, the point of which is to protect your
22 identity from being exposed to members of the public who will be listening to your
23 testimony.

24 For this to work correctly it is important that you listen carefully to the questions the
25 lawyers are asking and to respond to those questions only, because the lawyers know

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1 that you are protected and they know not to ask you questions that would elicit the
2 sort of information that will reveal your identity. That is why it's important to
3 answer only the questions. Try not to do follow-up answers they have not asked
4 you for but, if you must give follow-up information, please bear in mind not to
5 expose your identity while doing that.

6 There is one more practical matter. If you look up there, you will see interpreters
7 and court reporters. Their job is to record your testimony carefully. It is important
8 that you speak slowly and in manageable chunks of information so that they can
9 interpret correctly and also report correctly. Also, try to observe a pause between
10 questions you're asked and your commencement of your answer. That will also help
11 in recording your answer accurately.

12 Thank you very much. Mr Steynberg will now begin his examination-in-chief.
13 Mr Steynberg is the lead Prosecution counsel. When he finishes asking you his
14 questions, then the lawyers on the Defence side will ask you questions. On this
15 occasion would it be the Ruto Defence that will begin, or would it be Mr Sang's
16 Defence counsel? Anyway, they are seated on that side. They will take turns in
17 asking you questions when the Prosecution is done.

18 Thank you.

19 MR STEYNBERG: Thank you very much, your Honour.

20 QUESTIONED BY MR STEYNBERG:

21 Q. Good afternoon, Mr Witness.

22 A. Good afternoon to you.

23 MR STEYNBERG: As His Honour has explained, I will be asking you questions this
24 afternoon and tomorrow on behalf of the Prosecution.

25 Your Honour, I propose to commence the examination of this witness with some

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1 background information which is of an identifying nature. I hope that much of -- in
2 fact the majority of this witness's evidence, with the assistance of the Protected
3 Information Sheet, will be able to take place in open session, but I do request that for
4 the first approximately 20 minutes we commence with a private session so I can elicit
5 identifying information; potentially identifying information.

6 PRESIDING JUDGE EBOE-OSUJI: We will do that and, Mr Steynberg, I do recall
7 that at some point we -- there had been the suggestion made that identifying
8 information could be dealt with by way of the PIS method.

9 MR STEYNBERG: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: I don't know if you were here, so that we don't
11 have to spend something like 20 minutes asking questions if they are already on the
12 PIS and all the witness needs to do is to read over and confirm that those are
13 identifying information and then we tender them, with the exception of when you
14 really, really for a particular reason feel that you want to elicit such sort of
15 information on the record. That would be a way to cut down on the time we spend
16 not only in the examinations generally, but also the time we will spend in closed
17 session.

18 MR STEYNBERG: Thank you, your Honour. I'm not sure if that was conveyed to
19 me in its entirety. I have compiled the PIS sheet for this witness in the same way we
20 have in the past. It comprises mainly just of names. What I didn't want to start
21 doing is putting chunks of evidence that should more appropriately be led on the
22 record in this sheet. I presume that's not what your Honour is suggesting.

23 PRESIDING JUDGE EBOE-OSUJI: That is -- that is not what I have in mind. What
24 I have in mind is, as is often the case in examination-in-chief of witnesses, the first
25 things lawyers will ask is, "Your name is this and you live here and you're aged this"

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1 and all that.

2 MR STEYNBERG: No, no, no.

3 PRESIDING JUDGE EBOE-OSUJI: I'm saying if this is the sort of information we
4 want to do in closed session, it is the sort of the thing that's best done in the PIS -- in a
5 PIS. That's what I mean.

6 MR STEYNBERG: Thank you, your Honour. The point is taken. That is not what
7 I have in mind. I have used the PIS and, if your Honour will allow me, I think it will
8 become clear as to what is the background information.

9 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Fair enough. So we go then into
10 closed session -- private session.

11 MR STEYNBERG: Perhaps while we're doing that, if I may ask the court officer to
12 hand out copies of the bundles that I've prepared.

13 MR FAAL: And, Mr President, while we do that, perhaps if it helps may I suggest to
14 my learned friend opposite to lead on this personal information. We wouldn't have
15 any objection on that. Thank you.

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

17 *(Private session at 3.21 p.m.) Reclassified as Open session

18 THE COURT OFFICER: We are in private session, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, please proceed.

20 MR STEYNBERG: Thank you very much, your Honour.

21 Q. Mr Witness, since there is no dispute about your history, I'm going to lead you
22 through certain information. Is it correct that you were born in (Redacted)
23 (Redacted)

24 A. That is very true.

25 Q. And is it correct that you commenced your primary education (Redacted) in the

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1 (Redacted)

2 A. That is also very true.

3 Q. And can I just remind you please, Mr Witness, to leave a couple of seconds after
4 my question so the interpreters can catch up. Thank you. And, finally, (Redacted)

5 (Redacted)

6 A. That is also correct.

7 Q. (Redacted)

8 (Redacted)

9 A. It is -- it is very true.

10 Q. (Redacted)

11 (Redacted)

12 A. It is also very correct.

13 Q. Where you worked --

14 PRESIDING JUDGE EBOE-OSUJI: Witness, please feel free to say "Yes" only. It
15 would also make it simpler on the record. But if you want to say "Very true," we
16 accept that as well. We just want to make it easier for you.

17 MR STEYNBERG: Thank you, your Honour.

18 Q. (Redacted)

19 A. Yes.

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 (Redacted)

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- 1 Q. Thank you. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 A. Yes.
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. Yes.
- 8 Q. (Redacted)
- 9 (Redacted)
- 10 A. Yes, I did.
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 Q. Perhaps I should spell that for the record. (Redacted)
- 15 (Redacted)
- 16 A. Yes.
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 MR STEYNBERG: All right. Now, I'm going to hand you a document, if the court
- 20 usher will assist me, and on this document you'll see a list of 16 names.
- 21 I refer your Honours to the PIS sheet. I believe this will be PIS number 4 for the
- 22 record.
- 23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, perhaps you can spell -- you can
- 24 spell (Redacted) for the record. I see a name that sounds like it on the sheet.
- 25 MR STEYNBERG: I will do, your Honour, but perhaps I may first ask the witness

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1 not to shake the sheet too close to the microphone.

2 For the record then, (Redacted)

3 (Redacted)

4 Q. Mr Witness, you have the sheet in front of you; is that correct?

5 A. Yes, I have it.

6 Q. Now, the purpose of this sheet is to enable you to refer to people, especially
7 when we are in public session, without mentioning their names, since some of these
8 people are connected to you and might otherwise tend to reveal your identity. Do
9 you understand?

10 A. I do.

11 Q. So from now on, when we refer to (Redacted) for instance, I would ask
12 you to please refer to him as "Person number 1 on the sheet" and then we could all
13 know exactly who you are talking about. Is that clear?

14 A. Very clear.

15 Q. Thank you. Let me proceed then. (Redacted)

16 (Redacted)

17 A. My work for the person number 1 (Redacted)

18 Q. Anything else?

19 A. (Redacted)

20 Q. (Redacted)

21 A. Yes.

22 Q. Now, (Redacted)

23 (Redacted) any of the main parties contesting the presidential election in 2007?

24 A. Yes.

25 Q. Which one?

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- 1 A. PNU.
- 2 Q. Thank you. I'll return in a moment in open session to your -- to those elections.
- 3 While we are in private session, however, (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 (Redacted)
- 10 Q. And was this paid employment?
- 11 A. Yes, it was a paid employment.
- 12 Q. (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 (Redacted)
- 21 Q. (Redacted)
- 22 (Redacted)
- 23 A. (Redacted)
- 24 MR STEYNBERG: (Redacted)
- 25 (Redacted)

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE EBOE-OSUJI: One second. (Redacted)
- 5 (Redacted)
- 6 THE WITNESS: (Redacted)
- 7 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 8 (Redacted)
- 9 THE WITNESS: (Redacted)
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 11 MR STEYNBERG:
- 12 Q. Now, you yourself are of the Kikuyu ethnicity; is that correct?
- 13 A. Yes.
- 14 Q. (Redacted)
- 15 A. Yes.
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. I think I spoke over you. (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 A. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 Q. And if I can move on then to one last topic, before we go into public session, can
4 you tell the Court who person 2 on the PIS sheet is?

5 A. He is my immediate neighbour.

6 Q. Are you referring now to the relevant period in 2007/2008?

7 A. Yes.

8 Q. What is his ethnicity?

9 A. He is a Kalenjin.

10 MR STEYNBERG: If your Honour will bear with me one moment?

11 MR FAAL: Mr President, I didn't wish to interrupt the flow of the
12 examination-in-chief, but just to remind my learned friend to check the spellings in
13 the transcript. Thank you.

14 MR STEYNBERG: Yes, I see there are some blanks there, but I have spelt these
15 names previously. (Redacted)

16 On another matter, my colleague reminds me that the name of this witness is not in
17 fact on record yet. It is contained on the front of the witness sheet. I don't know if
18 it's necessary to read it into the record?

19 PRESIDING JUDGE EBOE-OSUJI: Why don't we do it quickly and then --

20 MR STEYNBERG:

21 Q. (Redacted)

22 (Redacted)

23 A. Yes.

24 MR STEYNBERG: Thank you.

25 Your Honour, I think we can now proceed into open session, if we may?

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1 PRESIDING JUDGE EBOE-OSUJI: We go into open session, then.

2 (Open session at 3.43 p.m.)

3 THE COURT OFFICER: We are in open session, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Witness, we are now in open session. The last questions you were asked were asked

6 in private session. Now we are in open session, meaning we are in the public zone.

7 There is a contraption in front of you. Beyond the microphone, you will see

8 something that has two lights on it. Right now -- a little to your right, yes, just this

9 end, a little grey thing, further away, just beyond the microphone, after the

10 microphone. It's now lit red. It turns red. Not the microphone. That, thank you.

11 The -- there are two buttons there. One is red and the other one is green. The green

12 button is not lit up now. It lights up when we are in private session, it lights up

13 green, but when we are in public it lights up red. That's just to remind you that we

14 are in the public and be careful about giving answers that will reveal your identity.

15 So that's what the red light means there.

16 THE WITNESS: Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Keep that in mind.

18 Please proceed, Mr Steynberg.

19 MR STEYNBERG: Thank you, your Honour.

20 Q. Now, Mr Witness, you mentioned previously that you had done some

21 campaigning for a party which is affiliated with the PNU?

22 A. Yes.

23 Q. Now, without mentioning the names of any persons involved, can you tell me

24 why is it that you supported the PNU and its affiliated parties?

25 A. You know, that was my feeling and that was how I found it necessary.

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1 Q. Yes, very well. I'd like to ask you, then, some questions about the 2007
2 elections and the period leading up to the elections. Can you describe the
3 atmosphere in the Eldoret area, particularly the Langas area, in the months preceding
4 the 2007 elections?

5 A. I can say the atmosphere in Langas was calm.

6 Q. And how were the relations between the various ethnic groups at that stage,
7 and particularly the -- your ethnic group and the Kalenjin, for instance?

8 A. It was good.

9 Q. And immediately prior to the elections -- well, was there a time when the
10 relationship between those two ethnic groups changed?

11 A. A few months, or a few days, to the elections.

12 Q. Tell the Court how it changed?

13 A. There were allegations and counter-allegations from both sides of the tribes,
14 especially those supporting the PNU and those supporting the ODM party, each
15 accusing one another of irregularities.

16 Q. And perhaps before I continue with that, let me just set some background about
17 the Langas area with you. How large is the Langas area?

18 A. When I mean Langas Farm, it is over a thousand acres.

19 Q. And how far is this area from Eldoret Town?

20 A. It's about five to six kilometres.

21 Q. And can you tell us a little bit about the history of the land ownership in the
22 Langas area?

23 A. Langas Farm was previously bought by Kalenjin people from a European
24 owner.

25 Q. When was that?

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- 1 A. That was around 1964/'65.
- 2 Q. And did the ethnic composition of the area change after that?
- 3 A. Yes.
- 4 Q. Please tell us what happened.
- 5 A. When the initial owners subdivided the land among themselves, they
- 6 started - each member started - selling his portion to a willing buyer, a willing seller.
- 7 Q. When you say "the initial owners," are you referring to the Kalenjin who had
- 8 bought the farm from the European landowners?
- 9 A. Yes, yes.
- 10 Q. And when those subdivisions were sold off, how did that change the ethnic
- 11 composition of the area?
- 12 A. Yes.
- 13 Q. My question was how did it change?
- 14 A. Oh, different communities bought pieces of land in Langas.
- 15 Q. And by the election, the 2007 election time, what was the approximate
- 16 population of Langas?
- 17 A. It was around 51,000.
- 18 Q. Can you repeat that number again for the record, please?
- 19 A. 51,000.
- 20 Q. 51,000?
- 21 A. 51.
- 22 Q. Thank you. And can you explain to the Court what was the ethnic breakdown
- 23 roughly of the area? What was the most predominant ethnic group at that time,
- 24 2007?
- 25 A. The Kikuyus occupied most of the plots in Langas.

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1 Q. And what were the other prominent ethnic groups who lived there?

2 A. There were Kalenjins, there were Kisiis, there were Luhyas and a few Luos.

3 Q. I see. Now, at the time or prior to the 2007 elections, were there any issues
4 regarding land ownership in the Langas area that came to the fore?

5 A. Yes, it has been there and it is still there.

6 Q. Can you please tell the Court what -- what was the issue, or what were the
7 issues?

8 A. The main issue was the ownership.

9 Q. What was the issue about the ownership?

10 A. Those original Kalenjins that sold off their portions of land to other members of
11 community did not and have not give them their title deeds.

12 Q. And prior to 2007, can you explain to the Court what was the attitude
13 towards -- of the Kalenjin towards the other ethnicities that lived in the Langas area?

14 A. Well, I can say it was not all that good and it was not all that bad.

15 Q. Can you explain that, please?

16 MR FAAL: Mr President, perhaps before the witness answers the question, I just
17 noticed that we are veering into issues that have not been contained in the statement
18 of the witness, especially issues elicited by these last two questions. While I would
19 let these ones go, I just want to signal that for the future we may have problems with
20 this because we would not have been on notice and therefore would not have been in
21 a position to investigate the issues and as a result we would not be able to deal with
22 those questions in the event it becomes necessary. So notice is important, at least for
23 the Defence, so that we know exactly what we face and what we will have to deal
24 with.

25 Thank you, Mr President.

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1 MR STEYNBERG: Thank you, your Honours. I might say that these questions are
2 not the object, but they are leading to the object. My learned friends have the
3 statement of the witness before them. It does deal with relations between the
4 Kikuyu and the Kalenjin members, or occupants of Langas, and that is where I'm
5 trying to lead this witness without leading the witness.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, also for the -- quite apart from the
7 objectionability of the question, so to speak, there is also a matter of efficiency. We
8 can't always, you know, cast a wide berth before getting to the point. If there is a
9 point, if it is easy to get to it without drawing far back too much, we would prefer
10 that.

11 MR STEYNBERG: Your Honours, if it was easy to get to I would have been there
12 already, but I'm trying my best I assure you. Perhaps I can try to get to the point a
13 little bit more directly.

14 Q. Prior to the election in 2007, did you ever hear derogatory terms used for
15 Kikuyu residents in the Rift Valley?

16 MR FAAL: Mr President, we object to this question. It is leading, it obviously
17 suggests what counsel wants the witness to say and also it relates to my previous
18 objection. This is something not contained in the statement of the witness. It just
19 shows that, if the Prosecution is allowed to ask questions or elicit evidence from
20 witnesses that is not contained in the statement, we would not have been on notice as
21 to what the witnesses are coming to testify about. And this is a fundamental issue
22 for us, because as a Defence we need to know exactly what we face, what we would
23 have to deal with when witnesses come to testify. Otherwise, disclosure of these
24 statements would have no meaning.

25 Thank you.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, there are two issues. The matter of
2 leading is one thing on a matter that might be in contention, but also a statement is
3 not expected to have every detail of information in it. If it is an aspect of this case
4 that there was inter-ethnic conflict between ethnic groups, particularly involving the
5 Kikuyu, this question should be able to be asked, even though the detail of it may not
6 be in the witness statement.

7 So that part of it is rejected, but the Prosecutor may want to reformulate from the
8 perspective of a leading question.

9 MR STEYNBERG: I presume my learned friend is now -- attention has now been
10 drawn to paragraph 15 of the statement, where in fact this is pertinently dealt with,
11 but in light of the second objection I'm now unfortunately forced to go back to my
12 first line of questioning, regardless I'm afraid of the inefficiency, if I'm not allowed to
13 lead on this point.

14 If I may have a moment, please, your Honour?

15 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you need not go back to it. It's a
16 matter -- if the question is about -- I mean, the question did point in the direction
17 there were derogatory terms used against Kikuyus. You could have been a more
18 neutral question. Derogatory can be there, but it need not be pointed in any
19 particular direction.

20 MR STEYNBERG: Thank you, your Honours.

21 PRESIDING JUDGE EBOE-OSUJI: But the witness may well answer the question
22 now that we've -- we're already there.

23 MR STEYNBERG:

24 Q. Mr Witness, the question was: Prior to the 2007 elections, were things said
25 about the Kikuyu in the Rift Valley that were not complimentary to the Kikuyu?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Let me ask it this way: Sir, at the time in
2 question were ethnic -- were derogatory terms traded between ethnic groups? Did
3 people, members of one ethnic group, call the others names that were not flattering?
4 THE WITNESS: Yes.
- 5 PRESIDING JUDGE EBOE-OSUJI: Who called whom what?
- 6 THE WITNESS: The Kalenjin people - and this came during -- when the election was
7 about to - used to refer to Kikuyus as "Mamdoamdoa."
- 8 PRESIDING JUDGE EBOE-OSUJI: Can you spell that? Court officer, can we
9 give -- does he have a sheet of paper and pen in front of him? A sheet of paper and
10 pen is in front of you for you to -- if it's easier for you to write these terms down to
11 enable you to spell them correctly, please do that. How do you spell
12 "Mamdoamdoa," sir?
- 13 THE WITNESS: M-A-M-D-O-A-M-D-O-A.
- 14 PRESIDING JUDGE EBOE-OSUJI: I will -- the Prosecutor later will ask you what
15 that means, I'm sure, but was there also bad names directed the other way?
- 16 THE WITNESS: Yes.
- 17 PRESIDING JUDGE EBOE-OSUJI: And who called whom what?
- 18 THE WITNESS: The Kikuyus used to refer to Kalenjins as "Dachurie."
- 19 PRESIDING JUDGE EBOE-OSUJI: Can you spell, please?
- 20 THE WITNESS: Yes, it's D-A-C-H-U-R-I-E.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 22 Prosecutor, it is now 5-past-4. Is this something we can take up tomorrow morning?
- 23 MR STEYNBERG: By all means, your Honour.
- 24 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 25 Witness, it is now time for us to adjourn for the day, and your examination-in-chief

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1 will continue tomorrow at 9.30 and by then we hope to know what these terms mean.

2 We will now bring down the blinds and escort the witness out of the courtroom and

3 then the Court will adjourn.

4 *(Closed session at 4.06 p.m.) Reclassified as Open session

5 THE COURT OFFICER: We are in closed session, your Honour.

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

7 Please escort the witness out.

8 (The witness stands down)

9 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.

10 THE COURT OFFICER: All rise.

11 *(The hearing ends in closed session at 4.07 p.m.) Reclassified as Open session

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September

14 2013, and the instructions in the email dated 06 December 2013, the version of the

15 transcript with its redactions becomes Public.