

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 Tuesday, 15 October 2013
10 (The hearing starts in open session at 9.37 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 number ICC-01/09-01/11, and we are in public session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Mr Kigen-Katwa, appearances remain the same?
21 MR KIGEN-KATWA: Mr President, it remains the same, except that I have today
22 with me Mr Philemon Koech and Judy Mionki, Mr President. Thank you.
23 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?
24 MR KHAN: Mr President, your Honours, good morning. The same, except
25 Mr Faal is not in court today.

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

2 Prosecutor?

3 MR GARCIA: Morning, your Honours. The same as yesterday, save for the
4 presence of senior trial attorney, Anton Steynberg, sitting behind me.

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

6 And victims' counsel, Mr Narantsetseg?

7 MR NARANTSETSEG: Good morning, Mr President, your Honours. We are the
8 same here.

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

10 We will continue with the examination-in-chief of the witness.

11 Mr Garcia, we were in closed session -- we ended in closed session yesterday and you
12 said you would be able to proceed in open today. Is that the case?

13 MR GARCIA: Indeed, your Honours. I'd ask for the indulgence of the Court. I
14 looked over the material. I'm still very cautious about proceeding in public with any
15 type of matter that might disclose the identity of the witness, so I just have about five
16 minutes to go with the private session and then I'm confident that we can move into
17 public session with the use of the PIS obviously.

18 PRESIDING JUDGE EBOE-OSUJI: Very well, then we will go into private session
19 for about five minutes.

20 * (Private session at 9.39 a.m.) Reclassified as Open session

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

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

23 Mr Garcia, please proceed.

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

25 QUESTIONED BY MR GARCIA: (Continuing)

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- 1 Q. Good morning, Madam Witness. Now, just to situate you, Madam Witness,
2 and so that we don't repeat ourselves, yesterday when we left off for the day you
3 were speaking to us about how from your hiding place (Redacted) you
4 were observing number 8, who was -- had arrived, "... (Redacted) the
5 looted properties (Redacted)," and those are your exact words and that's page 113,
6 lines 6 to 14, of the real transcript.
- 7 I'd just like to continue on that matter, Madam Witness. Can you tell the Court how
8 you knew witness -- person number 8 on your list?
- 9 A. (Redacted).
- 10 Q. I understand, Madam Witness, that person number 8 is a person of Kalenjin
11 ethnicity; is this correct?
- 12 A. Yes.
- 13 Q. Also, Madam Witness, so it can be clear for the record, you've indicated that
14 (Redacted). When you say (Redacted), am I to
15 understand -- are we to understand that Mr -- the person at number 8 (Redacted)
16 (Redacted)?
- 17 A. Yes.
- 18 Q. Was -- and this is just a question on your relations with person number 8. Did
19 you know him well? Was he a friend of yours?
- 20 A. Not really.
- 21 Q. Now, you said that -- in your testimony yesterday that they were looting the
22 properties. What properties were being looted exactly?
- 23 A. Majority were the electronics.
- 24 Q. Okay, the electronics. You stated (Redacted)
25 (Redacted)

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1 to the person at number 8. Who were the other occupants? Were they people of
2 Kikuyu or Kalenjin ethnicity?

3 A. There was another Kalenjin and one Luhya.

4 Q. And which of the properties were looted?

5 A. The Kikuyu and also number 7, his house was looted.

6 Q. Now, you've mentioned the person number 7. This is a person of Kalenjin
7 ethnicity, if I understand well?

8 A. Yes, he is.

9 Q. Now, did you see this person, number 7, while all of this was going on, that the
10 Kalenjins had invaded the compound and were looting?

11 A. Yes, he was there.

12 Q. Can you tell us what he was doing?

13 A. (Redacted)

14 (Redacted)

15 Q. (Redacted)

16 A. No, it wasn't.

17 Q. Now, I'd just like to return back to person number 8 on your list. You stated
18 that he -- that he brought -- that he was looting and things (Redacted)

19 Can you describe (Redacted)

20 A. (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. Now, you say "number 8." What were the other Kalenjin youths that had

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1 attacked the compound doing at that point?

2 A. They were also busy carrying the things and running away with them.

3 Q. Now, Madam Witness, (Redacted)

4 (Redacted), after the attack on the compound?

5 A. Later when (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. So from what I understand, Madam Witness, you were unable (Redacted)

9 (Redacted)?

10 A. Yes, I wasn't.

11 PRESIDING JUDGE EBOE-OSUJI: Counsel, try using simpler terminology.

12 MR GARCIA:

13 Q. Madam Witness, I'd like us to return now to that day when the compound was
14 attacked by these Kalenjin youths. Would you be able to tell us approximately how
15 many Kalenjin youths were inside the compound during the attack?

16 A. Those were around a hundred to 200 youths.

17 Q. And can you tell us whether these youths were armed? Did they have any
18 weapons on them?

19 A. Yeah, they still carried their bows and arrows.

20 MS ALAGENDRA: Your Honour, if I may refer my learned friend? I'm not sure
21 whether the transcript has picked up what the witness said. I see at line 16, page 5,
22 there's reference to, "I could see ...", something, "... and my area."

23 MR GARCIA: I'm sorry, what is the reference, Madam Alagendra, because we are at
24 page 6 presently?

25 MS ALAGENDRA: I'm referring to page 5, where she's talking about what she saw,

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: And also there's another missing word, or term,
4 at line 16.

5 MR GARCIA:

6 Q. Yes, Madam Witness, let's try and just -- I'd like to clarify something with you.

7 You stated that later on you (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 A. (Redacted)

12 Q. Just to be clear on that matter, Madam Witness, (Redacted)

13 (Redacted)

14 A. No.

15 Q. Thank you for those clarifications. Just another clarification on these same
16 matters. Yesterday you were speaking to us about the fact that at one point you

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Now, Madam Witness, I understand that at one point you were hiding and you
23 were observing person number 8 as he was looting property. What did you do after
24 that?

25 A. We stayed there and waited. Then later came a young Kalenjin running

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1 towards us, but from the looks he seemed afraid and I couldn't be afraid of him
2 because he was not armed.

3 Q. Now, did you have a chance to speak with this young Kalenjin?

4 A. Yes, I did.

5 Q. And can you tell us exactly what was said between both of you?

6 A. He told me he heard the vehicle coming and he's running because he thought
7 it's a police car.

8 Q. Now, just so we understand, was this one of the -- was this one of the youths
9 that were part of the other youths that were attacking? Did he have a weapon?

10 A. No, he did not have any weapon.

11 Q. What about his face, his hair? Was he disguised in any which way?

12 A. He was still white hair, white face and the clothes torn; torn clothes.

13 Q. And just so that we're clear for the record, when you say he had white face,
14 white hair, there was chalk on his face, I understand, and on his hair as well?

15 A. Yes.

16 Q. Did you manage to leave the compound after that?

17 A. Yes, we did.

18 Q. Did you have a chance to speak with your husband after you left the
19 compound?

20 A. Yeah. Immediately after he left the compound I received (Redacted)
21 (Redacted), number 11. Then he informed me about the incident (Redacted)
22 (Redacted). Then I thought it was wise. It was me who called my husband to let
23 him know (Redacted).

24 Q. And after you had spoken to your husband, what did you do? Where did you
25 go?

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1 A. We headed on the route to Munyaka.

2 Q. Now, Madam Witness, just before we do go on to when you left to Munyaka, I
3 understand from yesterday during your testimony that you confirmed that you had
4 spoken with the ICC investigators (Redacted). Am I correct in stating that during
5 your meeting with the investigators you also drew a sketch of (Redacted)
6 compound, (Redacted); is that correct?

7 A. Yes, I did.

8 MR GARCIA: If I could ask for the help of the court officer, I would just like to hand
9 over an unmarked copy of Annex A, which is KEN-OTP-0076-0531, to the witness.

10 Q. Madam Witness, you see before you a document that says "Annex A" and right
11 below it says "Sketch of (Redacted) compound." If you look at the bottom
12 right-hand corner, there's a date (Redacted) and there are initials above it. Is one of
13 those initials yours?

14 A. Yes.

15 Q. Am I to understand, Madam Witness, that this is a sketch that you drew for the
16 investigators of (Redacted) compound?

17 A. Yes.

18 Q. (Redacted)

19 (Redacted)

20 (Redacted) Am I to

21 understand that that's the place that you were hiding when you observed person
22 number 8 looting?

23 A. Yes.

24 Q. And over on the left-hand corner you see (Redacted)

25 (Redacted) Am I to understand that these are (Redacted)

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1 (Redacted)

2 A. Yes.

3 MR GARCIA: Now, your Honours, I'd ask that this Annex A be given an EVD
4 number for the Prosecution please.

5 MS ALAGENDRA: No objections, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

7 MR KIGEN-KATWA: No objection, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: The document will be marked as next in the
9 Prosecution exhibits.

10 THE COURT OFFICER: Your Honour -- (Interpretation) Your Honour, the
11 document KEN-OTP-0076-0531, which is -- which has no redactions, will have the
12 number EVD-T-OTP-0011, 11 on the list of the Prosecutor, and it will have the
13 number -- well, it will be made confidential, apart from if it is indicated otherwise.

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

15 So this will be Prosecution exhibit 11?

16 MR GARCIA: Yes, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MR GARCIA: Your Honours, I'd ask that we move into public session now.

19 PRESIDING JUDGE EBOE-OSUJI: Now we go into public session.

20 (Open session at 9.59 a.m.)

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

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

23 MR GARCIA:

24 Q. Madam Witness, I'd just like to remind you that we are in public session, so
25 please use the document that you have before you to refer to anyone, a name or a

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1 place, if you need to.

2 Now, I understand from your testimony that you were going in the direction of

3 Munyaka, is that correct, on that day?

4 A. Yes.

5 Q. Can you tell us briefly what road you took to reach Munyaka?

6 A. Betafarm, on the way to Munyaka.

7 Q. Can you tell us approximately what is the distance between the place where you
8 were, the compound, and Munyaka?

9 A. (Redacted)

10 Q. Did you in fact arrive in -- were you able to arrive at Munyaka on that day?

11 A. Yes.

12 Q. And where exactly did you go in Munyaka?

13 A. Munyaka PCEA church.

14 Q. Now, I understand that you've just given us an acronym of the PCEA. Can
15 you just tell us what the acronym stands for? What do the words stand for, or the
16 letters PCEA?

17 A. Presbyterian Church of East Africa.

18 Q. Madam Witness, can you describe to us how many people were there at the
19 church when you arrived on that day, approximately?

20 A. There were many, but more than 300 and above families.

21 Q. Can you tell us of what ethnicity these families were?

22 A. Majority were the Kikuyu.

23 Q. And do you know why these families were there on that day, the 300 families
24 that you've estimated?

25 A. They were there because it was secure and safer there.

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1 Q. Now, from your knowledge, if you do know, the families that were there, were
2 they families from Munyaka or from elsewhere?

3 A. They were not families from Munyaka. They were families from Kimumu and
4 Betafarm.

5 Q. Now, just so we're clear, Madam Witness, the families that were from elsewhere,
6 the ones from Kimumu and Betafarm, what ethnicity were they?

7 A. Kikuyu.

8 Q. Now, when you arrived at the church, did you meet anyone that you knew?

9 A. Yes, I met number 6.

10 Q. And what happened? Did you stay at the church?

11 A. No, I just met her to hand her back (Redacted) and also to find my way back
12 into Eldoret Town.

13 Q. Now, while you were at that church, can you tell us what the people were
14 doing?

15 A. They were just seated. Others could stand in groups. They were talking
16 about what has happened.

17 Q. Now, you've stated, Madam Witness, that you had the intention of finding your
18 way back to Eldoret Town. Did you manage to get back to Eldoret Town after
19 having been at the church?

20 A. Yeah. Yes, I managed, but with the help -- I had to call someone to be able to
21 help me to find a way back to Eldoret Town, so I had to call number 10.

22 Q. Now, you stated you had to call number 10. Did you speak to anybody else in
23 order to help you get back to Eldoret Town?

24 A. Nobody else.

25 Q. Were you planning on getting there by foot, or using a car, or another mode of

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1 transportation?

2 A. There were no means of transportation at that moment, so we had to walk.

3 Q. Now, Madam Witness, while you were at this church, did you get any news of
4 what was happening back at the compound?

5 A. Yes. I called number 7 to know of what happened to him after we left the
6 compound, so I had talk to him and he told me that it was number 8 who had been
7 masterminding and telling the Kalenjin youths which their homesteads belongs to.

8 Q. Just so that can be clear for the record, Madam Witness, you're saying that he "...
9 had been masterminding and telling the Kalenjin youths which their homesteads
10 belongs to." Can you explain that further? He was telling them what exactly about
11 the houses?

12 A. The houses that belongs to Kikuyus.

13 Q. All right. Just so that it's clear, am I to understand that he was identifying the
14 Kikuyu houses?

15 A. Yes.

16 Q. Now, you stated that you were going back to Eldoret Town. Can you explain
17 to us how you went about doing that?

18 A. Could you repeat the question?

19 Q. Now, you said that you were going to go by foot and you mentioned number 10
20 as a person who was going to help you. Did you in fact leave the church to go to
21 Eldoret Town?

22 A. Yes.

23 Q. Where did you go first?

24 A. I'm -- I went first to the Kikuyu youths and there I met (Redacted), number 11.

25 (Redacted).

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1 Q. (Redacted)

2 (Redacted)

3 A. (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 Q. (Redacted)

9 A. (Redacted)

10 (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. Now, after you went to --

21 PRESIDING JUDGE EBOE-OSUJI: One second.

22 Can we go into private session.

23 * (Private session at 10.11 a.m.) Reclassified as Open session

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

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, I wonder if any line of question could

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1 have made this witness clearer to the public than what we just heard?

2 MR GARCIA: Indeed, your Honours, we can continue in private session.

3 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

4 MR GARCIA:

5 Q. Now, Madam Witness, if you can just explain to us the road that you took back
6 to Eldoret Town?

7 A. From Munyaka to Hawaii and back to Eldoret Town.

8 Q. Madam Witness, did you encounter any difficulties getting back to Eldoret
9 Town?

10 A. Yes.

11 Q. Can you explain to the Court what those difficulties were?

12 A. There were roadblocks on the road.

13 Q. Can you tell us where you encountered the first roadblock?

14 A. The first roadblock was in Rock II.

15 Q. Now, just that we can understand better, Rock II, is this an area? Is it a village?
16 What kind of place is this?

17 A. It's an area.

18 Q. And if I understand correctly, when you arrived at Rock II, it was you with
19 Mr -- the person identified at number 10; is that correct?

20 A. Yes.

21 Q. Was there anyone else with you at that point?

22 A. No.

23 Q. Madam Witness, I'd like for you to explain to us exactly what you saw at that
24 roadblock. Who was present at the roadblock?

25 A. The Kalenjin youths.

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1 Q. Can you tell us how they were dressed?

2 A. Torn clothes, chalked face and hair, with bows and arrows.

3 Q. Do you recall how many Kalenjin youths were at the roadblock?

4 A. Approximately 20.

5 PRESIDING JUDGE EBOE-OSUJI: One second, Counsel. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 MR GARCIA: Yes, your Honours.

11 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

12 MR GARCIA:

13 Q. Now, Madam Witness, you said there were approximately 20 Kalenjin youths at
14 the roadblock. Could you tell us what age they were approximately, these youths?

15 A. From 18 years and above.

16 Q. Can you tell us as well what the roadblock was made of?

17 A. Stones and logs.

18 Q. Now, what happened when you and the person at number 10 arrived at the
19 roadblock?

20 A. We were told to kneel down and identify ourself.

21 Q. And what happened afterwards?

22 A. (Redacted)

23 (Redacted)

24 Q. And just for the record, Madam Witness, (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 Q. Now, Madam Witness, just so that we can be clear for the record, you

3 mentioned, (Redacted)

4 (Redacted) Could you spell that out for us?

5 A. (Redacted).

6 Q. And also for the Court record, this person at number 10, at the time -- at that

7 time (Redacted)

8 A. (Redacted).

9 Q. (Redacted)?

10 MS ALAGENDRA: Your Honour, before we go further, I think what the witness did

11 say was (Redacted)."

12 PRESIDING JUDGE EBOE-OSUJI: That's what I heard at first, but I was wondering

13 whether the spelling was a short term reference to the longer form you mentioned,

14 but for the completeness of the record I think it is better to spell the whole thing.

15 So, Ms Alagendra, do you know how to spell the term? If anybody can assist --

16 MS ALAGENDRA: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: -- so we can remove -- lessen the pressure on the

18 witness. She's doing a lot of work already.

19 MS ALAGENDRA: Yes, I do, your Honour, if I may assist? (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MR GARCIA:

23 Q. Now, Madam Witness --

24 PRESIDING JUDGE EBOE-OSUJI: Now, Mr Garcia, the reason I moved into private

25 session doesn't mean we can stay here forever. It's just that the line of question was

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1 particularly worrisome and I thought I should intervene and arrest it any further. I
2 had thought that if I had let it go, we would get out of it without attention, but I had
3 to intervene when I did because I wasn't sure we would stop asking those sorts of
4 questions.

5 Now, you tell me when you think, you really think, you can safely go back in the
6 open session. The worry, of course, is there are people out there working hard to
7 connect the dots and we don't want to make the dots' line for them to connect.

8 That's the problem I have, so that's --

9 MR GARCIA: And, your Honour, I can say that I'm very grateful for your
10 intervention at that point. It's always difficult, obviously, to try and conciliate the
11 ideal of publicising the procedures and have the public take note of what witnesses
12 are saying with the security of the witnesses, especially in this case. I can tell you
13 that the information that the witness should give within the next 10 to 15 minutes
14 should also remain in private session, just to be cautious.

15 PRESIDING JUDGE EBOE-OSUJI: Okay.

16 MR GARCIA:

17 Q. (Redacted)

18 (Redacted) ?

19 A. (Redacted)

20 Q. (Redacted)

21 A. (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 (Redacted)

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1 A. (Redacted)

2 (Redacted)

3 Q. Now, were these Kalenjin youths that were at the roadblock, were they armed?

4 Did they have any kind of weapons on them?

5 A. Yes, they carried bows and arrows.

6 Q. And as for the person that you've identified as person number 10, how did this
7 person identify himself?

8 A. (Redacted)

9 Q. Were you able to leave that roadblock at one point?

10 A. Yes.

11 Q. Was anything asked of you at that roadblock? Did you have to give anything?

12 A. Yeah -- yes. They asked (Redacted) to give them something small.

13 Q. Did the person at number 10 give something small to them?

14 A. Yes.

15 Q. And were you allowed to leave the roadblock finally?

16 A. Yes.

17 Q. Just so that we can be clear, the something small, are we speaking about money?

18 A. Yes.

19 Q. (Redacted)

20 A. (Redacted)

21 Q. Now, once you had left that roadblock, did you encounter any other problems
22 on your road to Eldoret Town?

23 A. There was also another roadblock at the Rock Centre.

24 Q. And just so that we can be clear on the record, you mentioned Rock Centre. Is
25 this another -- is this a village, an area?

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1 A. It's an area.

2 Q. Now, who did you encounter at this second roadblock?

3 A. Kalenjin youths.

4 Q. Do you recall how many Kalenjin youths were at this second roadblock?

5 A. This one were not many, they were around ten of them.

6 Q. And in regards to these youths, do you remember how they were dressed?

7 Were they disguised in any way?

8 A. Same torn clothes, white chalked face and hair.

9 Q. Did these youths have any weapons? Were they armed in any way?

10 A. Yes. They had bows and arrows.

11 Q. Did the Kalenjin youth at this second roadblock speak to you?

12 A. No.

13 Q. Were you allowed to pass this roadblock?

14 A. Yes.

15 Q. Can you explain to us how is it that you were allowed to pass this roadblock?

16 A. (Redacted)

17 (Redacted)

18 Q. Can you tell us what approximately was the distance between both roadblocks,
19 the first one and the second one you encountered?

20 A. It's about five minutes' walk.

21 Q. Thank you. So after you had left this second roadblock, did you encounter any
22 other roadblock on the way to Eldoret Town?

23 A. Yes, there was a major one at a place called Jerusalem, but also there, there was
24 no problem for us to pass.

25 Q. And approximately what is the distance from Jerusalem to Rock Centre, to the

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1 last roadblock that you had been at?

2 A. It's around ten minutes' walk.

3 Q. And as for the Kalenjin youth that were at this third roadblock, can you tell us
4 how they were dressed?

5 A. Same torn clothes, white face -- white chalked face and hair.

6 Q. Did they have any weapons?

7 A. Yes. They had bows and arrows.

8 Q. Can you tell me approximately how many youths were at this roadblock, the
9 third one?

10 A. These were a bit -- they were a bigger, larger amount compared to the ones we
11 left, around 20 to 30.

12 Q. Do you know why it is that you were allowed to pass this third roadblock?

13 A. (Redacted)

14 (Redacted)

15 Q. Now, after you left this roadblock where did you go?

16 A. I went back to Eldoret Town.

17 Q. Where exactly in Eldoret Town did you go to?

18 A. I went to Eldoret police station.

19 Q. Now, when you arrived at Eldoret police station, can you describe the scene that
20 you saw there. How many people were there?

21 A. There were more than 500 families.

22 Q. Now, just so we can understand this better, you mentioned Eldoret police
23 station. Is this a small police station, or is this a large police station that could
24 accommodate all these people?

25 A. It's a large police station but they were not within the police station but around

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1 the police station.

2 Q. Now, the families that were there at the police station, would you be able to tell
3 us where they were from?

4 A. Number 6, number 12 was there and she was affected. (Redacted)

5 (Redacted). There was also number 13, she was also affected. (Redacted)

6 (Redacted)

7 PRESIDING JUDGE EBOE-OSUJI: Spelling, Counsel.

8 MR GARCIA:

9 Q. Madam Witness, you've mentioned number 13, she was also affected, (Redacted)

10 (Redacted). Could you spell that for us, please.

11 A. (Redacted)

12 Q. I'm sorry, Madam Witness, maybe I wasn't clear enough, but (Redacted)

13 (Redacted), please?

14 A. Oh, sorry.

15 Q. Thanks.

16 A. (Redacted)

17 Q. And just to be clear, (Redacted) is that correct?

18 A. Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Sorry, Madam, did you say (Redacted)

20 (Redacted)

21 THE WITNESS: (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

23 THE WITNESS: (Redacted)

24 MR GARCIA:

25 Q. Now, Madam Witness, just so the record can reflect this, you mentioned (Redacted)

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1 (Redacted); is this part of Eldoret?

2 A. Yes, it is also part of Eldoret.

3 Q. You've also mentioned that -- now, you said number 13 was affected (Redacted)

4 (Redacted). Can you tell us how she was affected, what had happened

5 exactly?

6 A. Her house was looted.

7 Q. And just so that we know, number 13 is a person of what ethnicity?

8 A. She's a Kalenjin.

9 Q. You also said that number 12 was affected. Can you tell us the ethnicity of
10 number 12?

11 A. She's a Kikuyu.

12 Q. Can you tell us how she was affected?

13 A. (Redacted)

14 (Redacted).

15 Q. Sorry, Madam Witness, I'm just looking at the transcript. The interpreters

16 haven't caught exactly everything you've mentioned. You said, (Redacted)

17 (Redacted) Can you just say that one more time?

18 (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 A. Yes.

22 Q. Now, did you find out who had -- or (Redacted)

23 (Redacted)

24 A. That area it's --

25 PRESIDING JUDGE EBOE-OSUJI: Witness, do not say yet.

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1 MR KIGEN-KATWA: I was wondering, Mr President, if we still need to be in the
2 private session?

3 PRESIDING JUDGE EBOE-OSUJI: I think we can be in the private session for now.
4 Mr Garcia, you also let us know --

5 MR GARCIA: I'm trying, your Honours, to find a place where we can get out of
6 private session carefully, so as to not get into public session and disclose information
7 that might endanger the confidentiality of her information and her identity.

8 PRESIDING JUDGE EBOE-OSUJI: How much longer then do you think we will be
9 in yet?

10 MR GARCIA: I'd have five more minutes, your Honour, on this specific topic.

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MS ALAGENDRA: Your Honour, can I make a very humble suggestion, that when
13 we're going in and out of private session and discussing reasons why we do it, could
14 we focus on the fact that the identity of the witness should not be disclosed as
15 opposed to using words like "endangering"? I'm not sure it's in the interests of the
16 witness to be hearing such words. That's just my observation, your Honour.

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

18 Mr Garcia, can you bring back then your last question to the witness.

19 Witness, what Ms Alagendra was actually correctly suggesting is not about danger.

20 What our focus here is to protect your identity. Of course, when people use the term
21 "danger," it means something that threatens something somebody wants to protect, it
22 need not be danger in the terms of harm to somebody necessarily, so that's what she's
23 pointing out correctly. So the concern is not to reveal your identity.

24 Mr Garcia, there was a question we took out of you, and when Mr Katwa rose I

25 thought he was going to object. That was why I asked the witness not to answer the

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1 question yet.

2 MR GARCIA: I can pose the question again, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Good.

4 MR GARCIA:

5 Q. Now, Madam Witness, I was asking the question to find out if the person,

6 number 12 (Redacted)

7 A. The Kalenjin youths.

8 Q. Now, Madam Witness, just if we can clear up another matter, you mentioned

9 number 13 as being a person of Kalenjin ethnicity; is that correct?

10 A. Mix Kikuyu and Kalenjin.

11 Q. Would you know if the person number 13 was an ODM or a PNU supporter?

12 A. I can't tell.

13 Q. Now, Madam Witness, after you arrived at the police station, what did you do

14 after that?

15 A. (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. Yes.

22 Q. Now, after you had done that -- just one last question on the families at the -- at

23 the police station. Were you able to tell -- are you able to tell us where -- what

24 ethnicity these families were who were at the police station? You mentioned there

25 were about 300 of them.

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1 A. Those families were mixed, but majority were the Kikuyu.

2 Q. Would you be able to tell us where these families were from, what region?

3 A. They came as far as Maline, Kahoya, Yamumbi, Kimumu, Betafarm, Ilura and
4 surrounding area of Eldoret Town.

5 Q. Just one of the places you've mentioned, the interpreters have put it down as
6 "Ilula," I-L-U-L-A. Just to clarify that, is it I-L-U-R-A rather?

7 A. Ilura, I-L-U-R-A. Ilura.

8 Q. Thank you, Witness. Now, after having left the police station, where did you
9 go after that?

10 A. I went to the Eldoret Cathedral church.

11 Q. Can you describe to us the scene that you saw there at the Eldoret church?

12 A. There were also so many families there. The majority were Kikuyu.

13 Q. Can you tell us approximately how many people were you there?

14 A. More than 500 families.

15 Q. At what time approximately did you arrive there, at the Eldoret Cathedral?

16 A. At around 7 to 8 p.m.

17 Q. Now, did you arrive there alone, or were you in the company of anyone at that
18 point?

19 A. On my way to cathedral, I was alone.

20 Q. Now, when you arrived at the cathedral and when you stayed there, did you
21 see anyone that you -- that you knew?

22 A. (Redacted)

23 (Redacted)

24 Q. Can you tell us what ethnicity this man was?

25 A. He was a Kikuyu.

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1 Q. (Redacted)

2 A. (Redacted)

3 Q. Did this man tell you who had looted his property?

4 A. On that area the people who were looting other people's property were Luhyas
5 and Luos.

6 Q. (Redacted)

7 (Redacted)

8 A. Yes.

9 Q. Now, did you spend the night in the Eldoret Catholic Cathedral?

10 A. Yes.

11 Q. Can you tell us, were you sleeping indoors or outdoors? How did that work?

12 A. Outside the church.

13 Q. Were there other people sleeping outdoors?

14 A. Yes.

15 Q. And just so we can understand the situation better, were there any kind
16 of -- where were the people sleeping outdoors? How were they sleeping outdoors?

17 A. The majority of the people, a few managed to carry their belongings.

18 One -- they would just lie the mattress down or even sit and you lean where you are
19 to sleep.

20 MR GARCIA: Your Honours, I'd solicit the court officer's help to play the video
21 0080-731 at time stamp 21.45.

22 PRESIDING JUDGE EBOE-OSUJI: Before we do that.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 THE WITNESS: (Redacted)

4 (Redacted)

5 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

6 (Redacted)

7 (Redacted)

8 THE WITNESS: When it comes to Kikuyu, I can rate at around 30 to 40 families.

9 PRESIDING JUDGE EBOE-OSUJI: But it wasn't only Kikuyus that lived there, was it,
10 at the time?

11 THE WITNESS: No, it's not only the Kikuyu who lives also there. There are also
12 Kalenjin, a few Luos and Luhyas.

13 PRESIDING JUDGE EBOE-OSUJI: So then, in total, how many families would you
14 say, of all ethnicities, would you say would have lived in the (Redacted) area at the
15 time?

16 THE WITNESS: That one I don't know, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Would you say probably, just estimating more,
18 than 50 families, more than a hundred families --

19 THE WITNESS: A hundred families.

20 PRESIDING JUDGE EBOE-OSUJI: More than a hundred families?

21 THE WITNESS: Yeah -- yes.

22 PRESIDING JUDGE EBOE-OSUJI: So we would say probably over a thousand
23 people, generally, would live in, something like that - just estimating - would live in
24 the (Redacted) area in total?

25 THE WITNESS: Yes.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 We now return to the videos.

3 Counsel on both sides, we were exploring the possibility of - and I don't know how
4 the matter stands now, perhaps you can both discuss the matter with the court officer
5 later on - the possibility of counsel playing their own videos so that they are ready to
6 go immediately. If you have a point in the video you want to play, you're ready to
7 do it. It seems to me it will save time if counsel played their own videos when they
8 wanted, where they wanted, than having to leave it to the Registry to play for them.

9 Let's think about that as an option. When I used to practice, that's how we did it, but
10 maybe things work differently here.

11 MS ALAGENDRA: Your Honour, I actually think that's a very good idea and I
12 actually think it's possible, because that's what we did for the opening, for example,
13 we managed it ourselves.

14 PRESIDING JUDGE EBOE-OSUJI: But, for now, we don't have that system in place
15 so we will -- for purposes of the current video that Mr Garcia is going to play, we will
16 rely on the default system.

17 MR GARCIA: And, your Honours, just in regards to the question, we will speak
18 with the court officer and see if it is possible for us to do it from here, and if we can do
19 it, then we will if it can facilitate the testimony of the witnesses and better efficiency,
20 obviously.

21 PRESIDING JUDGE EBOE-OSUJI: So what video again did you say we are going to
22 look at, Mr Garcia?

23 MR GARCIA: Yes. The ERN is KEN-OTP-0080-0731, time stamp 21.45.

24 (Viewing of video excerpt KEN-OTP-0080-0731)

25 MS ALAGENDRA: Your Honour, I'm not so sure the witness is very comfortable

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1 watching this. That's my observation. Perhaps she should be asked --

2 MR GARCIA: Your Honours, the witness was played almost the four or five

3 minutes that I want to play for the witness - and we'll cut it even short - were played

4 to the witness during the witness preparation session and the witness did not indicate

5 any discomfort in viewing it at all.

6 PRESIDING JUDGE EBOE-OSUJI: Let's proceed.

7 (Viewing of video excerpt KEN-OTP-0080-0731)

8 MS ALAGENDRA: I'm sorry to interrupt. I think perhaps, your Honour, you can

9 ask the witness yourself because, from what I'm seeing, I don't think she's very

10 pleased watching this.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, we have to proceed. Yes,

12 it's -- these are difficult experiences, clearly, and that's part of the testimony of the

13 witness at some point. You've noted that, but let's proceed.

14 (Viewing of video excerpt KEN-OTP-0080-0731)

15 MR GARCIA: We can stop the video there.

16 MS ALAGENDRA: Your Honour, I do apologise.

17 PRESIDING JUDGE EBOE-OSUJI: Indeed, the witness does show signs of distress.

18 There's a question about and including a -- pulling up a paper napkin and -- to clear

19 the nose.

20 Mr Garcia, please proceed.

21 MS ALAGENDRA: Your Honour, if I could just interrupt for the last time on this

22 issue, your Honour, is I don't know what my learned friend wants to ask the witness,

23 but we don't have any objections to this -- for this video to be exhibited, your Honour.

24 MR GARCIA: Your Honour, if --

25 MS ALAGENDRA: It's very highly --

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1 MR GARCIA: If my colleague and Defence counsel are willing to admit, obviously,
2 for the record that this is a video of the Eldoret Cathedral taken on 31 December/1
3 January 2008, then that will suffice and I will not have any questions for the witness.
4 As I understand, the reason why we did show it to the witness and we're actually
5 going through this is because there was -- Mr Faal from Defence had indicated on the
6 last occasion that there was a dispute as to the date of the video, so we wanted to
7 confirm that with the witness. But if Defence counsel is ready right now to put it on
8 the record and to stipulate as to the date of the video, then no questions need to be
9 asked of the witness.

10 MS ALAGENDRA: Your Honour, if I may?

11 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

12 MS ALAGENDRA: Your Honour, we don't have any objections to the video being
13 admitted as representing the place, but in relation to whether or not the date is correct,
14 first of all, your Honour, I don't think this is the correct witness to be put through this
15 just for the sake of proving a date, your Honour.

16 MR GARCIA: Your Honours, the witness was --

17 PRESIDING JUDGE EBOE-OSUJI: Let's do it this way. Mr Garcia, ask your
18 question.

19 MR GARCIA:

20 Q. Madam Witness, I'm sorry that that might have caused you certain emotions. I
21 just have one question on the matter: Do you know what date -- I understand that
22 you were there at Eldoret Catholic Cathedral on the night of 31 December. Could
23 you tell us -- you've seen the -- the excerpts that I've shown -- that were shown to you
24 on the video. Could you tell us, if you're able to, on what date that video was taken?

25 A. It was in the eve of 31st to 1st of 2008.

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1 PRESIDING JUDGE EBOE-OSUJI: What you -- are you saying that what you saw on
2 the video would be -- would be a fair representation of the cathedral on the date you
3 indicated?

4 THE WITNESS: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: What I mean, a fair representation of what
6 happened at the cathedral on that date?

7 THE WITNESS: After the New Year's, there was a mass that was held to mark the
8 New Year's.

9 PRESIDING JUDGE EBOE-OSUJI: Is that mass what we see on the video?

10 THE WITNESS: Yes. That was the mass in the -- now the man who's on the
11 screen was the one who was leading in the prayers.

12 PRESIDING JUDGE EBOE-OSUJI: The record will reflect that we are looking now at
13 the freeze-framed video and there's a priest -- a picture of a priest on screen.

14 MR GARCIA:

15 Q. Madam Witness --

16 A. No.

17 Q. I'm sorry, you said, "No." Can you just explain?

18 A. The man on the screen is not the priest.

19 PRESIDING JUDGE EBOE-OSUJI: Who is the man on the screen then?

20 THE WITNESS: Maybe he's a Catholic believer trying to lead other people on
21 prayers, but he's not a priest.

22 PRESIDING JUDGE EBOE-OSUJI: Well, the record then reflects that information or
23 the evidence given by the witness. So the -- you -- the point you are making is that
24 there was a mass, a New Year's Eve mass, and this is the mass as it occurred at that
25 time?

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1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

3 MR GARCIA: That's fine, your Honours. I'd -- following the questions of the
4 Chamber, I have no further questions for this -- for the witness on this video.

5 PRESIDING JUDGE EBOE-OSUJI: And it's now 11 o'clock. It will be a good time
6 for our morning break.

7 When we come back, Mr Garcia, how much longer do you think we will be in private
8 session?

9 MR GARCIA: Your Honours, I would say five to ten minutes, and I'm going to try
10 and move out into public session as soon as possible.

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

12 Witness, we will take a break now for 30 minutes and then we will come back to
13 continue your testimony, but first I want to listen to Mr Kigen-Katwa.

14 MR KIGEN-KATWA: Mr President, I was wondering whether we shouldn't deal
15 with the issue of this video before the witness steps down, more particularly if the
16 Prosecution intends to produce it.

17 MR GARCIA: We will be asking for production, but we can do that after the break,
18 if there's no problem with it.

19 PRESIDING JUDGE EBOE-OSUJI: Can we proceed in that manner?

20 MR KIGEN-KATWA: That's okay, Mr President. I would probably want to make
21 one observation in the presence of the witness, and if you'd rather I make it now, I can
22 make it, Mr President, on the issue of that video.

23 Mr President, it is our position that we have no objection to the production of the
24 video. We would want -- that should not be -- that should be without prejudice to
25 our contesting the date as to when it was made.

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1 Secondly, Mr President, and I'm sure the witness will confirm, that the proceedings
2 reflected in that video is actually not a mass service, it is a Holy Rosary recitation.
3 I'm sure that that aspect of confirming that that video is genuine based on conduct of
4 mass is not accurate because there is no mass service there, but you can come back to
5 it after the break, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, this is something that you
7 could have done in your cross-examination, but we will get to it at that point. The
8 witness has given her testimony. At the moment, we will leave it there. If the
9 Prosecutor wishes to pursue the matter later we will also do that, but now we will rise
10 for the break.

11 We will bring down the blinds, then escort the witness out and rise and come back at
12 11.30.

13 *(Closed session at 11.03 a.m.) Reclassified as Open session

14 THE COURT OFFICER: (Interpretation) We are in closed session and the witness
15 shall be shown out of the courtroom.

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: When we return, let us not bring the witness in
18 immediately.

19 Mr Garcia, we would like to see this video again before the witness is brought in.

20 MR GARCIA: Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 The Court will now rise.

23 THE COURT OFFICER: All rise.

24 (Recess taken at 11.05 a.m.)

25 (Upon resuming in open session at 11.36 a.m.)

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1 THE COURT USHER: All rise.

2 Please be seated.

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

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

5 We're in public session. Now, Mr Garcia, we can play this video again, as we said,

6 and I see no harm in playing in public session, is there?

7 MR GARCIA: There's no objection from the Prosecution on that.

8 PRESIDING JUDGE EBOE-OSUJI: Why don't we roll that video from the beginning.

9 How long is it, sorry?

10 MR GARCIA: Now, the extract that the Prosecution wanted to play is

11 approximately four minutes.

12 PRESIDING JUDGE EBOE-OSUJI: So why don't we -- let's look at that extract.

13 MR GARCIA: We can start at time stamp 21.45. The relevant part is until time

14 stamp 24.55, approximately.

15 PRESIDING JUDGE EBOE-OSUJI: And you tell us when you want to stop.

16 MR GARCIA: Certainly, your Honour.

17 (Viewing of video excerpt KEN-OTP-0080-0731)

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

19 Mr Kigen-Katwa?

20 MR KIGEN-KATWA: Mr President, as the video will have shown, it has moved to a

21 point where the mass service is conducted, but what was shown earlier did not

22 include mass service. However, Mr President, we maintain our position that we

23 have no objection to the production of this document, without prejudice to our having

24 to challenge the date it was taken, and otherwise we have to challenge on the video,

25 Mr President.

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1 PRESIDING JUDGE EBOE-OSUJI: So the record then will reflect that what you are
2 saying is that the video does indeed show a mass portion and, as you also noticed
3 before, the full video was not played because of the evident distress the witness was
4 going -- was suffering at the time she was looking at the video.

5 So the matter is now -- stands on the record, with Mr Kigen-Katwa showing that there
6 was both a Rosary part of the video - a Rosary saying part of the video - and also a
7 mass. Is that what you're saying?

8 MR KIGEN-KATWA: I confirm, Mr President and your Honours.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR GARCIA: I'm just wondering, your Honour, because I sense that the question
11 has not been completely resolved yet, but if when the witness comes in we can ask her
12 a question just as to who was celebrating mass on that evening? I think that we can
13 see in the extract at 24.50 that it's Bishop Korir.

14 Now, if the witness does answer in that sense, would this satisfy the Defence and
15 basically maybe they can change their mind as to a stipulation as to the date this
16 video was taken to facilitate things?

17 PRESIDING JUDGE EBOE-OSUJI: One thing at a time. First, there will be the
18 question of now that Mr Kigen-Katwa no longer presses the issue that the video
19 concerned Rosary. He now agrees that there was a mass on the video -- there is a
20 mass on the video as well.

21 So we will take it the next step, which is whether the Defence will concede who was
22 saying the mass; the mass portion of it. Once that is done, then the next question is
23 what date the mass was celebrated, or the mass we see on the video.

24 Mr Kigen-Katwa and Ms Alagendra?

25 MR KIGEN-KATWA: Mr President, I confirm -- or rather our position is that we do

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1 not contest that the person who is presiding over the mass is Bishop Korir. We do

2 not contest that.

3 Unfortunately, Mr President and your Honours, and for the Prosecution, that doesn't

4 change our position about --

5 PRESIDING JUDGE EBOE-OSUJI: About the date?

6 MR KIGEN-KATWA: Yes, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: It doesn't change your position as to the date?

8 That's what you're saying?

9 MR KIGEN-KATWA: It doesn't, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

11 Ms Alagendra?

12 MS ALAGENDRA: Your Honour, if I can just say from our understanding of that

13 video, it appears to be both dates, 31st and 1st, and towards the end of the video the

14 Bishop in fact is making reference to, "And this year, 2008," that's what he's saying in

15 Swahili, and we do accept that's Bishop Korir, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: And what about the other proposition as to the

17 date?

18 MS ALAGENDRA: We don't object, as long as it's reflected that it's two dates, 31st

19 going into the 1st.

20 PRESIDING JUDGE EBOE-OSUJI: I believe that's consistent with the witness's

21 testimony, isn't it?

22 MS ALAGENDRA: I believe so, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: I see Mr Khan nodding his head.

24 MS ALAGENDRA: I believe so, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

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1 Why don't we then bring down -- Mr Garcia, any more?

2 MR GARCIA: I just wanted to be clear on that matter, because indeed it is what the
3 witness stated, she said it was the 31st and the 1st, and I understand that there is a
4 stipulation then from the Ruto Defence team. Is Mr Kigen-Katwa also making the
5 stipulation, so that we can go on to another subject and I don't need to belabour the
6 point as to the date? I understand the Ruto Defence has already done so.

7 MR KIGEN-KATWA: Mr President, please just allow me to maintain -- to reserve
8 my right to challenge the date.

9 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

10 Mr Garcia, I believe we -- it looks like that's all you can get out of the Defence at this
11 stage.

12 MR GARCIA: It seems so I think, your Honour, and I'll move on to another subject
13 when the witness does return.

14 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

15 Why don't we then -- not why don't we. We will now bring down the blinds and
16 invite the witness back on to the stand and continue from there.

17 Mr Garcia, back in private session?

18 MR GARCIA: I understand, your Honour, and I see that there are many people in
19 the public gallery, but unfortunately the topics that I'm going to cover need to be
20 elicited during a private session. I'll try to make it as brief as possible so we can get
21 to a portion which we can publicise.

22 PRESIDING JUDGE EBOE-OSUJI: Do you have any indication of how much longer
23 we will be in private session?

24 MR GARCIA: I would say ten minutes, your Honour, as an estimate.

25 PRESIDING JUDGE EBOE-OSUJI: Ten minutes. All right, let us try and get out

Trial Hearing

(Closed Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 sooner than that, but for now we will bring down the blinds and invite the witness
2 back in and go straight into private session.

3 *(Closed session at 11.48 a.m.) Reclassified as Open session

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR GARCIA: Just one matter, your Honour, if I may, before the witness continues
7 testifying? I'd like to have that excerpt from the video tendered in. I think it
8 already has actually an EVD number, EVD-T-OTP-0004. I'm just wondering if that
9 EVD number comprises the excerpt from 21.45 to 24.55? That's my question for the
10 moment.

11 PRESIDING JUDGE EBOE-OSUJI: I -- it may be difficult to check that. Why don't
12 we then stipulate for the record that, if the video -- please bring the witness in.

13 All right. The court officer will do the check right now and tell us.

14 THE COURT OFFICER: (Interpretation) Thank you, Mr President. 0080-0731,
15 that video has already been given EVD-T-OTP-0078-0004, exhibit number 4 presented
16 by the OTP, and the portions of the video that have just been played include the
17 section that has been played today, that is from 21.30 to 55. So, with your leave, I
18 therefore suggest that the same EVD number be maintained to apply in both cases.
19 Thank you, your Honour.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE EBOE-OSUJI: That will indeed be the case.

22 MR GARCIA: I thank the Court. So the record need only reflect that the EVD
23 number was shown to the witness.

24 PRESIDING JUDGE EBOE-OSUJI: We can raise the blinds again.

25 *(Private session at 11.50 a.m.) Reclassified as Open session

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 PRESIDING JUDGE EBOE-OSUJI: Madam, welcome back. Before you came
2 in -- we played the video, before you came in, and we saw that the video had both a
3 section of the evening where Rosary was recited and also a section of the evening
4 where the Bishop said a mass, and all the lawyers agree that that was the case so you
5 know. I tell you that, because before you left I know that there was a discussion that
6 was had between lawyers and the Judges whether there was only a Rosary that was
7 said that night. So you need not worry, so you're -- about what you already testified
8 to. We now know that there was both a Rosary section and also a mass.

9 Mr Garcia, please proceed.

10 MR GARCIA: Madam Witness, before we continue on to what happened after you
11 were at the Eldoret Cathedral, I'd like to just confirm -- you've already confirmed in
12 your testimony that you met the investigators of the ICC (Redacted) and
13 that during that time you did have a chance to draw up sketches and make
14 indications of some of the events that you saw during the post-election violence.
15 I'd like to solicit the help of the court officer in showing to the witness a paper copy of
16 KEN-OTP-0076-0534. This is Annex D. It would be tab 4 in the Court's
17 tumble -- bundle, sorry.

18 At the same time, so as to be more efficient, I'd ask the court officer to also give to the
19 witness KEN-OTP-0076-0532. That would be Annex B and it would be tab 2 on the
20 Court's bundle.

21 Q. Now, Madam Witness, you have two documents in front of you. I draw your
22 attention to the document that says "Annex B." Do you have that document in front
23 of you?

24 A. Yes.

25 Q. Now, I'd like to draw your attention to the bottom right-hand corner. There's a

Trial Hearing

(Private Session)

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Witness: KEN-OTP-P-0189

1 date (Redacted) and there are initials right above that date. Is that -- are those your
2 initials?

3 A. Yes.

4 Q. Now, Madam Witness, do you remember having drawn this sketch for the
5 investigators when you met them in (Redacted)

6 A. Yes.

7 Q. Am I correct in stating -- and I see here you've indicated on the far right it says,
8 "Sketch of Munyaka to Eldoret Town," and if we look at the centre I can see different
9 places indicated by you, "Rock II, Rock Center, Jerusalem," and each of these places
10 has a star and you've indicated "Road block's." Are these the places where there
11 were roadblocks that you mentioned during your testimony this morning?

12 A. Yes.

13 Q. I have just a couple of additional questions on this annex. If you look at the
14 top left side, there's an indication of (Redacted) and right next to it there's a star
15 and it says "Dead bodies." Do you see that?

16 A. Yes.

17 Q. Now, can you tell us what dead bodies were there?

18 A. There were five dead bodies.

19 Q. Do you know what ethnicity these dead bodies were?

20 A. They were Kalenjins.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, also I have to give you the pace
22 warning and the gap warning as well.

23 MR GARCIA: Thank you, your Honour.

24 Q. Madam Witness, right in front of the indication (Redacted) there's an
25 indication of a place called "Rock Primary." There's also a star there and it says

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(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 "Dead bodies." Do you see that?

2 A. Yes.

3 Q. Can you tell us what -- who were these -- what -- these dead bodies, who were
4 they exactly, do you know?

5 A. These were the Kikuyus.

6 Q. How many of them?

7 A. There were three.

8 Q. Can you tell the Court, Madam Witness, how you knew that these were Kikuyu
9 bodies?

10 A. On their bodies they had arrow wounds.

11 Q. Can you also tell the Court, Madam Witness, when it is that you saw these dead
12 bodies; the ones near (Redacted) and the ones at Rock Primary? At what point in
13 time?

14 A. I can't say the time.

15 Q. Now, was this on the same day that you passed through the roadblocks?

16 A. Yes, it was the same day.

17 Q. Now, Madam Witness, I draw your attention to a second document and at the
18 bottom left-hand corner it says "Annex D." Do you -- I notice that you're looking at
19 that document right now, and at the top of the document it says "Road block's from
20 Hawaii to town" and "Route from (Redacted) to Munyaka." Am I
21 correct in stating that you're the one who has indicated these things on this Google
22 Earth map?

23 A. Yes.

24 PRESIDING JUDGE EBOE-OSUJI: Actually, it does say (Redacted) but continue,
25 Mr Garcia. You had said (Redacted)--

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(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 MR GARCIA: I'm sorry about that. Yes, indeed.

2 PRESIDING JUDGE EBOE-OSUJI: -- but the thing says (Redacted)

3 MR GARCIA: Indeed, it says (Redacted)

4 Q. Madam Witness, am I correct in stating that on this map you've indicated

5 "Junction" with a star, as well as "Hawaii, Rock II, Rock Center," and then you've

6 indicated with arrows directed at another star. Do you see that on the map?

7 A. Yes.

8 Q. Can you tell us what that star is that the arrows are indicating to? What is that

9 representing?

10 A. That is Jerusalem Estate.

11 Q. Now, if you look at the bottom right-hand corner, there's a date (Redacted)

12 Thank you. My colleague has just indicated to me that at line 46 it says, "That is

13 Jerusalem," and I think you indicated, "That is Jerusalem Estate?" Is that correct,

14 where the star was?

15 A. Yes.

16 Q. And, Madam Witness, over at the bottom right-hand corner you see the date

17 (Redacted) Are those your initials above the date?

18 A. Yes.

19 MR GARCIA: Your Honours, I'd like to -- following the information given to us by

20 the witness, I'd like to have both Annex B and Annex D tendered -- introduced into

21 evidence as Prosecution exhibits.

22 MS ALAGENDRA: No objections, your Honour.

23 MR KIGEN-KATWA: No objections.

24 PRESIDING JUDGE EBOE-OSUJI: The document -- two of them; right?

25 MR GARCIA: That's correct, your Honour. They're Annex B and Annex D.

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1 PRESIDING JUDGE EBOE-OSUJI: They will be tendered as the next in the series of
2 the Prosecution exhibits.

3 THE COURT OFFICER: (Interpretation) Mr President, document
4 KEN-OTP-0076-0534, confidential document, shall be marked as EVD-T-OTP-00012,
5 exhibit number 12 for the OTP. Document KEN-OTP-0076-0532, confidential
6 document, shall be marked EVD-T-OTP-00013, exhibit number 13 for the OTP.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
8 Mr Garcia, please proceed.

9 MR GARCIA:

10 Q. Now, Madam Witness, from your testimony I understand that you spent the
11 night of 31 December to 1 January 2008 at Eldoret Cathedral. Now, can you please
12 tell us what you did on 1 January? Did you go elsewhere?

13 A. I went back at number 15's place.

14 Q. Is there a reason, Madam Witness, that you weren't there on the night before, on
15 the 31st?

16 A. No, there was no reason to.

17 Q. Now, how much time did you spend at that place exactly?

18 A. I didn't take too long because I was not comfortable being there, so I had to
19 finish doing a few things and going back to Eldoret Town.

20 Q. (Redacted) ?

21 A. Yes.

22 Q. When was that?

23 A. (Redacted).

24 Q. (Redacted)?

25 A. Yes, I went with somebody.

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Witness: KEN-OTP-P-0189

(Private Session)

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1 Q. Can you tell us who?

2 A. I went with number 10.

3 Q. (Redacted)

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. Yes.

14 MR GARCIA: Now, Madam Witness, I'm going to ask the Court to return into

15 public session for a little while and I'd just like you to keep in mind, because I'm

16 going to be asking you questions about what you saw back in Kimumu, that we are

17 going to be in public session and that if you need for any reason to refer to the

18 document - the numbers - please refer to them.

19 Your Honours, I'd like to return into public session for about ten or 15 minutes, so we

20 can exhaust exactly what the witness saw when she returned back to Kimumu, and

21 then I'll ask to return back into private session for another issue.

22 PRESIDING JUDGE EBOE-OSUJI: We'll go into public session.

23 (Open session at 12.05 p.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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(Open Session)

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Witness: KEN-OTP-P-0189

1 Witness, we're now in public session. Again, remember the word -- the advice I had
2 given you earlier. Listen to the questions carefully, as you've been doing, that the
3 lawyers are asking and answer only -- give only the answer that the question calls for.
4 That would also -- that would help the lawyers to control your questioning so we
5 can -- it can help in protecting your identity better now that we're in public session.
6 If you start answering other questions or giving other answers, there may be a risk of
7 you inserting your identifying information in those additional comments. It doesn't
8 mean you shouldn't give additional comments, but think about it very carefully and
9 try not to inject your personal information in additional information you give.

10 MR GARCIA:

11 Q. Now, Madam Witness, I understand that in going to Kimumu you pass by
12 Kapsoya; is that correct?

13 A. Yes.

14 Q. Can you tell the Court what you saw in Kapsoya?

15 A. We saw people in Kapsoya Catholic Church seeking refuge there.

16 Q. Did you yourself go into the Catholic Church at Kapsoya?

17 A. No.

18 Q. Were you able to determine who were these people that were at the Kapsoya
19 Catholic Church or what ethnicity they were?

20 A. They were Kikuyus.

21 Q. Can you tell us approximately how many Kikuyus were there at the Kapsoya
22 Catholic Church on that day?

23 A. I can't tell because I didn't went to the church, but I just passed by.

24 Q. Do you know where these Kikuyu people were from?

25 A. A few come from Ilura area and others came, a few from Betafarm who were

Trial Hearing

(Open Session)

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Witness: KEN-OTP-P-0189

1 not able to withstand the Munyaka church so they would seek refuge also there.

2 Q. Now just so we can understand better how you obtained this information, is it

3 because you knew some of these people, or did you have a chance to speak with them

4 and they told you?

5 A. No, I didn't speak to any of them.

6 Q. Did you recognise any of these people?

7 A. No.

8 Q. Can you tell us how you -- on what basis you were assuming that they were

9 coming from Betafarm and from Ilura?

10 A. Because that's Ilura, a few Kikuyu come from and a few also come from

11 Betafarm and majority of them, if I can say they were Kikuyus; I don't think any tribe

12 would be there.

13 Q. Now, just to be clear, you say that "If I can say that they were Kikuyus; I don't

14 think any tribe would be there." Can you just explain that for us? Is it a question of

15 other tribes being there?

16 A. Like Luhyas or Kisiis, no, I couldn't tell.

17 Q. And just one last question on that matter, madam: Would there be any

18 Kalenjins there? Is that a possibility?

19 A. There could be a possibility because Kikuyus and Kalenjins, they intermarry.

20 Q. All right. Now, I understand that you were heading to Kimumu. Did you

21 make it to Kimumu finally on that day?

22 A. Yes.

23 Q. And just before we get into the question of what you saw in Kimumu, can you

24 just tell the Court what ethnic groups are present or reside in Kimumu?

25 PRESIDING JUDGE EBOE-OSUJI: You mean now, or at the material time?

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(Open Session)

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Witness: KEN-OTP-P-0189

1 MR GARCIA: I will -- I will reformulate the question. Thank you, your Honour.

2 Q. Madam Witness, at that time can you tell us what ethnic groups were living in
3 Kimumu?

4 A. By after the clashes?

5 Q. During the clashes, yes.

6 A. During the clashes were Kikuyu and Kalenjin, 50/50, and the rest of the tribes.

7 Q. Now, I understand that you returned to Kimumu. Can you tell us what you
8 saw? How were the houses when you returned in Kimumu?

9 A. From a distance you could see the smoke and the shells of the homes which has
10 already been burnt down.

11 Q. Now, could you explain to us or tell us approximately how many homes had
12 been burnt down?

13 A. There were more than 50 to a hundred.

14 Q. Madam Witness, are you able to tell us who these homes belonged to, what
15 ethnic group?

16 A. Majority of the houses belonged to Kikuyu.

17 Q. Did you see any people in Kimumu?

18 A. Yes, but at a distance.

19 Q. Were there any youths in Kimumu?

20 A. They were there, but they were not doing anything at that time. You would
21 see them just in groups.

22 Q. Can you tell us what was the ethnicity of these youths that you saw in Kimumu
23 at that time?

24 A. From afar I can't tell.

25 Q. Now, Madam Witness, if you look at your document, I understand that you also

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Witness: KEN-OTP-P-0189

1 returned, in the list of places, to the number 2 place, the compound; is that correct?

2 Just maybe I'll make it clearer. You returned to the compound; is that correct?

3 A. Yes, I returned to the compound.

4 Q. Now, without getting into details, can you tell us what was the condition of the
5 compound? How were the rental properties?

6 A. They had been broken into. If there is papers, it's torn all over. You can see
7 scattered clothings all over. There was also a maize store. It was broken into. You
8 can see maize all over the place. And the shell houses of the number 6 son-in-law
9 and also number 6 house, also her burnt-down car.

10 Q. And, Madam Witness, what can you tell us about the content of the rental
11 properties?

12 A. Content of the rental, it's households.

13 Q. Yes, Madam Witness, what about the household items that were in the rental
14 properties, were they still there?

15 A. No.

16 Q. Did you stay there for long at the compound?

17 A. No.

18 Q. Thank you.

19 MR GARCIA: Your Honours, could we just return in private session for another 10,
20 15 minutes, and then I'll move back into public session.

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

22 *(Private session at 12.16 p.m.) Reclassified as Open session

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR GARCIA:

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(Private Session)

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Witness: KEN-OTP-P-0189

1 Q. Madam Witness, what did you do -- where did you go after you visited the
2 compound?

3 A. I headed back to Eldoret Town.

4 Q. Did you head back to the house of number 15?

5 A. No. I went to the police station.

6 Q. What did you do after that, after the police station, where did you go?

7 A. (Redacted)

8 Q. Just before we get to that, Madam Witness, (Redacted), did they
9 remain in Eldoret during the violence?

10 A. No.

11 Q. What happened exactly? Where did they go?

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0189

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1 A. (Redacted)

2 (Redacted)

3 Q. (Redacted)

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. Madam Witness, did she tell you of what ethnicity these people were, the
8 people that had burned the house and taken items from her home?

9 A. They were mixed: Kalenjin, Luhyas and Luos.

10 Q. (Redacted) Madam Witness, where were they at this point,
11 at this time?

12 A. (Redacted).

13 Q. Now, at one point were you able to meet (Redacted)
14 (Redacted)

15 A. Yes. After I managed (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. Madam Witness, I know this might be a little difficult for you, but how did you
19 manage (Redacted)? Can you just give us the details of that?

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. Did you encounter any problems in (Redacted)

25 A. No.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. Now, you had mentioned previously in your testimony that there had been
2 roadblocks. Did you see any roadblocks on the way back to (Redacted)?

3 A. They were there but you can just swerve and pass, but there were no people on
4 those roadblocks, but you can see the youths from a distance.

5 Q. Now, you stated that you can see the youths at a distance. Are you speaking
6 about the Kalenjin youths that you mentioned previously?

7 A. Yes.

8 Q. Now, Madam Witness, I understand that later on, on 4 -- 5 January 2008 and
9 afterwards, (Redacted) during the
10 post-election violence; is that correct?

11 A. Yes.

12 Q. (Redacted)?

13 A. Number 5 and number 14.

14 Q. Now, can you just tell us briefly about how you were -- what sites or what
15 places you were planning on visiting (Redacted)?

16 A. The main spots were Kimumu, Ilura, Kiambaa, Moi Teaching and Referral
17 Mortuary and Hospital and Kahoya area and Langas.

18 Q. Correct me if I'm wrong, Madam Witness, but you took a car? The people that
19 you mentioned and yourself were in a car and that's how you were planning (Redacted)
20 (Redacted)?

21 MS ALAGENDRA: Your Honour, may I request that for this portion of testimony,
22 my learned friend does not ask leading questions.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, the -- Ms Alagendra has indicated her
24 position. Of course the matter of the questions is a matter of the discretion on the
25 Chamber, but you've heard her position. Before she was willing to consent to some

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1 things, but now she's saying, if you do, she will be objecting. That's basically what
2 she says.

3 MR GARCIA: Certainly, your Honour. I didn't think there were going -- that this
4 subject matter that we were broaching was contentious. But indeed, since there is an
5 objection, well, I'll be asking more -- no leading questions, obviously.

6 Q. Madam Witness, now I understand that you (Redacted). Can you tell
7 us how you were supposed (Redacted)? Were you going by foot? Were you
8 using any means of transportation?

9 A. We used number 5's car.

10 Q. Who else was in the car with you?

11 A. (Redacted)

12 Q. Do you remember the name (Redacted)?

13 A. No.

14 Q. Whose car was it exactly that you were using?

15 A. Number 5's car.

16 Q. So correct me if I'm wrong, Madam Witness, there was number 5 who was in
17 the car, (Redacted) and yourself; is that correct?

18 A. And number 14.

19 Q. Thank you for that clarification.

20 PRESIDING JUDGE EBOE-OSUJI: Witness -- Mr Garcia, this is for my purposes so I
21 can follow what's going on. Are we saying that (Redacted) you are referring to was
22 (Redacted)?

23 MR GARCIA: That is the case, your Honour. We don't have (Redacted). It's just a
24 question that -- I will lead the evidence on --

25 PRESIDING JUDGE EBOE-OSUJI: Fair enough. I just wanted --

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Witness: KEN-OTP-P-0189

1 MR GARCIA: There was (Redacted) at one point, yes.

2 Q. Now, Madam Witness, we are going to go into -- I'm going to ask the Court for
3 leave to go back into public session within a couple of seconds, and just be mindful of
4 the fact obviously that it's public session, and that if you do need to indicate anything,
5 you have the list before you. There shouldn't be any necessity because you've
6 already given us the people who were with you. So just be mindful of those
7 elements.

8 MR GARCIA: Your Honours, I'd ask that we go in public session, please.

9 PRESIDING JUDGE EBOE-OSUJI: We go back into public session now.

10 (Open session at 12.28 p.m.)

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

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Mr Garcia, please proceed.

14 MR GARCIA:

15 Q. Now, Madam Witness, you stated that the main spots that you were visiting
16 were Kimumu, Ilura, Kiambaa, Moi Teaching and Referral Mortuary and Hospital,
17 and -- Kahoya area and Langas.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we are in public session. Be careful
19 how you refer to what she was doing.

20 MR GARCIA:

21 Q. Madam Witness, can you tell us what was the first place that you saw?

22 A. We went to Munyaka first and (Redacted) those dead bodies of both sides of the
23 road.

24 Q. And after Munyaka, where did you go?

25 A. We went to Ilura.

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(Open Session)

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Witness: KEN-OTP-P-0189

1 Q. Madam Witness, can you -- can you tell us what you saw at the Moi Teaching
2 and Referral Hospital?

3 A. At the mortuary there were dumped bodies in one room which were bad -- bad.

4 Q. Do you remember how many -- do you remember how many bodies were in
5 that mortuary, approximately?

6 A. I can't tell.

7 PRESIDING JUDGE EBOE-OSUJI: When you said, "There were dumped bodies in
8 one room which were bad," are you saying that the bodies had started decomposing?

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR GARCIA:

12 Q. Now, Madam Witness, just if you can, obviously - I know this is not a
13 particularly easy subject - I've asked you how many bodies there were in the
14 mortuary. As an estimate, were there more or less than a hundred?

15 A. Not less than a hundred.

16 Q. Now, Madam Witness, I understand that you visited the mortuary itself. Was
17 there -- did you have to speak to anyone to gain access to the mortuary? And if you
18 did, please don't indicate the name.

19 A. The mortuary was open and so we had to talk to the attendants and we just
20 went in.

21 Q. Now, if you can, can you just describe to us the size of this mortuary. Was it a
22 big place? Small? How big was it approximately?

23 A. The room is bigger than the one I'm waiting in when I leave the courts.

24 Q. As to the size of the -- of the mortuary, where you're sitting right now to the
25 place where the legal officers are sitting, is that a fair distance from one side to

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Witness: KEN-OTP-P-0189

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1 another --

2 A. Yeah, it's --

3 Q. -- or is that small?

4 A. Yeah, it's fair but also the mortuary has some like shelves, but now the bodies
5 could not be kept in the shelves so they're just dumped down there.

6 Q. I understand there were shelves but since -- were there shelves being used?

7 A. No. It --

8 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

9 THE WITNESS: No, they were not being used to store the victims, but maybe they
10 were used to store those people who might be -- have gone dead before the clashes.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I was going to say you will need to
12 estimate the dimensions she gave you earlier, from where she's sitting to where the
13 legal officers are. We can estimate probably -- roughly 12-by-12, something like that,
14 feet.

15 MR GARCIA: I think that would accurately reflect.

16 Q. Madam Witness, do you remember, the mortuary, is it in the form of a square?
17 Of a rectangle? Was the width longer than the length? How was it --

18 A. It's -- it's rectangled -- squared. One side is long and, the other one, it's shorter.

19 Q. Okay. All right. So when I asked you to give us approximately the
20 dimensions and you said from where you were sitting to the place where the legal
21 officers were, which is approximately 12 feet, was that the shorter side or the longer
22 side?

23 A. That is the longer side.

24 Q. And if you were to give us approximately what the shorter side would be.

25 A. Just from their desk up to mine.

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Witness: KEN-OTP-P-0189

1 Q. So from what I understand, just a bit -- a bit shorter, is that it, or --

2 A. Yeah, it's not all that long.

3 MR GARCIA: So I would say, your Honour, that 12-by-12 would seem something
4 reasonable, or 12-by-11, something in those parameters.

5 PRESIDING JUDGE EBOE-OSUJI: You can move on.

6 MR GARCIA:

7 Q. Now, Madam Witness, just so we can understand, when you do look into the
8 mortuary, are you able to walk in the mortuary or -- because you're saying the bodies
9 are piled, or you're unable to walk because of the bodies?

10 A. We were able to walk because the bodies were not just dumped anywhere, they
11 were in just one -- just that one room -- one room, so we managed to get into.

12 Q. Now, just one last question. Were the bodies piled on, one on top of the other?

13 A. Yes.

14 Q. Now, did you -- I understand that you managed to get into the mortuary. Did
15 you manage as well to look inside the hospital itself, the wards?

16 A. Yes.

17 Q. What did you see in the wards?

18 A. There were so many casualties, one -- others with deep pangas, others with
19 arrows which were able to be removed, and back to the section where the Kiambaa
20 people who were burnt were.

21 Q. Now, in regards to these people from Kiambaa, you said people were burnt.
22 How many -- do you remember approximately how many people you saw that had
23 sustained burns, that had burn marks?

24 A. The section that we entered, it was the critical one. There was a woman who
25 was covered all her -- all over. And then there was a small boy between 9 to 12 who

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Witness: KEN-OTP-P-0189

1 was badly burnt. There was also a small baby who also had some burns. But the
2 other part, the one which they had no -- not burnt a lot.

3 PRESIDING JUDGE EBOE-OSUJI: We -- here we are talking about evidence of
4 injured people, people who were still alive, but injured; is that it?

5 MR GARCIA: That's correct, your Honour, people from what the witness states
6 Kiambaa.

7 Q. Madam Witness, I want to ask you this question, if you can answer it: Can you
8 tell us how you knew that these people were from Kiambaa, these burn victims?

9 A. This boy who was between 9 to 12 years, we had to talk to him because he was
10 so burnt, he couldn't even be able to sit so he was walking around and around. So
11 we said -- I decided to talk to him and asked him. It's what he told me, they were
12 burnt, they were the ones who burnt in the church.

13 Q. Now, as for the other people that you saw, you said you saw people who were
14 injured with arrows. Do you know what ethnicity these people were?

15 A. These people are mixed because -- like, the ones with deep cuts -- panga cuts,
16 that's not a Kikuyu, it's a different tribe. But the ones which had arrows, the
17 majority of them were Kikuyus.

18 Q. And can you tell us approximately, Madam Witness, how many of these people
19 there were that had been injured by arrows?

20 A. The ward was crowded and they were all in one room, although in beds they
21 would share maybe two or three. And since there were so many, others would sleep
22 on the floor.

23 Q. Now, these people that were injured by arrow, were there more or less than 50
24 of these people?

25 A. There were more than 50.

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Witness: KEN-OTP-P-0189

1 Q. And as for the hospital itself, how many people were there, approximately,
2 when you arrived there?

3 A. I can't tell that.

4 Q. Can you just describe to us exactly what the scene is, what you see upon
5 arriving at the hospital at that point in time? Where are the people? What are they
6 doing?

7 A. People are going up and down, like the relatives, those were in pain, others
8 were crying, others were just talking about what happened and so on.

9 Q. Are you all right, Madam Witness? Can we still go on?

10 A. Yes.

11 Q. Madam Witness, what did you see in Langas?

12 A. Around Langas there were chopped heads and planted on a stick. Their heads
13 were planted on the stick.

14 Q. Can you tell us anything about the houses in Langas?

15 A. In Langas most of the houses were not burnt, but they were looted, like shops
16 were broken into.

17 Q. Can you tell us, Madam Witness, if you know, what were the ethnic groups that
18 lived in Langas at the time of the election violence?

19 A. Majority of the people in Langas are Kikuyu and Luos.

20 Q. Madam Witness, can you tell us what you saw in Kiambaa?

21 A. Upon arriving in the Kiambaa, the church was a shell and we would see the
22 mattresses and some burnt-down bodies, and then there was that wheelchair where a
23 woman perished in.

24 Q. You said, Madam Witness, that you saw mattresses. Can you tell us where
25 they were in respect of the church?

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1 A. They were just inside the entrance of the church.

2 Q. In what condition were these mattresses?

3 A. Burnt completely.

4 Q. Just one last question on this matter. Was there anyone there when you
5 arrived at the Kiambaa -- Kiambaa church?

6 A. No.

7 Q. Can you tell us what you saw, Madam Witness, at Kahoya Estate?

8 A. Kahoya, there were dead bodies all over, rotten, eaten by pigs and dogs.

9 Q. Can you tell us, Madam Witness, approximately how many bodies you saw on
10 that day?

11 A. The ones which were eaten by dogs were around five to six -- dogs and pigs, but
12 the rest of the bodies were around 10 to 20.

13 Q. What can you tell us about the homes, the buildings, in Kahoya Estate?

14 A. The buildings were also burnt around.

15 Q. Can you give us an estimate, about how many of these buildings or houses were
16 burnt?

17 A. Around the area that we were, there were more, like ten houses.

18 Q. Thank you, Madam Witness.

19 MR GARCIA: Your Honours, I'd ask to move into private session for 10, 15 minutes.

20 PRESIDING JUDGE EBOE-OSUJI: We will then go into private session and stay
21 there until the lunch break, which is at 1.00.

22 MR GARCIA: I'm most grateful, your Honour.

23 *(Private session at 12.48 p.m.) Reclassified as Open session

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

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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Witness: KEN-OTP-P-0189

1 MR GARCIA:

2 Q. Madam Witness, I'd like to know if you can recall when exactly, on what date,
3 (Redacted) these locations and went and saw these locations. Can you
4 remember that today?

5 A. No.

6 Q. Do you remember the month?

7 A. Yes.

8 Q. What month would it have been?

9 A. It was in January.

10 Q. Are we speaking about January 2008?

11 A. Yes.

12 Q. Now, Madam Witness, I understand that you (Redacted) these locations with
13 (Redacted). Did you ever manage (Redacted)
14 (Redacted)?

15 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, can you rephrase that? The word
16 (Redacted)

17 MR GARCIA: I'm sorry, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 MR GARCIA:

20 Q. Madam Witness, (Redacted)?

21 A. (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 A. No.

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1 Q. Madam Witness, I understand that you went (Redacted) in the month of

2 January 2008. Where were you residing at that point when you (Redacted)?

3 Where were you living?

4 A. (Redacted)

5 Q. (Redacted)?

6 A. (Redacted)

7 Q. Madam Witness, did you (Redacted) afterwards due to the

8 post-election violence?

9 A. Yes.

10 Q. Where exactly did you (Redacted) ?

11 A. (Redacted)

12 Eldoret Showgrounds.

13 Q. (Redacted)

14 A. (Redacted)

15 (Redacted)

16 Q. You also mentioned that you (Redacted)

17 (Redacted) ?

18 A. (Redacted)

19 (Redacted)

20 Q. Can you just tell us, as to the victims, what ethnic groups were they -- did they

21 come from?

22 A. At the showground the people there are mixed, but the majority are the

23 Kikuyus.

24 Q. Now, Madam Witness, while you were -- how much time did you spend

25 (Redacted) - at the IDP camp at Eldoret Showground?

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Witness: KEN-OTP-P-0189

1 A. As long since the day they arrived there 'til the whole of 2008.

2 Q. How was the security at the showground?

3 A. The security was okay.

4 Q. What can you tell us about the conditions of life for the people that were there at
5 the showground, the IDPs?

6 A. Bad.

7 Q. I understand it was bad. Can you just elaborate on that, or explain a little bit,
8 why it was so bad?

9 A. There were no foods. At the moment the people had not yet received the tents,
10 not until later. There was also a problem with water until later the Red Cross came
11 and fixed. It was hard.

12 PRESIDING JUDGE EBOE-OSUJI: Okay. Let's -- Ms Alagendra, I didn't know
13 whether you intended the -- to stop the answer, or something else?

14 MS ALAGENDRA: No, your Honour, that's why I was waiting for Madam Witness
15 to finish.

16 Your Honour, in fact I understand your Honours made a ruling that we will remain
17 in private session until the lunch-time, but in fairness this is an area, your Honour,
18 which the Defence would like to be heard in public. I don't think it will identify the
19 witness in any way.

20 MR GARCIA: I don't see, your Honours, why we should revisit the decision of the
21 Chamber that was taken, and maybe Defence counsel can point out to why exactly it
22 is that they want this to be publicised, this portion?

23 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, the reason for the indication that
24 we stay in private session 'til the lunch -- until the lunch break was in view of the time
25 estimates that Mr Garcia had indicated were -- we will need to be in private session

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1 for. So why don't we just proceed and see. If later on there is something in
2 particular that you want to summarise in the open session, something in particular,
3 you can make that request and we'll see how we attend to it, if we can.

4 MS ALAGENDRA: Very well, your Honour. Thank you.

5 MR GARCIA:

6 Q. Madam Witness, in the time that you were at the Eldoret Showground, do you
7 remember if any politicians visited the showground?

8 A. Yes.

9 Q. Can you please name the politicians, or politician, that visited while you were
10 there?

11 A. Mr Ruto visited.

12 Q. Now, can you tell the Court how Mr Ruto was greeted at the showground?

13 A. Harshly. Harshly.

14 MR GARCIA: I think the word that the witness said is "harshly."

15 Q. Can you give us more details as to why you're saying "harshly"? What
16 happened exactly?

17 A. The people at the showground shouted at him, calling him all sorts of names.

18 Q. What kind of names were they calling him, Madam Witness?

19 A. Murderer.

20 Q. Any other names?

21 A. No.

22 Q. And what was Mr Ruto's reaction to that?

23 A. The security had to intervene and Mr Ruto had to leave the place.

24 Q. Now, Madam Witness, was there anyone else with Mr Ruto on that day when
25 he came to visit?

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1 A. I can't tell.

2 Q. Now, apart from shouting names at him, did the people do anything else to
3 Mr Ruto?

4 A. They tried to throw them -- throw things at him.

5 Q. What were they trying to throw at him?

6 A. They never wanted to see him.

7 Q. You're saying, "They never wanted to see him." Can you tell us why?

8 A. Because, from what they were saying, said he's the main problem to what has
9 gone through.

10 Q. You said, "... he's the main problem to what has gone through." Can you just
11 explain that to the Court? What do you mean that what has -- what do you mean by
12 "... what has gone through"?

13 A. They blamed him for the clashes.

14 Q. Do you remember approximately how much time he spent there before he
15 was -- he had to leave?

16 A. He didn't have so much time there.

17 MR GARCIA: Now, your Honours, I'm sure that the Defence counsel on both sides
18 will stipulate that the Mr Ruto that the witness is speaking about is Mr William Ruto,
19 who is seated here in the courtroom today, and we won't have to put the witness
20 through that exercise, especially Ms Alagendra who's impressed upon the Court at
21 various times that the witness has to be safeguarded from these things.

22 MS ALAGENDRA: Your Honour, I'm not sure that was very appropriate and the
23 insinuation that the witness needs to be safeguarded from Mr Ruto I think is highly
24 improper. I hope your Honours will make some comment about that, your Honour,
25 and I'll address the second part of it.

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1 PRESIDING JUDGE EBOE-OSUJI: Can you proceed with the second part.

2 MS ALAGENDRA: Your Honour, we would prefer that the witness be asked to
3 identify the person that Mr Garcia is speaking about.

4 MR GARCIA: The reason why, your Honour, I was asking if Defence counsel would
5 stipulate to that is that obviously it's the Prosecution desire to protect -- to safeguard
6 the witness from the difficulties and the stress that's probably related to identifying --

7 PRESIDING JUDGE EBOE-OSUJI: All right, let's not push the issue.

8 Can you ask -- do the usual thing, Mr Garcia.

9 MR GARCIA:

10 Q. Madam Witness, you've spoken about a Mr Ruto who was at the showground.
11 Is he in the courtroom here today with us?

12 A. Yes.

13 MS ALAGENDRA: Your Honour, before we move further, I did also indicate, your
14 Honour, that we do take serious objection to conduct of counsel and the way in which
15 he refers to matters that are taking place in this Court, and we do ask your Honour to
16 advise counsel to address matters in the most appropriate and professional manner,
17 your Honour. That's our simple request.

18 PRESIDING JUDGE EBOE-OSUJI: You -- Ms Alagendra, you made that request. I
19 also noticed that we are in closed session -- in private session and also this is a trial
20 of -- being conducted by professional Judges, not a jury. So the prejudice you're
21 talking about -- I do see why you are concerned at the insinuation, we see that, but I
22 don't think it's something we need to labour upon. Let's move on.

23 The witness had said she can identify Mr Ruto and when she said that she was
24 looking in the direction of the Defence area. She leaned over to do that. Please
25 proceed.

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1 MR GARCIA: Yes, your Honour, I'm just wondering if there's a need to ask her to
2 point him out, because she has already indicated that he is in the courtroom and I'm
3 just wondering if Defence counsel --

4 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. Please proceed and let's complete the
5 exercise --

6 MR GARCIA:

7 Q. Madam --

8 PRESIDING JUDGE EBOE-OSUJI: -- without prejudice. Of course, we are mindful
9 that there is a matter that is pending before the Appeals Chamber and whether or not
10 Mr Ruto should be excused from continual presence at trial. We also know that the
11 Defence - the Ruto Defence - had indicated that they will not be making any issue out
12 of identity matters. So I know that right now, yes, the Appeals Chamber says
13 suspension of the -- of that decision of the Trial Chamber.

14 MR GARCIA: It's all right. So --

15 PRESIDING JUDGE EBOE-OSUJI: So on that basis we will proceed.

16 MR GARCIA: I can proceed, your Honour.

17 Q. Just one additional question. Madam Witness, can you please point out

18 Mr Ruto; the Ruto that you saw at the Eldoret Showground on that day? You said
19 he was in the courtroom?

20 A. There he is.

21 MR GARCIA: Now, let the record reflect that the witness has pointed out the
22 Mr William Ruto, accused, sitting behind Mr Khan.

23 MS ALAGENDRA: Your Honour, can I just make one observation?

24 Your Honour, it is correct that there is a matter pending which will relate to this issue,
25 but the reason we insisted, your Honour, is because of my learned friend's very

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1 provocative remarks and what we just saw is that the witness had no problem or

2 discomfort in identifying Mr Ruto. That was the point, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: And, if it makes you feel better, I did detect a

4 flicker of a smile on the witness's face as she was doing that exercise. Now, let's

5 move on please.

6 MR GARCIA: Your Honour, I notice the time. It's 1.04 already. I can tell already

7 the Chamber that I will not have much more to go in the examination of this chief (sic)

8 when we do come back from the lunch-break. I said a day-and-a-half initially. I'm

9 going to pass it by just a little bit.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 Madam, we will be adjourning briefly for our lunch break. "Briefly" doesn't mean

12 ten minutes. You will now have your lunch break. In fact, it will be, I think, an

13 hour-and-a-half of lunch break. We will be returning at 2.30 for you to continue

14 with your testimony. You are still under oath, and do not discuss your testimony

15 with anybody during the lunch break. Thank you.

16 The blinds will come down and the witness will be escorted from the courtroom.

17 *(Closed session at 1.04 p.m.) Reclassified as Open session

18 THE COURT OFFICER: (Interpretation) We're in closed session, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: We will escort the witness out of the courtroom

20 and then we'll rise.

21 (The witness stands down)

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

23 THE COURT OFFICER: All rise.

24 (Recess taken at 1.06 p.m.)

25 (The witness enters the courtroom)

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1 *(Upon resuming in private session at 2.35 p.m.) Reclassified as Open session

2 THE COURT USHER: All rise. Please be seated.

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

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

5 Mr Garcia.

6 MR GARCIA:

7 Q. Good afternoon, Madam Witness. I just have a few questions for you this

8 afternoon. Madam Witness, did you at one (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 (Redacted)

20 A. (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. Madam Witness, I'd like to know, did -- (Redacted)

25 (Redacted)?

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1 A. (Redacted)

2 Q. (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 A. (Redacted)

6 Q. Now, Madam Witness, can you tell the Court exactly what were (Redacted)

7 (Redacted)?

8 A. (Redacted)

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

10 Thank you, your Honours.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. You --

12 MR GARCIA: Just before, your Honour - I'm sorry to interrupt - but there's a PIS
13 document, perhaps that should be given an EVD number as well for her testimony.

14 PRESIDING JUDGE EBOE-OSUJI: Is that EVD number or do we call it something
15 else, court officer?

16 MR GARCIA: I'm not sure, but I think we might have given it an EVD number on
17 the last occasion, or do we -- a PIS number, is that possible? So I'd ask that the same
18 be done with this PIS for this witness.

19 PRESIDING JUDGE EBOE-OSUJI: Yes, please proceed, we'll give it the next PIS
20 number for the Prosecution.

21 THE COURT OFFICER: (Interpretation) Yes, your Honour. This document, the
22 PIS for this particular Witness, 0189, will be given the following reference number:
23 KEN-PIS-0001-0004 and shall be a confidential document. It will be available in the
24 eCourt system for all parties and participants who are present in this courtroom.

25 Thank you.

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- 1 PRESIDING JUDGE EBOE-OSUJI: So would this be called PIS number 4, is that it,
2 the fourth one, for the Prosecution?
3 MR GARCIA: Yes, your Honour.
4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
5 Witness, the -- Judge Fremr has a question or two for you.
6 JUDGE FREMR: Thank you for the floor.
7 Madam Witness, you several times mentioned you (Redacted)
8 (Redacted)
9 (Redacted)?
10 THE WITNESS: (Redacted)
11 JUDGE FREMR: (Redacted)?
12 THE WITNESS: Can you repeat the question, please.
13 JUDGE FREMR: (Redacted)
14 (Redacted)
15 THE WITNESS: (Redacted)
16 (Redacted)
17 JUDGE FREMR: (Redacted)
18 (Redacted)?
19 THE WITNESS: (Redacted)
20 JUDGE FREMR: Thank you very much, Witness.
21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
22 (Redacted)?
23 THE WITNESS: (Redacted)
24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 THE WITNESS: (Redacted)

6 (Redacted)

7 PRESIDING JUDGE EBOE-OSUJI: (Redacted)?

8 THE WITNESS: (Redacted).

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR KHAN: And, Mr President, before cross-examination, just for the record, we're
11 joined this afternoon by Mr Essa Faal and also, at the back of the courtroom, a pro
12 bono legal assistant Brooke Stedman. So, your Honour, I just wanted the Court to
13 reflect their presence. I'm most grateful.

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

15 Ms Alagendra, I take it you're now ready to start your cross-examination?

16 MS ALAGENDRA: I am, your Honour, perhaps after the legal representative says
17 something.

18 PRESIDING JUDGE EBOE-OSUJI: Please.

19 MR NARANTSETSEG: Before the Defence commence their cross-examination, may
20 I address the Court briefly?

21 Mr President, your Honours, yesterday morning you have asked whether we are
22 interested in this witness on the stand. I have consulted with Mr Nderitu, the
23 Common Legal Representative, and he instructed me to make a few submissions on
24 the matter.

25 I would begin by making some general remarks and at the end I will address the

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1 specific question you have asked.

2 PRESIDING JUDGE EBOE-OSUJI: I don't want to cut you short. What I -- when I
3 say "interested," it was not a general question. It was a matter of whether you would
4 be asking the witness questions from the perspective of registered victim, and that
5 can be answered simply without general remarks.

6 MR NARANTSETSEG: Yes. We do understand that, your Honour, but we would
7 also like to take this opportunity to make some general requests which will relate to
8 also other witnesses who would be coming to testify so that we would avoid the need
9 of repeating ourselves for the next occasions, if there is need be.

10 PRESIDING JUDGE EBOE-OSUJI: How long will these general remarks take?

11 MR NARANTSETSEG: It will not take more than two minutes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Okay, go on then.

13 MR NARANTSETSEG: Mr President, your Honours. Firstly, the Common Legal
14 Representative wishes to recall that he had been planned to question himself all the
15 dual-status witnesses himself. That's why he asked previously from the Honourable
16 Chamber a ruling on the interpretation of the word or terminology "critical junctures"
17 you have used in your decision on the victim participation and representation in
18 order to allow -- this was in order to allow the Common Legal Representative to
19 question those dual-status witnesses himself. However, due to the unforeseen
20 change of circumstances in this case, a number of dual-status witnesses have
21 withdrawn. So, according to our records, there only remain three dual-status
22 witnesses in the Prosecution's list of witnesses. So this change of circumstances
23 compelled the Common Legal Representative to re-evaluate his trial strategy.
24 Secondly, in our working method, when the Common Legal Representative wishes to
25 examine certain witnesses, whether dual or non-dual-status witnesses, he prefers to

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1 be able to meet those witnesses in question and conduct an interview prior meeting
2 them in the courtroom so that -- and complete the necessary disclosure procedures
3 and et cetera.

4 Thirdly, according to your decision on the victim participation and representation, the
5 Common Legal Representative is also allowed to call witnesses on his own and
6 present evidence. After the Prosecution case, if the Common Legal Representative
7 considers it necessary, he is required to submit a written -- discrete written
8 application for presentation of evidence that is relevant to the personal interests of the
9 victims, that may also contribute to the determination of the truth. That's why,
10 therefore, the Common Legal Representative is therefore planning to take that
11 opportunity to call fresh witnesses, in order to gather evidence for his purposes.
12 So, if your Honours are minded to grant his application to that effect in the future,
13 following the appropriate procedures, the Common Legal Representative will have
14 conducted the necessary interviews with those witnesses prior to their testimony and
15 would have completed the necessary disclosure procedures.

16 So, lastly, as to this witness on the stand, the Common Legal Representative believes
17 that his team is not on a position to effectively examine her since this witness is not a
18 dual-status witness, but the Common Legal Representative is also aware of the fact
19 that she did suffer personally, she did -- she is a de facto witness. So as victims'
20 lawyer, we do acknowledge that. However, according to our records, this witness
21 unfortunately didn't file an application for participation or have registered as a
22 victim.

23 In addition, according to the current narrow temporal scope of the document
24 containing the charges, she falls outside of the temporal scope as a victim. Therefore,
25 the common Legal Representative considers that he doesn't have an official mandate

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1 to represent her as a victim or examine her about the personal harms she has suffered.

2 But at the same token, we would like to make it clear that by making these

3 submissions the Common Legal Representative is not ruling out the possibilities in

4 the future where he might wish to make proper applications and question

5 non-dual-status witnesses as well. So if the Common Legal Representative is

6 required to do so, he will inform the Chamber in due course.

7 That concludes our submission, your Honour. Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: Your point is that she's not a dual-status

9 victim/witness and you're not going to ask her questions?

10 MR NARANTSETSEG: That would be the correct summary.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Next time let's stick

12 with that sort of answer to questions asked. Thank you.

13 Ms Alagendra, you're ready to start?

14 MS ALAGENDRA: I am, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: In open or in closed?

16 MS ALAGENDRA: In open, please, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: How long do you anticipate the -- your

18 cross-examination of this witness to take? When I say "anticipate," you have to give

19 me accurate estimate this time so we can plan.

20 MS ALAGENDRA: In all possibility 'til tomorrow afternoon.

21 PRESIDING JUDGE EBOE-OSUJI: Okay. I will hold you to it.

22 Let us then go to the public -- the open session.

23 (Open session at 2.51 p.m.)

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

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

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Ms Alagendra, please proceed.

2 MS ALAGENDRA: Thank you, your Honours, and good afternoon.

3 QUESTIONED BY MS ALAGENDRA:

4 Q. Good afternoon, madam. I hope you had a good lunch.

5 PRESIDING JUDGE EBOE-OSUJI: Let me explain something I should have told the
6 witness before you started.

7 Madam, Ms Alagendra is counsel. As we introduced her earlier on when -- the first
8 time you were in court, she is a lawyer for Mr Ruto. She will be asking you
9 questions about what you have testified to and possibly other things. You are still
10 under oath.

11 The earlier advice I gave you still remains. Please listen carefully, try to understand
12 what it is she is asking you and, if you are in a position to answer her question, then
13 answer it. If you don't understand, you can ask her -- tell her you don't understand
14 and she will ask again. At all times we are interested in only what you know, what
15 you saw, what you heard, what you felt, things like that, all right?

16 We're now in public session. Again, be careful what answers you give. We
17 don't -- we do not want to reveal your identity to the public. Thank you.

18 Ms Alagendra, please. Sorry about that.

19 MS ALAGENDRA: Thank you, your Honours.

20 Q. Madam Witness, this afternoon what I would like to discuss with you would be
21 the issues whereby the Court will have a good understanding as to exactly what took
22 place on the ground in 2007 and 2008. Is that okay? Madam, can I ask that if you
23 want to say "Yes" for you to say it into the microphone, please, because when you nod
24 your answers are not captured.

25 A. Yeah.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. Madam, am I right that you have lived in the North Rift Valley for more than 20
2 years?

3 A. Yes.

4 Q. And am I right, madam, that you went to school and you've worked there?

5 A. Yes.

6 Q. In the course of your life, you've mixed with people from all ethnicities; am I
7 right?

8 A. Yes.

9 Q. Madam, you've also been very involved in politics. That's correct, isn't it?

10 A. Yes.

11 Q. In the 2007 elections, you were supporting and campaigning for the PNU and
12 for Mwai Kibaki for president; that's correct?

13 A. Yes.

14 Q. What about the last elections, madam? Who were you supporting?

15 A. I did not participate.

16 Q. Did you have a candidate of choice?

17 A. No.

18 Q. Madam, I'm going now to 2007. You will agree with me, won't you, that it was
19 one of the most closely contested elections in your living memory; am I right?

20 A. Yes.

21 Q. And you will recall that, in the lead-up to the elections, there was a lot of
22 suspicion that the presidential elections was going to be rigged in favour of the PNU
23 and Mwai Kibaki. Do you recall that?

24 A. Yes.

25 Q. And, madam, for instance you will recall, perhaps immediately before the

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 elections, where there was an incident when a few administration police officers were
2 killed in Nyanza province because it had been alleged that they were carrying
3 pre-marked ballot papers and that they were going to rig the election in favour of
4 Mwai Kibaki and the PNU. Do you recall that incident, madam?

5 A. No.

6 Q. Okay. Madam, I'm going to play you a short video and I'd like you to watch
7 that video and tell the Court if you recall seeing that at any time. Is that okay?

8 A. Yes.

9 MS ALAGENDRA: Your Honours, could I ask that KEN-D02-0022-0002 be played
10 and I request that it be played until 37 seconds?

11 PRESIDING JUDGE EBOE-OSUJI: Court officer, please oblige.

12 (Viewing of video excerpt KEN-D02-0022-0002)

13 MS ALAGENDRA:

14 Q. Madam, did you watch that video?

15 A. No.

16 PRESIDING JUDGE EBOE-OSUJI: Do you mean watch it now?

17 MS ALAGENDRA: Yes, I did, your Honour.

18 Q. Madam, the video I just played for you, did you listen to what was being said
19 by the newsreader?

20 A. Yes.

21 Q. And do you recall that incident at the time it happened?

22 A. No.

23 Q. Moving forward, madam, yesterday when you were testifying you spoke about
24 an incident at the Brookside Dairy. Do you remember?

25 A. Yes.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. And you told the Court that that incident was all about some rumours and
2 allegations that there were ballot boxes with marked ballot papers that were being
3 hidden inside Brookside Dairy. Do you remember that?

4 A. Yes.

5 Q. And the suspicion --

6 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you remember the pauses that
7 need to be observed, but before that there is a matter for the record. At about line 8,
8 when I had intervened and asked whether you mean watch it now and then you
9 asked the question, "Madam, the video I just played for you, did you listen to what
10 was said by the newsreader?", the witness did answer. She said "Yes" to that
11 question, it doesn't appear and then you asked your next question, "Do you recall that
12 incident at the time it happened?" It is there that she said, "No." So there is a "Yes"
13 missing in-between the two questions you posed between lines 10 and 12.

14 MS ALAGENDRA: Indeed, your Honour, and it's probably my fault because I must
15 have been speaking over the witness. So if your Honour pleases I can put it again,
16 or --

17 PRESIDING JUDGE EBOE-OSUJI: Well --

18 MS ALAGENDRA: -- I accept that what she did say was "Yes."

19 PRESIDING JUDGE EBOE-OSUJI: Yes, I think we can leave it at that. I've already
20 reflected it on the record and we all agree that that's what happened. It's just for us
21 to just remember our pauses. At least -- I think five seconds might be too much.
22 Two is good enough, but the point is if we have our minds to five seconds it makes it
23 necessary to observe some pause at all than none -- than none.

24 So please proceed.

25 MS ALAGENDRA:

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. Madam, I was asking you about what you told the Court yesterday, that there
2 was an incident at the Brookside Dairy where there were allegations that there were
3 pre-marked ballot papers being hidden inside and that it was being done in order to
4 rig the elections in favour of PNU and Mwai Kibaki. Do you recall that?

5 A. Yes.

6 Q. Now, madam, after you voted on 27 December, you said you went to number 1
7 and you spent the rest of the day 28, 29, 30, including the 27th, and you were
8 following the tallying of the presidential results on the television. You recall saying
9 that, madam?

10 A. Yes.

11 Q. And, madam, you will agree with me, wouldn't you, that there was a delay in
12 the announcement of the results of the presidential elections, wasn't there?

13 A. Yes, there was a delay.

14 Q. And you will also agree with me that Kenyans were getting very anxious?
15 They wanted to know who the next president of Kenya was going to be?

16 A. Yes.

17 Q. And, madam, do you recall, while you were following these events on the TV,
18 the comments by the ECK Chairman, Samuel Kivuitu, when he was commenting
19 about the delays in the results coming in, and his comments were, "What kind of
20 cooking is going on?"? Do you remember hearing that?

21 A. Yes.

22 Q. And, madam, do you also recall that the ECK Chairman, on that same occasion
23 when he said, "What kind of cooking is going on?", referring to the delays, he also
24 said, "If people were coming with false results, they will never see the sun again"?
25 Do you recall hearing him say that, madam?

Trial Hearing
Witness: KEN-OTP-P-0189

(Open Session)

ICC-01/09-01/11

1 A. No.

2 Q. Madam, I'm going to play you another very short video and I'd ask you to
3 watch it and to listen to what is being said. Is that okay?

4 A. Okay.

5 MS ALAGENDRA: Your Honour, can I ask that KEN-D09-0019-0003 be played,
6 please, and it can be played until minutes 1.37 seconds?

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

8 THE COURT OFFICER: (Interpretation) Mr President, could counsel indicate
9 whether the video is confidential or public and could this video be played now?

10 MS ALAGENDRA: It can all be public, your Honour. It can all be public.

11 PRESIDING JUDGE EBOE-OSUJI: It can be played in the public, says counsel.

12 (Viewing of video excerpt KEN-D09-0019-0003)

13 MS ALAGENDRA:

14 Q. Madam, do you recall watching that on TV at the time?

15 A. No.

16 Q. Madam, do you recall that even the international election observers noted that
17 tension was rising across the country because of the delays in the announcement of
18 the presidential election results? Do you --

19 A. Yes.

20 Q. Now, madam, I'm going to play you another short video and I'm going to ask
21 you to recall whether or not you saw this on the TV. Okay?

22 A. Okay.

23 MS ALAGENDRA: Your Honour, could I ask that KEN-D09-0019-0138 be played,
24 please, and the whole video can be played for that.

25 PRESIDING JUDGE EBOE-OSUJI: How long is that?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 MS ALAGENDRA: It's a short video, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Right.

3 Okay, court officer, please play it.

4 While the video is being loaded, by tomorrow can both sides advise of the
5 recommendation earlier, that parties play their own videos, so we can, if possible,
6 start doing that from tomorrow rather than wait for a long time.

7 MR GARCIA: Yes, indeed, your Honours. We'll consult with the court officers
8 after this hearing.

9 (Viewing of video excerpt KEN-D09-0019-0138)

10 MS ALAGENDRA:

11 Q. Madam Witness, were you able to watch that video clearly?

12 A. Yes.

13 Q. Now, madam, what you saw there, you saw scenes of excited youth running
14 around. Did you see that?

15 A. Yes.

16 Q. And, madam, you will agree that the delay in the results was leading to mistrust
17 and was adding to tensions rising; am I right?

18 A. Yes.

19 Q. Now, madam, moving forward to 29 December, you will recall that the TV
20 channels around the country aired the chaotic scenes at the KICC national tallying
21 centre; you recall that, madam?

22 A. Yes.

23 Q. And finally, madam, on 30 December, at around 5 p.m., the results of the
24 presidential elections were announced and President Mwai Kibaki was declared the
25 winner; do you recall?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 A. Yes.

2 Q. And, madam, very soon after the results were announced, it was shown on
3 television the ECK Chairman being whisked away from the KICC. Do you recall
4 seeing that, madam?

5 A. Yes.

6 Q. And am I right, madam, that the next thing that happened was, within one hour,
7 what all Kenyans were watching on their TV screens was the swearing-in ceremony
8 of President Mwai Kibaki at the State House; am I right?

9 A. Yes.

10 Q. It all happened very fast; am I right, madam?

11 A. Yes.

12 Q. And it all happened amid allegations that the elections had been rigged; am I
13 right?

14 A. Yes.

15 Q. And, madam, you will also recall that the swearing-in ceremony in fact took
16 place at twilight, it was almost getting dark, wasn't it, madam?

17 A. Yes.

18 Q. Madam, I'm going to play you another short video and I would ask you to
19 please pay attention to what is being said at the very beginning of the video. Is that
20 all right?

21 A. Yes.

22 MS ALAGENDRA: Your Honours, can I ask that KEN-D09-0019-0002 be played and
23 for it to be paused at 13 seconds?

24 PRESIDING JUDGE EBOE-OSUJI: Court officer, please play the video and pause it
25 at 13 seconds.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Ms Alagendra, while you're raising those questions, will we at some point be hearing
2 evidence - either through this witness or through some other witnesses - of how long
3 it took in the past to announce election results, how long it would be in the past -- it
4 took in the past between announcement and results -- of results and swearing-in of
5 the winner, as well as what hour of day it would take, or it did take, rather, to -- for
6 the swearing-in ceremony.

7 MS ALAGENDRA: Your Honour, indeed the Defence will be calling evidence of all
8 those issues, and additionally, your Honour, if I may, I think the next video may
9 answer some of these questions, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

11 MS ALAGENDRA: And, your Honour, just for the assistance -- I'm sorry. The
12 transcript of this video is at tab 6, your Honour, and for the Prosecution, it's

13 KEN-D09-0022-0043.

14 (Viewing of video excerpt KEN-D09-0019-0002)

15 MS ALAGENDRA:

16 Q. Madam, I just want to ask you a few questions while we are paused here.

17 Is -- did you hear the start of this video, madam, the voice of Ambassador Mutharu,
18 saying, "Ambassadors, it's getting dark"? Did you hear that?

19 A. Yes.

20 Q. Also, madam, if you look at the screen do you see: "Breaking news: Riots
21 erupt in Kibera, Ongata Rongai, Eastlands and Kisumu"? Do you see that, madam?

22 A. Yes.

23 Q. So you will agree with me, madam, that as the swearing-in ceremony of
24 Mwai Kibaki was going on in the State House, chaos was taking place in other areas;
25 you will agree?

Trial Hearing
Witness: KEN-OTP-P-0189

(Open Session)

ICC-01/09-01/11

1 A. Yes.

2 MS ALAGENDRA: Can I ask that we continue playing until 22 seconds, please?

3 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, what date is this video? What
4 date is the swearing-in, do we know?

5 MS ALAGENDRA: This is 30 December, which is the day Mwai Kibaki was sworn
6 in.

7 (Viewing of video excerpt KEN-D09-0019-0002)

8 MS ALAGENDRA:

9 Q. Madam, can you read on your screen: "Breaking news: 10 people killed in
10 Kisii"?

11 A. Yes, "Breaking news: 10 people killed in Kisii."

12 Q. Thank you, madam.

13 MS ALAGENDRA: You can continue playing, please, until 3 minutes and 28.

14 (Viewing of video excerpt KEN-D09-0019-0002)

15 MS ALAGENDRA:

16 Q. Madam, were you able to have a good look at what was happening on the
17 video?

18 A. Yes.

19 Q. And you will agree with me that it was the swearing-in ceremony of President
20 Mwai Kibaki?

21 A. Yes.

22 Q. And, madam, will you agree with me that the ceremony was rather informal?

23 A. Yes.

24 Q. And you will agree with me that even the ECK chairman is saying he's not sure
25 of the procedure, it was that informal; you agree, madam?

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 A. Yes.

2 Q. Madam, do you recall that immediately after the swearing-in, or quite close in
3 time, the Minister for Internal Security, Honourable John Michuki, he imposed an
4 immediate ban on live broadcast? Do you recall that, madam, it was on the same
5 day?

6 A. Yes.

7 Q. And am I right, madam, screens went blank? That's what happened, yes?

8 A. Yes.

9 Q. And, madam, just to borrow your own phrase, at this point there was a lot of
10 rumour and speculation that was going on -- going around, rather, about events that
11 were taking place; am I right?

12 A. Yes.

13 Q. Now, madam, do you remember hearing a rumour at this time that
14 Raila Odinga and William Ruto had been arrested and William Ruto had been shot?
15 Did you hear this rumour going around at this time?

16 A. Yes, I did.

17 Q. And, madam, you will recall that this decision of the Minister of Internal
18 Security, John Michuki, it was condemned by the media association, wasn't it?

19 A. Yes.

20 Q. And, madam, I'm going to play you another short video and you can tell me
21 whether or not you have any knowledge of what is being said on that video. Okay?

22 A. Yes.

23 MS ALAGENDRA: Your Honours, can I ask that we play KEN-D09-0022-0011 until
24 2 minutes and 21, please?

25 PRESIDING JUDGE EBOE-OSUJI: It will be played.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Court officer, please proceed.

2 MS ALAGENDRA:

3 Q. And, madam, while we're getting ready, can I also say that you're very free to
4 have a glass of water, if you would like?

5 (Viewing of video excerpt KEN-D09-0022-0011)

6 MS ALAGENDRA:

7 Q. Madam, you were able to watch the video and hear what was being said?

8 A. Yes.

9 Q. And, madam, it is true, is it not, that the media ban was increasing tensions and
10 it was creating a situation where the leaders could not reach the people to tell them to
11 calm down; that is correct, isn't it?

12 A. Yes.

13 Q. And, madam, it is also correct that the international organisations were also
14 criticising the media ban and they were warning about the looming dangers that was
15 going to happen if it continued. Do you recall that?

16 A. Yes.

17 Q. And, madam, I'm going to read you something. Please just listen to me and
18 tell me if you agree. Okay?

19 A. Okay.

20 MS ALAGENDRA: Your Honour, I'm referring to the document at tab 5 and that is
21 KEN-D09-0022-0010.

22 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, as you know, during the last
23 exercise I did signal some discomfort with the habit of having documents like this
24 read to witnesses and then we have to sit and go through it. There needs certainly
25 be a better way of doing it so as to make things more efficient. We wouldn't want a

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 situation where every witness has to sit down and counsel will have to put all sorts of
2 documents picked off the internet to witnesses who do not have connections to it.

3 Have we thought about a better way of doing this?

4 MS ALAGENDRA: In fact, your Honour, what I was proposing to do is to read a
5 section to the witness and to ask her if she recalls hearing this on any international
6 media, because she did say that she recalls hearing the international media also
7 issuing a similar warning as the media association chairman.

8 PRESIDING JUDGE EBOE-OSUJI: Is that inconsistent with -- if you put that to her
9 first and then see how she reacts. If she doesn't give you what you want, then we
10 may consider looking at something else, even if that is appropriate. But let's first put
11 the question.

12 MS ALAGENDRA:

13 Q. Madam, do you recall hearing that the international community was also
14 criticising the media ban, and in fact they were saying that such a ban would result in
15 streets being ruled by rumour and disinformation, and they also suggested that it was
16 imposing a climate of intimidation and it may plunge the country into confusion?
17 Do you recall that that was the view being held by the international community?

18 A. No.

19 MS ALAGENDRA: Your Honour, perhaps I'll just leave the issue of this document
20 and we'll deal with it later, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Very well. I think that's the way to proceed if
22 she hasn't heard it. It doesn't mean you cannot prove the proposition through
23 somebody else who's heard it.

24 MS ALAGENDRA: I stand guided, your Honour.

25 Q. Madam, you are aware, are you not, that on 31 December the European Union

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 observers came out on public television and they doubted the credibility of the results
2 that declared Mwai Kibaki as the winner of the 2007 elections? Do you recall that?

3 A. No.

4 Q. Madam, I'm going to play you another short video and I'd ask you to listen to
5 what is being said. Is that okay?

6 MS ALAGENDRA: Your Honour, I'll ask that KEN-D09-0022-0012 be played,
7 please.

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

9 (Viewing of video excerpt KEN-D09-0022-0011)

10 MS ALAGENDRA:

11 Q. Madam, am I correct that effectively what the EU observers and the others you
12 saw on the video were doing was providing support to the views of the ODM
13 supporters that the elections had been rigged? Would you agree?

14 MR GARCIA: Your Honours, I'm going to object to the question and to the
15 procedure that Defence counsel has taken with these types of documents and
16 propositions. I understand that the proposition has already been put to the witness
17 in regards to what knowledge she had on this subject matter and the witness has
18 already responded in a clear manner.

19 Now, the evidence that we're putting to the witness is evidence that should be led by
20 Defence counsel in their case. We don't have any evidence as to the authenticity of
21 these videos, as to the date at which they were taken, so it puts Defence counsel in a
22 position, when they're purporting something to the witness and the rest of
23 us - Prosecution and the Chamber - have no evidence as to the authenticity, the date
24 at which time this was taken, and other factors that are important, and that's why the
25 Prosecution's case should not be used as a means to put in the Defence videos and

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 other documents that should be more appropriately be led in the Defence case and
2 not in the Prosecution's case. So, once again, once the proposition is put to the
3 witness and the witness says clearly that she has no information on the matter, I don't
4 see what the point is of putting a video or having Defence counsel read a newspaper
5 article to the witness.

6 MS ALAGENDRA: Your Honour, I must say I'm not quite following my learned
7 friend's objection because from what I'm hearing from the witness, she said she was
8 familiar with what was being said by all these people, your Honour, and what is even
9 more worrying, your Honour, is the fact that the Prosecution are saying that they
10 have no evidence of all these matters which is very widely in the public domain, and
11 these are snippets from news rooms, your Honour, which is very easily available and
12 can be easily confirmed. And my questions are quite valid, your Honour, because
13 the witness did say she was watching the TV for three days.

14 (Trial Chamber confers)

15 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, the -- again, this is not your fault
16 because we started on this basis earlier, allowing things to come in. So then it's time
17 to start putting brakes on what comes in.

18 There are two things. If the witness has said she did not recall hearing what the EU
19 have said, you play the video, you can ask her if that refreshes her memory; that's one
20 thing. If she still -- if the memory is not refreshed, I believe you can also put the
21 other proposition to her about the ODM views, without linking it to the video. So
22 that's an independent proposition. See whether she agrees with what ODM people
23 are saying. And later on, if you have witnesses to call to this thing, to do that. So
24 why don't we see if the video refreshed memory and then see where we go from
25 there?

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 MS ALAGENDRA: I'm grateful, your Honour. I believe the witness did say that
2 she recalled those events, and perhaps I can move forward and take what your
3 Honour said in guidance and put the questions to her.

4 Q. Madam Witness, do you recall that around the time that the EU observers were
5 saying that the elections were not fairly conducted, that the ODM was also
6 complaining that the elections had been rigged? Do you recall that, madam?

7 A. Yes.

8 MS ALAGENDRA: Your Honours, I'm just going to move forward. I think the
9 record will be quite clear.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MS ALAGENDRA:

12 Q. Madam, now moving forward, I recall that during your testimony you spoke
13 about seeing five Kalenjin bodies. Do you recall that?

14 A. Yes.

15 Q. And I note, madam, that my learned friend, the Prosecutor, dealt with that issue
16 very, very quickly, but we would like to ask you some questions about that, okay?

17 A. Okay.

18 Q. Now, madam, am I correct that one of the bodies that you recognised was that
19 of a famous athlete?

20 A. Yes.

21 Q. And do you remember his name, madam?

22 A. No.

23 Q. Could it have been Lucas Sang?

24 A. I don't know his name.

25 Q. Have you heard of anyone by the name of Lucas Sang?

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 A. No.

2 Q. Madam, what I'm saying to you is that on that day there was a famous athlete
3 that was killed and his name was Lucas Sang. Do you have knowledge about that?

4 A. Yes.

5 Q. So you have knowledge that Lucas Sang was killed, yes?

6 A. I couldn't tell his name. All I knew, I knew there was an athlete was killed.

7 Q. Now, madam, you said you saw the body of this famous athlete. Can you
8 describe for the Court, please, what you saw? In what condition was his body?

9 A. The bodies were burnt.

10 Q. Did you notice anything else about his body?

11 A. No.

12 Q. Isn't it true, madam, that the body that you saw had multiple machete wounds?
13 Panga cuts?

14 A. Yes, they had.

15 Q. And it was all over his body. Do you recall that?

16 A. Yes.

17 Q. And do you recall, madam, that there was a famous athlete who was living in
18 Munyaka?

19 A. That one I can't tell you.

20 Q. Do you know anything about an athlete who was living in Munyaka who had
21 won -- not won, who had run in the Olympics in Korea?

22 A. No.

23 PRESIDING JUDGE EBOE-OSUJI: All right. A record check. At line 20 the
24 answer reported is, "That one I can tell." Was that what we heard, or did we hear

25 "That one I cannot tell," or "I can't tell"?

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 MS ALAGENDRA: Your Honour, what I heard was that "I cannot tell".

2 PRESIDING JUDGE EBOE-OSUJI: And then the witness shook her head when she
3 said that also.

4 Madam, let's ask you this question again. The lawyer had asked you the question
5 whether there was a famous athlete who was living in Munyaka. We want to know
6 whether you said, yes, you could tell that there was a famous athlete living in
7 Munyaka, or that, no, you could not tell. What was your answer?

8 THE WITNESS: No, I could not tell.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 Proceed.

11 MS ALAGENDRA:

12 Q. Madam, how do you know that the body that you saw was of a famous athlete?

13 (Redacted)

14 (Redacted)

15 Q. What did he tell you about this?

16 PRESIDING JUDGE EBOE-OSUJI: Okay, let's hold on here.

17 Ms Alagendra, did you say you would finish this today, the examination in -- or did
18 you say tomorrow?

19 MS ALAGENDRA: Tomorrow, please, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Tomorrow.

21 All right, let's go into private session for a minute or two to deal with something.

22 *(Private session at 3.48 p.m.) Reclassified as Open session

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

24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 (Redacted)

2 Now, Ms Alagendra, do you wish to press this any further so we can do that quickly
3 in closed session and then move out?

4 MS ALAGENDRA: Your Honour, just maybe one or two questions about that.

5 PRESIDING JUDGE EBOE-OSUJI: Okay.

6 MS ALAGENDRA:

7 Q. Madam Witness, what (Redacted) famous athlete?

8 What did he say about him?

9 A. He said the athlete was shooting at the Kikuyus and, when he ran out of bullets,
10 they held him and they started attacking him.

11 Q. Meaning the Kikuyus held him and started attacking him; is that right?

12 A. Yes.

13 Q. Did he say anything else, madam?

14 A. No.

15 Q. Am I correct, madam, that in fact (Redacted) told you that these Kalenjins that
16 you saw killed, including the famous athlete, that they burnt maize crops on them as
17 symbolic revenge for the burning of houses? Is that correct that he told you that?

18 A. Yes.

19 MS ALAGENDRA: Your Honour, I think we can go back into the open session now.

20 PRESIDING JUDGE EBOE-OSUJI: We'll go back into the open session.

21 (Open session at 3.50 p.m.)

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Ms Alagendra, please proceed. We have -- you have ten more minutes left for the
25 day.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 MS ALAGENDRA:

2 Q. Madam, am I right that the killing of this famous athlete inflamed tensions
3 around the area?

4 A. Yes.

5 Q. And am I right, madam, that there were some athletes who said in essence that,
6 "For one Lucas, we want to kill a dozen people?" Did you hear those views being
7 expressed at the time?

8 A. No.

9 Q. Madam, moving forward, I want to talk about what you may have seen in
10 Langas. Now, you told the Court that in Langas you saw heads that were chopped
11 and planted on a stick. Do you remember that?

12 A. Yes.

13 Q. And do you remember when that incident took place, madam?

14 A. No.

15 Q. And, madam, the place where you saw the heads on sticks in Langas, it was a
16 place called Kisumu Ndogo; am I right?

17 A. Yes.

18 Q. And from your knowledge of the area, madam, can you explain to the Court
19 what it means when a place is referred to as "Kisumu Ndogo"?

20 PRESIDING JUDGE EBOE-OSUJI: One second. Can we go into private session for
21 a minute.

22 *(Private session at 3.53 p.m.) Reclassified as Open session

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

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

25 Madam, you can now answer the question.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 THE WITNESS: Kisumu Ndogo is a Luo majority people.

2 MS ALAGENDRA:

3 Q. So am I right, madam, there are several areas around the country which are
4 referred to as "Kisumu Ndogo" because the Luos live in that area in the majority?

5 A. Yes.

6 PRESIDING JUDGE EBOE-OSUJI: We can go back in the open session.

7 And, Ms Alagenda, you can summarise the answer. The reason I went in is I didn't
8 know what might come out from the answer.

9 MS ALAGENDRA: I understand, your Honour.

10 (Open session at 3.54 p.m.)

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

12 MS ALAGENDRA:

13 Q. Madam, just to summarise --

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MS ALAGENDRA: Your Honour, shall I do the quick summary?

16 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

17 MS ALAGENDRA:

18 Q. Madam, just to summarise what we discussed in the brief private session, it was
19 that you told the Court that the area was called Kisumu Ndogo because it was a place
20 where the Luos are in the majority and this is the case across the country. There are
21 several places by the name Kisumu Ndogo, because the Luos are in the majority.

22 Was that a correct summary?

23 A. Yes.

24 Q. Madam, do you recall how many heads you saw displayed on sticks?

25 A. One, but I saw others on the ground.

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. When you say "others," you mean there were other heads on the ground, isn't it,
2 madam?

3 A. Yes.

4 Q. Madam, am I correct it was a terrifying scene?

5 A. Yes.

6 Q. And something I'm sure you will not easily forget, isn't it, madam?

7 A. Yes.

8 Q. Madam, is it also correct that it is believed that the people who killed those Luos,
9 beheaded them and displayed their heads were in fact youth who belonged to the
10 Mungiki sect? Wasn't that the allegation, madam?

11 A. I can't say they were Mungiki, but I can say they were Kikuyu youths.

12 Q. Madam, will you agree with me that in Kenya the beheading and displaying of
13 heads is an act which is associated to Mungiki youth? That is the perception in
14 Kenya, isn't it, madam?

15 A. Yes.

16 Q. Madam, while we're on the issue of Mungiki, there were also rumours going
17 around, was there not, at the time of the violence, that the Mungiki were coming in to
18 take part in the battles?

19 A. Yes.

20 Q. And am I right, madam, that in fact members of the Mungiki were involved in
21 the violence that took place in the area?

22 A. I've never encountered a Mungiki, so I can't -- I cannot tell it is Mungiki.

23 Q. But is it possible that they would have been in the vicinity and taking part in the
24 battles?

25 A. It's hard.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 Q. Madam, is it also not true --

2 PRESIDING JUDGE EBOE-OSUJI: One second.

3 Madam, when you say "It's hard," do you mean it's hard to answer the question, or

4 what are you saying "It's hard" to when you said "It's hard"?

5 THE WITNESS: It's difficult to answer the question.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 MS ALAGENDRA:

8 Q. Madam, am I correct that the heads that were lying around and on the stick that

9 you saw, they all belonged to Luos?

10 A. Yes.

11 Q. And, madam, did you ever come to understand why this was done? Why

12 were people beheaded and their heads displayed?

13 A. No.

14 MS ALAGENDRA: Your Honour, could I go into private session for just one second,

15 your Honour, just one question?

16 PRESIDING JUDGE EBOE-OSUJI: It will be more than one second, but we will go

17 into private session.

18 *(Private session at 3.58 p.m.) Reclassified as Open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

21 MS ALAGENDRA:

22 Q. Madam, if I said to you that the North Rift co-ordinator for the Mungiki says

23 that the reason these Luos were beheaded and their heads displayed was because

24 they wanted to instill fear so that the Kikuyus will not be attacked, what would you

25 say to that, Madam?

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 A. I cannot recall of that.

2 Q. You may not have heard that, but do you have anything to say about what this
3 man says, that the reason these heads were displayed was to instill fear against
4 anyone who wanted to attack the Kikuyus?

5 A. No.

6 MS ALAGENDRA: Your Honour, we can go back to open session.

7 PRESIDING JUDGE EBOE-OSUJI: We'll go back into the public session, but I don't
8 know why we had to go into private, but I will not ask you why.

9 (Open session at 4.00 p.m.)

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

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, tell me how many more questions
12 you have for us to close for the day.

13 MS ALAGENDRA: Your Honour, with two more questions I think I'll also close this
14 topic, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Okay, please proceed.

16 MS ALAGENDRA:

17 Q. Madam, did you hear during this period of the violence that it was being said
18 that the OCS of Langas police station, a Mr Mwangi, is alleged to have personally
19 killed around 23 people? Did you hear that?

20 A. No.

21 Q. And did you hear that this OCS Langas, Mr Mwangi, is alleged to have killed
22 people who were Kalenjins and Luos? Did you hear that?

23 A. No.

24 Q. Madam, did you hear that police shooting of people from the Kalenjin and Luo
25 communities was increasing the tension in the area? Did you hear that?

Trial Hearing

(Private Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 A. Yeah.

2 Q. And, madam, just for the record, am I right Mr Mwangi is a Kikuyu?

3 A. Yes, he is.

4 Q. And he was the OCS at Langas police station, am I right, madam?

5 A. I don't know about that, because I never lived there. MS ALAGENDRA:

6 Thank you, madam.

7 Your Honour, I think this would be the right time to stop.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you. Again, to check with you, you will

9 be by your own estimation ending when?

10 MS ALAGENDRA: Your Honour, could you allow me just probably ten/15 minutes

11 after lunch, your Honour?

12 PRESIDING JUDGE EBOE-OSUJI: Okay, thank you.

13 MS ALAGENDRA: And, your Honour, just one more matter is if you would allow

14 me, your Honour, to go through admission of the videos probably tomorrow, if that is

15 all right?

16 (Trial Chamber confers)

17 PRESIDING JUDGE EBOE-OSUJI: All right. We will -- let's try and wrap it up

18 today before -- so we have that angle tied up. We will bring down the blinds and let

19 the witness out of the courtroom.

20 Madam, we will let you -- leave you for today and then you will come back tomorrow

21 to continue your -- to continue answering the questions. You're still under oath and

22 you're still in the witness stand, so -- on the witness stand, so to speak, so do not

23 discuss your testimony with anybody overnight, okay?

24 THE WITNESS: Okay.

25 PRESIDING JUDGE EBOE-OSUJI: All right. We will bring down the blinds.

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0189

1 *(Closed session at 4.04 p.m.) Reclassified as Open session

2 THE COURT OFFICER: (Interpretation) We're in closed session, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 The witness will now be escorted from the courtroom.

5 (The witness stands down)

6 PRESIDING JUDGE EBOE-OSUJI: While that is going on, Ms Alagendra, can we

7 attend to the matter of your exhibits?

8 MS ALAGENDRA: Your Honour, we will of course seek to tender all the videos we

9 played as exhibits.

10 PRESIDING JUDGE EBOE-OSUJI: How many --

11 MS ALAGENDRA: And --

12 PRESIDING JUDGE EBOE-OSUJI: -- of them, do you recall? About three, four, or

13 something?

14 MS ALAGENDRA: Six, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Six, okay.

16 Any objection?

17 MR GARCIA: Yes, your Honour. At the maximum, they should be admitted only

18 for MFI purposes and not as exhibits in light of the fact that the only evidence that's

19 been solicited from the witness on certain occasions -- and I can just go through them:

20 Videos D09-0019-0003, the witness doesn't recall that video; 0022-0003, again once

21 again does not recall that video, doesn't recognise it; 0019-0138, the same goes for that

22 one; and as for the other videos the only thing that was done by Defence counsel was

23 suggest questions and answers -- suggest answers to the witness as to what was

24 appearing on the videos.

25 Now, that's not a mark of authenticity for the Chamber, and therefore on that basis, as

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(Closed Session)

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Witness: KEN-OTP-P-0189

1 for the other videos that have been shown to witnesses in the Prosecution case, they
2 should only be given a marked for identification number and not an exhibit number.

3 PRESIDING JUDGE EBOE-OSUJI: Do you have difficulty with that proposition?

4 MS ALAGENDRA: In fact I do, your Honour, and if you'd permit for Mr Khan to
5 address you on this issue since it's going to be a matter which is going to be going
6 through the case.

7 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

8 Mr Khan?

9 MR KHAN: I'm grateful, Mr President, your Honours.

10 I'll be quite brief. In our respectful submission, it's quite clear the criteria for
11 admissibility. There must be a sufficient indicia of reliability and the material must
12 be relevant and probative.

13 The videos shown are from public television; from NTV which the witness says that
14 she was watching at the time. Your Honours, the relevance and the weight to be
15 accorded to them are matters that the Trial Chamber, as professional Judges, can
16 weigh in due course, and of course the Prosecution at that stage may make any
17 submissions regarding the relevance or deficiency of the Defence evidence, but your
18 Honour in our respectful submission the documents -- the videos that come from
19 Kenyan television that were shown to the witness should be given exhibit numbers.
20 Of course it's without prejudice, as Mr -- my learned friend, Mr Omofade, said
21 previously, to the right of the Prosecution to critique them and question them and
22 make submissions regarding the weight.

23 Your Honours, in the Prosecution's Bar table motion they make certain submissions
24 regarding information in the public domain, and we simply say what is sauce for the
25 goose is sauce for the gander and in our respectful submission it is not right for the

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(Closed Session)

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1 Prosecution to put forward a position when it comes to their documents and their
2 evidence and somehow say that the same standard should not benefit the Defence.
3 Your Honours, we say the Bench are more than able to give what weight, if any, the
4 Defence evidence, but they should be exhibited at this moment.
5 That's my submission.

6 PRESIDING JUDGE EBOE-OSUJI: Do you recall -- do you recall the Prosecutor's
7 submissions in the Bar table application? Briefly, if you do?

8 MR KHAN: Your Honour, the relevant bit I remember - and perhaps one of my
9 learned friends can assist me - is effectively one of their criteria for arguing
10 admissibility is that the material that they were seeking to tender from the Bar table
11 was information from -- not created with contemplated criminal litigation in mind in
12 the usual course of official business of journalism and by dint of that factor they
13 should be prima facie admissible.

14 Your Honours, we say these Citizen, or NTV news reports and other reports should
15 benefit from the same principle that the Prosecution have advanced when it suits
16 them.

17 And, your Honour, the other -- I think that's my submission on this issue, your
18 Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

20 MR KIGEN-KATWA: Mr President, I associate myself with the submissions made
21 by my learned friend, Mr Karim.

22 Mr President, may I observe that, if the criteria were to be changed at this point, it
23 would mean some of the documents that the Prosecution had sought to have
24 produced as exhibits, and have successfully had them produced as exhibits on the
25 basis that they are founded on public knowledge, will also be compromised by any

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1 change in the approach to that issue, Mr President and your Honours.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, a reply?

3 MR GARCIA: If I may, your Honours? What we have on evidence for the
4 moment - I understand Mr Khan's submissions - is what Mr Khan is saying and that's
5 not evidence. The Chamber has no evidence as to the authenticity of these
6 documents, of these videos, when they were produced, the exact date.

7 The correct moment to do so - to present these videos - is in the Defence case, so
8 there's absolutely no prejudice to the Defence at all. The appropriate moment to
9 present them is in the Defence case, with an appropriate witness who can tell the
10 Court exactly when these videos were taken, what is the channel, what time-frame.

11 That's the information that the Chamber needs. So there's absolutely no prejudice of
12 giving, as we've done in the past, MFI numbers to these documents -- to these videos.

13 PRESIDING JUDGE EBOE-OSUJI: But if you -- isn't that a submission you can make
14 at the time of evaluation of the worth of this material?

15 MR GARCIA: Your Honour, I say to that that it's best that at this appropriate -- at
16 this moment we take upon ourselves to follow the appropriate procedure, because it's
17 not only going to concern these types of documents or videos, newspapers or video
18 recordings, but it's also going to concern other types of items of evidence that might
19 be put to the witness.

20 So if we adopt this procedure, it means that the Defence will -- can through the
21 Prosecution's case unload a certain amount of material that they should be presenting
22 in their own Defence case and not in the Prosecution's case.

23 I understand that elements have been shown to the witness and the Prosecution has
24 not objected because to a certain degree they are related to the testimony, but not
25 really within the crux of the testimony but on the outside scope. We haven't objected

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1 to that so that it can facilitate the testimony of the witness in cross-examination, but
2 the Prosecution's case and the cross-examination of the witness is not a licence for the
3 Defence to try and introduce elements or items of evidence in the Prosecution's case
4 when it should be doing so at the time of the Defence's case.

5 What I submit to your Honours is there's absolutely no prejudice and it's actually
6 safer to have these documents just admitted for MFI purposes to indicate in the
7 record that indeed it's been shown to the witness and not to put them in as exhibits.

8 MR KHAN: Mr President, can I say two things with your leave?

9 (Trial Chamber confers)

10 PRESIDING JUDGE EBOE-OSUJI: We don't need to belabour the point. The point
11 really here is not that the Defence may not use cross-examination to introduce
12 evidence. That is not the correct proposition. The Defence can do that. So can the
13 Prosecution when it is their turn to cross-examine.

14 The difficulty in this case is the witness saying she did not see these materials at the
15 time, or these videos at the time. That's what makes the difference. If she had seen
16 them, or agreed, the Chamber would have been inclined to treat these videos as was
17 done in the past, so on that basis the videos will be marked MFI.

18 Was there any one -- any of these videos that the witness acknowledged seeing at the
19 time?

20 MR KHAN: Your Honour, my recollection -- I'd rather reflect over it overnight so I
21 don't misstate and look at the transcript, but what the witness did say - and of that I'm
22 certain - is that certain videos accorded with her recollection. Now -- of what was
23 transpiring. To that extent we say there was sufficient indicia of reliability,
24 cross-referencing the testimony of the witness with the video shown, but your
25 Honours perhaps if we can have overnight and we'll cross-reference the transcript

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1 directly with the videos shown and so we can make accurate submissions to --

2 PRESIDING JUDGE EBOE-OSUJI: Let's -- I think that might be a better way to do

3 it --

4 MR KHAN: I'm grateful. Much obliged.

5 PRESIDING JUDGE EBOE-OSUJI: -- in light of where we are in the day.

6 So we will not mark anything now either for MFI, or as an exhibit. We will take up

7 the matter tomorrow, check the transcript and see what exactly the witness said in

8 relation to those things.

9 Now, that reminds us that it's probably best to do this thing one after another. As

10 we play a video, we will deal with -- we'll treat it at that point to avoid the confusion

11 later.

12 We will now rise for the day and come back at 9.30 tomorrow.

13 THE COURT USHER: All rise.

14 *(The hearing ends in closed session at 4.14 p.m.) Reclassified as Open session

15 RECLASSIFICATION REPORT

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

17 2013, and the instructions in the email dated 6 December 2013, the version of the

18 transcript with its redactions becomes Public.