

Trial Hearing
Witness: KEN-OTP-P-0488

(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
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and Judge Robert Fremr
7 Trial Hearing
8 Thursday, 10 April 2014
9 (The hearing starts in open session at 9.42 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Court officer, please call the case.
15 THE COURT OFFICER: (Interpretation) Thank you, Mr President. Situation in the
16 Republic of Kenya, in the case The Prosecutor versus William Samoei Ruto and Joshua Arap
17 Sang, ICC-01/09-01/11. We are in open session.
18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
19 Appearances?
20 MR STEYNBERG: Good morning, your Honours. For the Prosecution appearance is the
21 same as yesterday.
22 PRESIDING JUDGE EBOE-OSUJI: Thank you.
23 Mr Narantsetseg?
24 MR NARANTSETSEG: Good morning, Mr President, your Honours. The victims are
25 represented by myself, Orchlon Narantsetseg, and James Mawira, my colleague. Thank you.

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- 1 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the same.
- 2 MR FAAL: Good morning, Mr President, your Honours. Mr Ruto's Defence team remains
- 3 the same.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 5 Mr Faal will continue his cross-examination of -- Witness, welcome back. Thank you for
- 6 joining us again.
- 7 Before we do, Counsel, we will communicate with you by email about the possibility
- 8 of a status conference. That will be done in the course of the day. Thank you.
- 9 Please, Mr Faal, continue.
- 10 MR FAAL: Thank you, Mr President.
- 11 WITNESS: KEN-OTP-P-0488 (On former oath)
- 12 QUESTIONED BY MR FAAL: (Continuing)
- 13 Q. Good morning, Mr Bromley.
- 14 A. Good morning, sir.
- 15 Q. Welcome back. I hope you're well-rested?
- 16 A. Yes, thank you.
- 17 Q. Yesterday just before the close of day we started talking about Kiambaa. Do you
- 18 remember that?
- 19 A. Yes, I do.
- 20 Q. I would wish to take a step backwards to help us first understand the work you have
- 21 done with regards to Kiambaa and also to help us understand the material. I take it that you
- 22 have analysed the imagery with respect to the area that is known as Kiambaa and have
- 23 annotated that segment of the imagery for the purposes of your report; is that right?
- 24 A. That is correct.
- 25 Q. And am I correct to say that the imagery was divided into grid cells and each grid cell

1 was given a number; is that right?

2 A. Not precisely. The grid cells were developed for the Atlas book product, but the
3 analysis proceeded in basically a grid-like fashion. So each segment of the image was
4 analysed in turn until the entire image was analysed.

5 Q. Thank you for that correction. And in the analysis, each of those grid cells in the Atlas
6 was magnified and your findings are annotated on that -- on that segment; is that right?

7 A. That is correct.

8 Q. And as per the instructions you received from the Office of the Prosecutor, you looked
9 specifically at places known as Huruma, Kimumu, Langas, Yamumbi and Kiambaa; is that
10 right?

11 A. Yes, I received co-ordinates for those locations and then essentially analysed the area
12 around those co-ordinates and including those co-ordinates.

13 Q. So in order for us to see exactly the results that you were able to arrive at with regards to
14 these particular places, we have to go back to those actual grid cells that coincide with those
15 particular locations. Say for instance we have to go to the grid cell that is say for Kiambaa; is
16 that right?

17 A. Somewhat. The grid cells you might be referring to, if they're the grid cells represented
18 in the Atlas, they don't -- they are not exactly the grid cells that were used to guide the
19 analysis.

20 Q. Could you -- could you explain that again? I'm a bit lost as to what you are trying to
21 say here. My understanding is that you have the imagery, you divided it into grid cells and
22 then you identify the locations of interest. And that -- those locations of interest coincided
23 with particular grid cells, and in order to know what happened or your findings with regards
24 to those locations we have to go to the grid cells that corresponded with it; is that right?

25 A. Are you referring to the grid cells used -- the grid cells represented in the Atlas product?

1 Q. Yes.

2 A. So, no, the analysis did not use those grid cells. The grid cells were created for the
3 Atlas product simply as a way to create a hundred and -- a hundred page book for these
4 images and so the OTP could use that book to refer to specific areas as needed.

5 When I analysed the image I had a certain image extent which I then just reviewed
6 sequentially piece by piece, but it did not necessarily relate to the grid cells
7 specifically, though at the end of the process both refer to the same areas.

8 Q. What I'm trying to drive at here, Mr Bromley, is that if we want to find out what are the
9 results of your findings say with regards to a place called Huruma, how do we use the results
10 of your analysis together with the Atlas to determine exactly what were your findings with
11 regards to Huruma? Could you help us with that?

12 A. Yeah, if you're using the Atlas then you would use the grid cell which is on the front
13 page of the Atlas book, which is the overview map of the book, and then you could refer to
14 the specific page expressed on that overview map. But when I did the analysis, that
15 overview map hadn't been created yet. That was done at the end.

16 Q. But if we go to the specific page we would be able to see the destruction that you were
17 able to identify; is that right?

18 A. That is correct.

19 Q. Good. So now let us take a look at the work you have done with respect to Kiambaa in
20 order to detect the burnings or destruction that occurred there. Your report is contained in
21 KEN-OTP-0092-1380. That is tab 3 of the Prosecution bundle, exhibit 50 to be specific.

22 That's your report for Kiambaa, isn't it?

23 A. Yes.

24 Q. And in the report you indicated that 123 buildings were destroyed, 93 definitely
25 destroyed and 30 possibly destroyed; is that right?

1 A. Yes.

2 Q. And when you did the analysis for Kiambaa, did the OTP provide you with information
3 as to the exact boundaries of Kiambaa village? Did they give you information as to the exact
4 boundaries of Kiambaa village?

5 A. No.

6 Q. What were you given to assist you in your work?

7 A. I believe initially I was given a co-ordinate expressed only as "Kiambaa," and so that
8 essentially becomes the -- I believe became the centre point of the analysis. The smallest area
9 you can purchase when you purchase a satellite image is 25 square kilometres, so we simply
10 create an area around the centre point amounting to 25 square kilometres.

11 Q. Thank you very much. So do I take it to mean that, when you did the analysis, you did
12 not know the exact boundaries of Kiambaa village; is that right?

13 A. That's correct and I would be surprised if there were actual administrative boundaries of
14 a village, but that's speculation.

15 Q. So when you arrived at this finding of 93 definitely destroyed houses, you merely
16 counted the destroyed structure within the area that you analysed; is that right?

17 A. Yes.

18 Q. But do you realise -- let's perhaps go to the image of Kiambaa. It's at 1386 of the
19 document I referred to earlier, tab 8 of the Prosecution bundle. Could you kindly put it on
20 the screen, please? It's KEN-OTP-0092-1386. Yes, it is already on the screen.

21 So do you realise, Mr Bromley, that the red dots to the left bottom of the imagery are
22 not in fact in Kiambaa? Do you know that?

23 A. No.

24 Q. And do you also realise that the red dots on the bottom right-hand corner of the image
25 are also not in Kiambaa? Do you realise that?

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1 A. No, I wouldn't know that.

2 Q. We in fact say that the place on the bottom right corner of the image is in fact in
3 Cheplaskei, which is a Kalenjin village. What do you say to that?

4 A. Again, the analysis was just -- it's an arbitrary 25 square kilometres around the
5 co-ordinates I was given. That's the minimum area of a satellite image which you can
6 purchase. It could have been larger, but it generally wouldn't have been smaller unless I was
7 instructed to focus on a specific location.

8 MR FAAL: For the record, your Honours, Cheplaskei is C-H-E-P-L-A-S-K-E-I.

9 And, your Honours, may I refer the Court to the Defence bundle, tab 11? The
10 Defence bundle, tab 11. It's KEN-D09-0034-0009. I do not propose to put it up on
11 the screen because I want the possibility of a comparison between this document and
12 what is on the screen at the moment.

13 Q. Have you seen the document, Mr Witness?

14 MR STEYNBERG: I beg your pardon, your Honours. If I may for a moment? The image
15 which I've been provided looks like it was taken at night. I don't know whether my
16 learned -- the witness has the same image, but I have a better copy and if the witness is going
17 to be asked to comment on it, may I ask that the -- this copy also be put before him? It's the
18 same ERN, 0034-0010.

19 PRESIDING JUDGE EBOE-OSUJI: I think a better copy is always welcome, but you may be
20 looking at the wrong document.

21 MR STEYNBERG: I beg your pardon. Which -- you said tab --

22 MR FAAL: Yes, my learned friend is referring to the document next in the series.

23 MR STEYNBERG: Ah, tab 11?

24 MR FAAL: We haven't quite got there yet --

25 MR STEYNBERG: I beg your pardon.

1 MR FAAL: -- but we'd be happy to receive your assistance once we get there. Please --

2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, is it not possible to know if you loaded up yours,
3 because the one I have is -- on the bundle it looks washed out? Is it -- if --

4 MR FAAL: We had a problem with the colour printer this morning.

5 PRESIDING JUDGE EBOE-OSUJI: Yes. So if there is a better image, is it possible to flip
6 back and forth and then if you want to dwell on one image we will do?

7 MR FAAL: I'm much -- I'm guided, Mr President.

8 Could we load the document up the screen, please? KEN --

9 MR STEYNBERG: Your Honours, if I may assist? I also have a better copy of that one
10 which may be handed to the witness, if that would help?

11 PRESIDING JUDGE EBOE-OSUJI: That would be -- it would be greatly welcome.

12 MR FAAL: Could we load it up the screen, please? KEN-D09-0034-0009.

13 Q. Mr Witness, can you see the document please? It's a bit faint from looking at it from
14 here, but can you see it clearly?

15 A. Yes.

16 Q. And do you notice that the location of Kiambaa church has been identified?

17 A. Yes. We should discuss this a little bit, because what you've done is used Google Maps
18 and I would have no way of -- we have no way of knowing if that's the accurate location of
19 the church. If I input the co-ordinates that are in the URL - the web address at the top of
20 your page - into my GIS, then it takes us to a location which is a farm field. So we go
21 through this a lot when we use mapping resources about whether the co-ordinates of an area
22 like this are actually accurate. But, yes, on the map you -- on the map you've printed there is
23 a location called Kiambaa church.

24 Q. And -- but you would agree with me that this is the general -- same general location that
25 is depicted in KEN-OTP-0092-1386; that is the image you have looked at contained in tab 8?

1 Would you agree?

2 A. It's certainly the same general location, but whether the location indicated for Kiambaa
3 church is the precise one I can't say just sitting here very quickly.

4 Q. That is -- that is not my issue for -- for the time being. I just want to take you to some
5 parts of this document. And we see where they're for. Kindly take, if you look at the image,
6 you would see just below Kiambaa a collection of fields which appear in the form of a square,
7 not perfectly, but in the form of a square. Could you see it? Just below -- just below
8 Kiambaa.

9 A. Are we on tab 11 or tab 12?

10 Q. Tab 11.

11 A. I see an empty area below Kiambaa church, but on a map like this you don't see whether
12 they're fields or not.

13 Q. Okay. Could you go back to the imagery you looked at and tell us whether you can see
14 the same or a similar feature just below Kiambaa? Can you see it?

15 PRESIDING JUDGE EBOE-OSUJI: Which map are you telling him to look at now?

16 MR FAAL: The imagery that he provided. Yes, that --

17 PRESIDING JUDGE EBOE-OSUJI: His own?

18 MR FAAL: Yes, his own. Tab 8.

19 THE WITNESS: I see fields, but you see fields everywhere.

20 MR FAAL:

21 Q. Mr Bromley, what I am trying to refer to is this field that appears like a square below
22 Kiambaa. You can see that, can't you? It's quite visible, isn't it?

23 A. On your map? On the Google map?

24 Q. On both actually.

25 A. On both Google map and on my image?

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- 1 Q. Yes. Look at the middle section of your image.
- 2 PRESIDING JUDGE EBOE-OSUJI: Again, Mr Faal, where is his image? Did you say tab 8?
- 3 MR FAAL: Tab 8, at page 1386.
- 4 MR STEYNBERG: Your Honours, I believe it's tab 7.
- 5 MR FAAL: I am sorry, Mr President, it must be tab 3 of the Prosecution binder.
- 6 PRESIDING JUDGE EBOE-OSUJI: Tab 3?
- 7 MR FAAL: Yes.
- 8 PRESIDING JUDGE EBOE-OSUJI: It's neither 8 nor 7.
- 9 MR FAAL: Yes.
- 10 PRESIDING JUDGE EBOE-OSUJI: So tab 3. Okay.
- 11 MR FAAL: Tab 3. My apologies, I -- it was arranged differently in my binder. My
- 12 apologies.
- 13 THE INTERPRETER: Message from the interpreters: Could counsel kindly be asked to
- 14 move his microphone to point it in his direction and also to switch it off when the witness is
- 15 speaking because it's picking up a lot of extraneous noise and making it difficult for the
- 16 interpreters to interpret? Thank you very much.
- 17 MR FAAL: Thank you very much.
- 18 Have you found it, Mr President, the -- the relevant --
- 19 THE COURT OFFICER: (Interpretation) Please could I interrupt you. The interpreters are
- 20 complaining about the noise around your microphone. If you could please switch it off
- 21 when you are not using it. Thank you.
- 22 MR FAAL: Thank you. My apologies once again.
- 23 Mr President, are you able to find the right document?
- 24 PRESIDING JUDGE EBOE-OSUJI: 1386, yes.
- 25 THE INTERPRETER: I'm sorry, your Honour, there really is a very loud background noise.

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1 The microphone has to be pointed towards the speaker. We really can't hear him properly.

2 MR FAAL: Can you hear me now?

3 THE INTERPRETER: There seems to be a terrible hum on. We're not exactly sure what the
4 source of the hum is.

5 PRESIDING JUDGE EBOE-OSUJI: All right. We don't know why. It could be because
6 of -- we know that when you made that observation the last time it was only Mr Faal's
7 microphone that was on and the witness's microphones that were on, but bear with us. Let's
8 see.

9 MR FAAL: Perhaps I can change microphones and see whether that will solve the problem.
10 Can you hear me now?

11 THE INTERPRETER: Yes, we can certainly hear you. It's just that we hear a lot of
12 background noise and we're not quite sure why, but let's try and proceed.

13 MR FAAL: Thank you very much.

14 Mr President, I take it you have seen the relevant document that is at page 1386 of the
15 Prosecution document?

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

17 MR FAAL:

18 Q. Mr Bromley, I was referring to the middle section of the imagery that you provided on
19 page 1386. Can you see it?

20 A. Which tab?

21 Q. Tab 3 of the Prosecution binder. It's the document that was previously put on the
22 screen, still on the report on Kiambaa.

23 A. Yeah.

24 Q. Do you see it now?

25 A. Yes. So the field areas between the roads essentially; correct?

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1 Q. In the middle of the document. Can you see it?

2 A. Yes. Just so you know, the -- the Google map data that you've printed here is different
3 than what's on my map simply because my map was made a year ago -- more than a year ago
4 and the Google map data has been updated since then.

5 PRESIDING JUDGE EBOE-OSUJI: I think -- I think what Mr Faal is saying is that if you look
6 to the Google map, between Kiambaa church and St Therese's Hekima primary, there is a
7 space there that appears identical to what also appears on your own map at 1386. Can you
8 see?

9 THE WITNESS: Yes, sir. Again, they're not entirely identical. There is more roads on the
10 updated Google map version than on -- on my version.

11 MR FAAL: Thank you very much, Mr President.

12 Q. But, Mr Bromley, that aside, this is showing the same location; is that correct?

13 A. Yes.

14 Q. And if you are now -- we are now to juxtapose this Google map we provided -- or,
15 rather, to overlay this Google map we have provided onto the image that you have, then you
16 would see that the red dots on the bottom right-hand corner of your image would correspond
17 to the area near Cheplaskei secondary school in the Google map; is that right?

18 A. Correct.

19 Q. You would also notice that the red dots on the left-hand corner would also correspond
20 to the area of Patricia primary school, Kabongo; is that right?

21 A. On the bottom left of my map?

22 Q. Yes. Would correspond to the area near Patricia primary school, Kabongo?

23 A. I think it's below and left of the area of the Patricia primary school.

24 Q. Precisely.

25 A. Yes.

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1 Q. And do you know that Kabongo is a village near Kiambaa and it's not part of Kiambaa?

2 Do you know that?

3 A. No.

4 Q. And do you know that Kabongo is in fact a Kalenjin village?

5 A. No.

6 Q. And back to Cheplaskei, you don't know that Cheplaskei is a Kalenjin village, do you?

7 A. No, sir.

8 Q. In a sense, Mr Witness, we are saying that these red dots in the lower half of the image
9 you provided are in fact in Kalenjin villages?

10 A. I wouldn't know.

11 Q. Thank you very much. I won't burden you further with that particular issue.

12 PRESIDING JUDGE EBOE-OSUJI: Before you move away, Mr Witness, on the Google map,
13 we see Eldoret-Nakuru Road. Do you see that?

14 THE WITNESS: Yes

15 PRESIDING JUDGE EBOE-OSUJI: Are we able to see that road on your own map at 1386?

16 THE WITNESS: That would most likely be the yellow line on my map, on the 1386 map, but
17 I would have to check my original data and verify that.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Mr Faal, you can ask any follow-up question arising from mine.

20 MR FAAL: I'll just leave that point and move on, Mr President. You have adequately
21 covered it.

22 Q. Mr Witness, I now take you to Kimumu. When you did the grid you identified those
23 locations, in particular Kimumu, Huruma, Yamumbi and Langas. Do you remember that?

24 A. Yes.

25 Q. In fact, KEN-OTP-0092-1067 shows Huruma. Can we -- can you put that document on

1 the screen please? KEN-OTP-0092-1067.

2 PRESIDING JUDGE EBOE-OSUJI: Do we have a tab?

3 MR FAAL: Yes, it's tab 10 of the OTP binder, the annotated report.

4 Q. And if you look at the top middle part of the document, you will see the typing
5 "Huruma". Can you see it?

6 A. Yes.

7 Q. And this is the place you have identified in your report as Huruma; right?

8 A. Yes, based on the co-ordinates I was given.

9 Q. Now, let's look at --

10 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, where is the "Huruma"? I can't see it.

11 MR FAAL: If you look at the top half, the top most part in the middle of the image --

12 PRESIDING JUDGE EBOE-OSUJI: I see it now. It's, again, watched out in what I -- on the
13 bundle, but I see it on the screen. Yes, okay.

14 MR FAAL: Thank you very much, Mr President.

15 Q. I would now take you to the one with the marking "Kimumu", and it is on 0958 -- 0958
16 of the same document. Sorry, 0985 of the same document. Could you kindly put up the
17 screen KEN-OTP-0092-0985. And if you look at the middle of the page, you would see the
18 typing "Kimumu" in the middle of the page. Can you see it?

19 A. Yes.

20 MR FAAL: Mr President, are we together?

21 PRESIDING JUDGE EBOE-OSUJI: I can see it, yes, Kimumu.

22 MR FAAL: Thank you very much.

23 Q. And you would agree with me that this is the place you have identified as Kimumu; is
24 that right?

25 A. Yes, based on the co-ordinates I was given.

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1 Q. In fact we have seen various sections of this image previously, but we would come to
2 that a bit later.

3 Now, let me take you to Yamumbi. Yamumbi would be 1132 of the same document.

4 Can you take us to image -- to KEN-OTP-0092-1132.

5 Could you see that in the top most part in the middle segment of the document the typing
6 "Yamumbi"? Can you see that?

7 A. Yes, in the adjoining grid cell.

8 Q. And this is the location you identified as Yamumbi; is that right?

9 A. Yes, again based on the co-ordinates I was given by OTP.

10 Q. Now let's go to the last location.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, before we do, is there any slide or plate that
12 shows Yamumbi as the central -- the centre of attention? Here we see it outside -- more or
13 less on the outside, on the edge.

14 MR FAAL: We would -- we would come back to that. It was part of the planned evidence
15 to be elicited from this witness. Thank you, Mr President.

16 Q. So now let's move on to Langas and Langas would be contained in 0092-1134 of the
17 document, just two pages after Yamumbi. And, Mr Witness, could you take a look at the
18 middle part of the report? You identified or you've typed "Langas" in the middle part of that
19 document; is that right?

20 A. Correct.

21 Q. And this is the place you have identified as Langas; is that right?

22 A. Yes, based on the co-ordinates I was given.

23 PRESIDING JUDGE EBOE-OSUJI: Did they -- were the co-ordinates given to you, or did
24 you yourself acquire it by research? If the name of a location was given, then you found out
25 where the co-ordinates were?

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1 THE WITNESS: The co-ordinates were given to me and then also communicated in the
2 request letter from the OTP.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.

4 MR FAAL: Thank you very much, Mr President.

5 Q. And now that we have seen the annotated Atlas of the various locations, we take it that
6 you have examined these -- the imagery on these locations and have identified the destruction
7 and burning of structures that you notice in those documents; correct?

8 A. Correct.

9 Q. Now let us examine the results of your analysis with respect to each of these particular
10 areas, and let's start with Kimumu. And can we go back to 0092-0985. It is now up the
11 screen. Can you see it?

12 A. Yes.

13 Q. And you would agree with me that we have looked at this image on several occasions
14 during the course of your testimony. It's that junction that you talked extensively about with
15 the Prosecution. Do you remember it?

16 A. Yes.

17 Q. And you agree with me that it shows some definitely destroyed structures on the
18 right-hand side of the "V" -- of the "Y" rather, on the right-hand side of the "Y." Do you
19 agree?

20 A. Yes, as well as one on the left.

21 Q. This is the extent of the destruction you were able to see in the place you call Kimumu;
22 right?

23 A. Yes, depending on how -- how big the Kimumu area is, if it has boundaries, but yes,
24 those are the points closest to the -- to the point I was given as Kimumu.

25 Q. And --

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1 PRESIDING JUDGE EBOE-OSUJI: In that grid we see, would it be the case that if there were
2 any other definitely destroyeds you would have identified them as well on the grid we're
3 looking at now?

4 THE WITNESS: Yes.

5 MR FAAL: Thank you very much, Mr President.

6 Q. And looking at this document we are talking about approximately 25 destroyed
7 structures; correct?

8 A. Approximately, yes.

9 Q. And, Mr Witness, we say that in fact the places that have been identified as destroyed
10 are in fact in Better Farm and not in Kimumu. What do you say to that?

11 A. I wouldn't know where the farm is, or --

12 Q. But, Mr Witness, you would agree with me that in such an analysis, it is important for
13 one to know the geography of the area, to know which village is located where?

14 PRESIDING JUDGE EBOE-OSUJI: That's argumentative now. The witness has answered.

15 MR FAAL: I wanted his opinion on that, Mr President. He may agree or disagree, but if
16 you overrule me I'll proceed.

17 PRESIDING JUDGE EBOE-OSUJI: It's overruled. Ask another question.

18 MR FAAL: Thank you very much, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Try not to make it argumentative.

20 MR FAAL: I'm guided, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: You can reformulate that question. It's not the
22 substance that's the trouble. It is the argumentative form of it.

23 MR FAAL: I'm guided, Mr President.

24 Q. Mr Bromley, don't get me wrong here. We place no blame on you, none whatsoever.
25 I just thought that this exercise would have been more meaningful if you were given precise

1 locations. Wouldn't that have helped you?

2 A. When doing an image analysis like this, you -- you almost don't want to contaminate
3 your process by gathering too much other information. You essentially take a broad view
4 across the area and assess each -- you know, each portion of the area separately. Whether
5 something falls in one district or another district or within a farm or not a farm, it shouldn't
6 influence the final results of the analysis, which is based on each individual structure. So
7 what I'm doing when I do this is assessing the status of each individual structure regardless of
8 where it might fall within a property ownership scheme or a political district or anything like
9 that.

10 Q. But I take it, Mr Witness, that your brief was also to identify destroyed structures within
11 particular locations; is that right?

12 A. Not beyond what was communicated in the letter from the OTP, which was the four
13 co-ordinates. And I believe they said "in the area of" and so I interpreted that to essentially
14 mean a broad search. Some of that may have been my own experience on these -- on
15 mapping in many parts of the world, which is simply not precise. A location may be, you
16 know, kilometres away from the co-ordinates which have been provided. So you generally
17 try and search an area without focusing too much on the precise co-ordinates.
18 You'll notice the Kimumu co-ordinate as it appears on this map appears to be on a
19 fence. So if I was simply going to assess the fence, it is meaningless. And so yeah,
20 essentially we tend to search the areas around a co-ordinate as much as we can afford
21 when we purchase the image.

22 Q. So you blame it on the co-ordinates that you were provided; is that right?

23 A. No. It's -- it's common practice to -- I mean, first of all, you can't purchase an image for
24 a single point. It's too small. The minimum I could have done is a 25 square kilometre area
25 around that point. Since we had four points in this area I expanded it to cover all four points

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1 but, yeah, I did not focus only on the specific co-ordinates communicated to me. Rather, I
2 focused on the area around it.

3 Q. Thank you very much. I'll move on.

4 PRESIDING JUDGE EBOE-OSUJI: But the co-ordinates would necessarily have been the
5 centre of attention, isn't it? So you have your co-ordinate, you identify it and then you look
6 around it, isn't it, or did you do something different?

7 THE WITNESS: The co-ordinates are the centre of the area of the image that you acquire and
8 you analyse the entire image, or to be precise in this case, they were not necessarily the centre
9 of the entire image, but they determined the area of the image that I -- that I purchased.

10 MR FAAL:

11 Q. Thank you very much. Mr Witness, we say that the areas on the top right-hand side of
12 the road of the image you're looking at is in fact not in Kimumu. It is in a village called
13 Maruru. What do you say to that?

14 A. I have no, no information on that.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, now that we have the image, are you able to tell
16 us where it is you say is Maruru rather than talk about it in those general terms?

17 MR FAAL: Yes, Mr President. The next thing I was going to do is to put up the screen a
18 map that would show some of these locations.

19 PRESIDING JUDGE EBOE-OSUJI: But are you able -- are you able to do that on what we're
20 looking at now?

21 MR FAAL: Yes, that's exactly what I was going to do. Thank you, Mr President.

22 May I ask that document KEN-D09-0034-001 be put up the screen, please? Tab 2 of Defence
23 bundle.

24 Q. Mr Witness, this is a Google search result of the place called Kimumu and this is the
25 result that came out. Would you agree that this image depicts the same location as that one

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1 contained in 0985, the OTP document you were showed a moment ago?

2 A. Yes, the centre of this map is that map in addition to probably the grid squares next
3 door.

4 Q. And you would see that there is a shaded area coloured brown in the middle of the
5 document. Can you see that?

6 A. Yes, and --

7 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, can you -- if there is as an identifying inscription,
8 you might as well put it in so we can zero in on what you are talking about, instead of shaded
9 area brown.

10 THE WITNESS: I see a brown and a red.

11 MR FAAL:

12 Q. You see there is a shaded area which place is identified such as "Kimumu Primary
13 School", "Kimumu School," "Kimumu Cathedral," "PGC Church, Kimumu." Have you seen
14 that in the document?

15 A. Yes.

16 Q. And we say that this shaded area is in fact the area known as Kimumu. What do you
17 say to that?

18 A. I wouldn't have any other information on that.

19 Q. And if you were to overlay this image over the image that you have provided in 0985,
20 you would see that the burned area that you have identified is in fact not within the shaded
21 area that shows Kimumu; is that right?

22 A. The particular burned area we looked at would not appear to be there, but the other
23 burned area -- other burned areas would.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, can you look at that again? We see on one side
25 "PGC Church Kimumu," we see "Kimumu Sisters' Convent," We see "St Catherine's Kimumu

1 Primary School," and we also see "Better Farm" where it is on your map.

2 MR FAAL: Yes, Mr President. I take particular note to the issue of Better Farm, and I think
3 at the appropriate time we may have to call evidence to show exactly where is Better Farm
4 because that has become an issue.

5 I also take note of the fact that there are one or two points in the burned area that may
6 appear within what is the shaded area we call Kimumu. I would deal with that
7 particular issue right away.

8 Q. And if you look at the Google map that we have provided you would see the place
9 called Kimumu Sisters' Convent, and you would realise that it coincides with what appears to
10 look like an "h" in the image that you provided just where "Kimumu" is written on your map.
11 Can you see it?

12 A. It's tough to see on what I have.

13 Q. Look on document 0985.

14 A. Of 0092?

15 Q. Yes. Mr Bromley, I am referring to B12 if that helps? B12.

16 A. Okay.

17 Q. Just look at where the inscription is "Kimumu" in the middle of the page.

18 A. Okay.

19 Q. Could you see a feature there looking like a letter "h"?

20 A. You mean roads?

21 Q. Yes.

22 A. To left or the right, or --

23 Q. To the right of the document, just after the "u" in Kimumu. Could you see it?

24 A. An "h" horizontal, or vertical?

25 Q. It is -- it is horizontal.

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- 1 A. Ah, yes, I believe I see it.
- 2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, I want to follow you. Where are we?
- 3 MR FAAL: If you look at the middle of the image --
- 4 PRESIDING JUDGE EBOE-OSUJI: Again, tab -- sorry, the page, 09 --
- 5 MR FAAL: 0985.
- 6 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 7 MR FAAL: B12 to be specific.
- 8 PRESIDING JUDGE EBOE-OSUJI: Well, why don't we put -- all right.
- 9 MR FAAL: B12.
- 10 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 11 MR FAAL: And if you look at the middle you would see the writing "Kimumu."
- 12 PRESIDING JUDGE EBOE-OSUJI: That I see, yes.
- 13 MR FAAL: Yes. Just immediately after the "u" there is what may appear like -- like a letter
- 14 "h," but it's just a road really looking like a -- immediately after the "u" you could see those
- 15 roads and a field there. Yes, that location.
- 16 THE WITNESS: You mean a lower case "h"?
- 17 MR FAAL:
- 18 Q. Yes.
- 19 A. Thank you.
- 20 Q. Yes, thank you very much, Mr Bromley. And if you look at that place, it looks like it
- 21 coincides with the place called Kimumu Sisters' Convent, or there about?
- 22 A. Yeah, it's possible, unless there is another road to the south that looks like an "h."
- 23 PRESIDING JUDGE EBOE-OSUJI: Well, wouldn't that depend on the scale of your Google
- 24 map?
- 25 THE WITNESS: Exactly.

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1 MR FAAL: Yes, yes. But what I am trying to do here, Mr President, is trying to be as fair to
2 the witness as possible, because there are few dots in that area in his map which, if the scales
3 were to be exactly the same, may show some burning in the place we call Kimumu. I just
4 want to be fair to him and not exclude everything that is -- that is on this that appears to be in
5 Better Farm.

6 PRESIDING JUDGE EBOE-OSUJI: Yes. Of course from the Bench it's always touch and go
7 how far we press in when counsel are cross-examining, and the reason I brought up the
8 matter of the scale is that, if what you're looking at is the Kimumu Sisters' Convent that
9 appears on your Google map - again correct me if I am wrong, but you're here to assist us see
10 the evidence and your point - it would appear considering the scale that it appears the scale
11 on Mr Bromley's own map might be larger. Maybe your own "h" could be further down the
12 line on his map. Am I --

13 MR FAAL: I agree with you entirely, Mr President, on that.

14 Q. So, Mr Bromley, if --

15 PRESIDING JUDGE EBOE-OSUJI: But he's here. He's heard the exchange. He can help us
16 see if I'm on the wrong track, or Mr Faal is on --

17 THE WITNESS: I mean, the -- again, it's the scale. It's hard to tell. The Sisters' Convent
18 seems very far down the road, whereas the "h" you refer to is almost at the intersection of the
19 "Y" on my map.

20 MR FAAL:

21 Q. I mean --

22 PRESIDING JUDGE EBOE-OSUJI: That's the point I was getting at. We can clear it up now,
23 rather than argue about it later.

24 MR FAAL: That's fine.

25 Q. But, Mr Bromley, you know these things better than I do certainly and you have seen

1 the map that we have provided. You have seen the Google image. You know scales much
2 more than I do. Would you say, based on your experience, that the dots - the red dots - that
3 you find in what appears to be letter "h," small case, on the map you provided, would those
4 dots fall within the shaded area called Kimumu in the Google map we have provided?

5 A. Okay. If we look at the Google map, there is a shaded area up next to Saint Catherine
6 Kimumu Primary School. That area I believe is the area indicated on my map, the 0985.
7 And the red dots, my definitely destroyed structures, are up in that area next to St Catherine
8 Kimumu Primary School.

9 If you look under the text of "St Catherine Kimumu Primary School," it's extremely
10 hard to see but I believe there is a road shaped like a lower case "h" there as well.

11 I would think that that is the lower case "h" road on the B12 map, but honestly I think
12 the Kimumu Sisters' Convent area is farther south, but again it would require some
13 indication of the scale on your Google map.

14 Q. Thank you very much, Mr Bromley. And therefore, if what is contained in the shaded
15 area of the Google map we provided is Kimumu, then it means to say that all the red dots that
16 are contained in your map would be outside the area called Kimumu; is that right?

17 A. Again, I think the -- there's the shaded area up near the intersection marked as "Children
18 Play Field, St Catherine Kimumu Primary School." I believe most of my red dots are within
19 that area. The shaded area below that, down the page, on this particular grid cell that you're
20 looking at I don't know if there's red dots there, but I think on the broader data set you would
21 find other destroyed and possibly destroyed structures in that area. Does that answer your
22 question?

23 Q. Yes, it does, but taking at its best it would appear that these 25 red dots is the extent of
24 the destruction in the area you call Kimumu; is that right?

25 A. I didn't denote an area called Kimumu beyond the point that I was given by the OTP.

1 Q. Well, precisely. That is the issue. The area that you were given as Kimumu, this is the
2 extent of the destruction you have seen, nothing further?

3 MR STEYNBERG: Your Honour, I should object at this stage. The witness has stated
4 repeatedly he was not given an area. He was given a point. The point is described on the
5 mandate as a central point of those areas, so he has no information about what the limits of
6 the areas are and my learned friend repeatedly is putting to him that he was given an area.
7 That's simply not correct.

8 MR FAAL: Mr President, it's --

9 PRESIDING JUDGE EBOE-OSUJI: So the point is co-ordinates. He was given co-ordinates.

10 MR FAAL: Yes, yes, exactly, but the co-ordinates were also tied to a particular geographical
11 area in this instance called Kimumu.

12 Q. This is the extent of the destruction that you find in the -- with regards to the
13 co-ordinates that you have examined, the area called Kimumu, this is the extent of the
14 destruction that you have found; is that right?

15 A. On examining my other maps, I would say "No." There is additional destruction which
16 would certainly fall within the area you're describing as Kimumu based on the Google map.

17 Q. Could you show them to us?

18 A. That would be on OTP-0092-0957, the large A3 map. If you follow the road C48 to the
19 south, you have plenty of additional destroyed points down there.

20 Q. Did you identify those locations as Kimumu?

21 A. No, I did not identify any location as Kimumu. I just used the Kimumu co-ordinate
22 which I was given.

23 Q. But, Mr Witness, we have looked at the Google image of the area represented as
24 Kimumu. And if you look at that, if you overlay that to the map you have provided, there
25 are hardly any red dots there; is that right?

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1 A. I would have to overlay your map with my map and look at it. I mean, just looking at
2 it from here, I would think you would see multiple dots. But we also can't see how far south
3 the Kimumu area goes in your map. It looks like it may go on for quite some time, but that's
4 speculation.

5 Q. And in order to avoid speculation, taking it at its best, the evidence that you have
6 provided in 0985, there are no more than approximately 25 destroyed structures on this map;
7 is that right?

8 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, the witness has referred you to 0957.

9 MR FAAL: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: That is a fair question to take it there, shouldn't it?

11 MR FAAL: But, Mr President, the witness did a grid-by-grid analysis of the -- of what is
12 contained in 0957. So 0957 is a document that is difficult to read without any further
13 assistance.

14 PRESIDING JUDGE EBOE-OSUJI: Yes.

15 MR FAAL: And that is why the grid cells are important. I have referred him to the grid cell
16 that he --

17 THE WITNESS: I can --

18 MR FAAL: -- labelled "Kimumu." If there are any other grid cells which fall within that
19 particular area of Kimumu, then perhaps it's for him to show us.

20 PRESIDING JUDGE EBOE-OSUJI: And that's a fair point. You say, yes, 0957, it's difficult
21 to read on its own. But to an extent perhaps we can begin with asking the witness looking at
22 0957, if one looks at it, and you bring in your question, does it show the extent of the
23 destruction that he was able to have identified in his task? And then first we settle that, or if
24 he tells us that, then we will start looking at zeroing in on particular subdivisions, magnified
25 subdivisions into which 0957 may be split.

1 MR FAAL: The difficulty I have with that, Mr President, is we believe that those other areas
2 are outside the Kimumu town. And perhaps maybe it's because of the understanding we
3 have of the geographic area because we've been to the place. We believe that Kimumu is
4 covered in what we have provided.

5 PRESIDING JUDGE EBOE-OSUJI: All right, let's do this. Let him answer my question and
6 then let's make that mine.

7 MR FAAL: Thank you very much.

8 PRESIDING JUDGE EBOE-OSUJI: Witness, you heard my concern or rather what I was
9 discussing with Mr Faal. If we look at 0957, which you've referred to, would you say that it
10 would have at that level of obstruction have accounted for every destruction you would have
11 seen within the grid appearing there, the red outline we see?

12 THE WITNESS: Yes. And I was using 0957 because it requires less page turning. But if
13 we go into the Atlas, sorry, heading south along that road, then you get to sheet C12, which
14 does show several of the locations indicated in the Google map, and again there are both red
15 and -- there are both destroyed and possibly destroyed structures on C12. And then I guess
16 we would go down to D12 depending on how far south we want to go.

17 PRESIDING JUDGE EBOE-OSUJI: So the 0957 is more or less a comprehensive picture of the
18 whole thing?

19 THE WITNESS: Yes, yes. But if we want to use the Atlas, to stay within what he asked,
20 then we would go to C12 and then D12 and possibly farther, but I don't know how far south
21 the Kimumu area goes and both C12 and D12 would show many of the Kimumu locations
22 indicated on the Google map and additional destroyed points around them.

23 PRESIDING JUDGE EBOE-OSUJI: All right. So we're clear, C12 and D12 they're also
24 represented in 0957, or are they outside of 0957?

25 THE WITNESS: They're in 0957 and then also in the 0092-1000 page of the Atlas and then

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1 0092-1015 page.

2 PRESIDING JUDGE EBOE-OSUJI: All right. My next question to you then is this:

3 Looking at 0957, would it be accurate to say that if there were any destructions to the extent
4 that this satellite images you acquired were able to show, you would have accounted for them
5 in 0957?

6 THE WITNESS: Correct.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR FAAL:

9 Q. Mr Witness, I would take you to C12 and D12 so that we can also see the extent of the
10 destruction just so that we can cover all the area you think would also be Kimumu. Let's go
11 to C12, please.

12 PRESIDING JUDGE EBOE-OSUJI: Where is it?

13 MR FAAL: Tab 10, C12, which is 0092-1000. Could you load that up the screen, please?

14 PRESIDING JUDGE EBOE-OSUJI: Before you start your questions on C12 -- and I'm not
15 stopping you.

16 Mr Bromley, again to be clear, so to allow us, the Judges, to follow you, what we see
17 at 0957, is it what is represented on the top right-hand corner of C12?

18 THE WITNESS: Yes, the points are the same data and then the background satellite image is
19 different. So in C12, the image used is the image from January 2008.

20 PRESIDING JUDGE EBOE-OSUJI: What I'm trying to understand so we can correlate one
21 thing to the other, so 0957 is a larger representation of a smaller image we see in the top
22 right-hand corner of C12?

23 THE WITNESS: Correct.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR FAAL:

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- 1 Q. And, Mr Witness, if you take a look at C12, you would see that there are some red dots;
2 right?
- 3 A. Correct.
- 4 Q. And let us count them. I have counted about 12 dots. Do you agree?
- 5 A. Yes. And then we also see in the middle of C12 the -- what I think is the Kimumu
6 Cathedral. So I think we're all looking at the same spot then.
- 7 Q. Yes. Let us now move to D12. It's on 0092-1015. Could you see it?
- 8 A. Yes.
- 9 Q. And I have counted about 16 destroyed structures according to your report.
- 10 A. Approximately, yes.
- 11 Q. So now we are talking about 15 plus 16, that's 31, plus 25 in the previous map that we
12 have seen to make it 26 destroyed structures -- sorry -- 56 destroyed structures?
- 13 A. I'll trust your math, yes.
- 14 PRESIDING JUDGE EBOE-OSUJI: Let's pause there for a minute. Interpreters, how is it
15 going with the rifling? Is it still very disturbing or has it sort of somewhat ameliorated?
- 16 THE INTERPRETER: Your Honour, there is no background noise now. Thank you.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 18 MR FAAL: Mr President, perhaps this is a convenient time to stop for the break.
- 19 PRESIDING JUDGE EBOE-OSUJI: All right. We will take our morning break now, and
20 we'll come back at 11.30. How much longer do you think you will stay?
- 21 MR FAAL: Mr President, I want to do this exercise for the rest of the villages. So I still
22 have Langas, Yamumbi, and Huruma to do. Huruma looks very easy, Yamumbi and Langas
23 a bit murkier. So I should finish before lunch break. Thank you.
- 24 PRESIDING JUDGE EBOE-OSUJI: We will take our lunch break now. Court will rise.
- 25 THE COURT USHER: All rise.

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- 1 (Recess taken at 11.00 a.m.)
- 2 (Upon resuming in open session at 11.36 a.m.)
- 3 THE COURT USHER: All rise.
- 4 Please be seated.
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 6 Witness, welcome back.
- 7 Mr Faal, please proceed.
- 8 MR FAAL: Thank you.
- 9 Q. Mr Bromley, are you okay? Good.
- 10 Mr Bromley, I now wish to take you to look at Yamumbi, and you will recall that you
- 11 identified Yamumbi in what is grid cell L9 in the Atlas, that is page 0092-1132. Grid L9 in the
- 12 Atlas. Do you see it?
- 13 A. Yes. It's actually in the grid cell above it, but it's on this page too.
- 14 Q. And we say that actually the place depicted on this page, or most of it, is in fact Langas
- 15 and not Yamumbi. What do you say to that?
- 16 A. I wouldn't know. Again, the -- yeah, I wouldn't know.
- 17 Q. When the OTP provided you with the co-ordinates, they gave that particular co-ordinate
- 18 as Yamumbi; is that right?
- 19 A. Correct.
- 20 Q. Did they inform you that Yamumbi is basically a farm area and not a town? Did they
- 21 explain that to you?
- 22 A. No.
- 23 Q. We also say that the area with the red dots on that map showing destruction is in fact in
- 24 Kisumu Ndogo in Langas and not Yamumbi. What do you say to that?
- 25 A. I wouldn't know.

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1 MR FAAL: May I take your Honours to tab 4 of the Defence binder? The ERN number is
2 KEN-D09-00 -- sorry, D09-0034-003 -- it's 0003. Could you put that up the screen, please?

3 Q. Could you now see it up the screen and also on tab 4 of the Defence -- of the Defence
4 bundle? Can you see it?

5 A. Yes.

6 Q. I want you to examine this Google Earth image we have provided very carefully and if
7 you look at about three plots away from the area stamped as Kisumu Ndogo shopping centre,
8 you would see a plot with a triangular shape. Could you see it? At least three plots --

9 A. What do you mean by plots? The area within streets?

10 Q. Yes.

11 MR STEYNBERG: Also a direction would be helpful, your Honours. A direction would be
12 helpful.

13 MR FAAL:

14 Q. I see it to the left -- three plots to the left from the point marked as "Kisumu Ndogo."
15 Can you see a triangular-shaped plot?

16 A. Yes, a triangle without a bottom; correct?

17 Q. Yes. Would you agree with me that that same spot is also visible in the image that you
18 provided especially to the left -- top left-hand corner of the image you have provided of this
19 document 0092-1132? Can you see it?

20 A. Yes, I believe I can.

21 Q. Would you agree that this Google Earth image depicts the same location as the one
22 contained in the imagery that you analysed on L9?

23 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, I have not located where we are. First of all,
24 I'm handicapped by the printout of the map Atlas sheet L9. Be that as it may, where is the
25 triangle you are talking about that is to the left of the designation Kisumu Ndogo shopping

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1 centre?

2 MR FAAL: Yes, Mr President, may I ask the court officer to shrink -- to shrink the image a
3 little, that way the portions I'm talking about would become obvious? Now it's up the screen,
4 Mr President. You could see that counting three plots to the left -- could you expand it a
5 little bit, please and include a bit of the farm area? Yes, this is -- that is perfect now. If you
6 count three plots to the left from --

7 PRESIDING JUDGE EBOE-OSUJI: Of the "B"?

8 MR FAAL: Of the "B."

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR FAAL: You will see a plot with a triangle -- a triangular shape at the top. That is the
11 spot I'm talking about.

12 PRESIDING JUDGE EBOE-OSUJI: All right. I see that.

13 MR FAAL: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: Okay.

15 MR FAAL: It is quite visible in the image provided by the Office of the Prosecutor contained
16 in KEN-0092-1132. That is L9.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Can we pull up 1132 on the screen?

18 MR FAAL: The ERN number is KEN-OTP-0092-1132; that is sheet L9 Atlas sheet L9.

19 PRESIDING JUDGE EBOE-OSUJI: So we can leave 1132 on screen because your own Google
20 map bundle appears sufficiently clear to work with.

21 MR FAAL: I'm guided, Mr President.

22 So could you kindly put 1132 up the screen, please, L9.

23 Q. And, Mr Bromley, L9 is now up the screen. And taking it from the top left-hand corner,
24 and you walk down the first street, you would come to the point of the triangular shape we
25 talked about contained in the Google Earth image; is that right?

1 A. Yes.

2 Q. So essentially L9, or what is contained in L9, is the same thing that is depicted in the
3 Google Earth image we have provided; is that right?

4 A. Yes, generally the same area.

5 Q. And if you look at the image you provided, that is the L9 you provided, there are red
6 dots to the top right of the document; is that right?

7 A. Correct.

8 Q. And if you overlay the Google map image that we provided, the Google Earth image,
9 onto L9, the red dots would fall on a location called Kisumu Ndogo in Langas; is that right?

10 A. The shopping centre, correct.

11 MR FAAL: Kisumu Ndogo, Mr President, is -- for the record is spelled K-I-S-U-M-U, Ndogo
12 N-D-O-G-O.

13 Q. And we say that Langas is in fact to the left -- to the left -- to the left of the Google Earth
14 image that we provided and also to the left of L9 that you have provided. What do you say
15 to that?

16 A. You mean the --

17 Q. I meant to say Yamumbi is to the left of the Google Earth image that we provided and
18 what is to the right is all Langas. What do you say to that?

19 A. Again, I wouldn't know other than the co-ordinates I was provided.

20 Q. And --

21 PRESIDING JUDGE EBOE-OSUJI: So you're saying that Yamumbi would be around the
22 area you pointed out as the triangle, to the left of that?

23 MR FAAL: Yes, Mr President.

24 Q. And we say that Yamumbi also comprises the area contained in L8, L7, L6, and L5 of the
25 Atlas. Do you have any comment on that?

1 A. I wouldn't know again.

2 Q. We --

3 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, do you have the co-ordinates for all these places
4 you are putting that's different from the Prosecutor's own co-ordinates?

5 MR FAAL: Mr President, we hope, we expect that at some stage when the Defence may
6 present evidence we would have to call someone to present evidence as to the geographical
7 boundaries of Yamumbi and also perhaps present a map.

8 I have attempted to try to get a Google Earth image of it, but the precise boundaries
9 are not marked as it was in the Kimumu one, and I did not want to present
10 misleading information. I have good knowledge of the area. I can --

11 PRESIDING JUDGE EBOE-OSUJI: You're not to give evidence. You're a lawyer.

12 MR FAAL: Exactly. So that is why we are prepared to leave it as is at the moment.

13 PRESIDING JUDGE EBOE-OSUJI: What I was saying is whether you have the co-ordinates
14 for Yamumbi, Langas, Kisumu and so on, since you are contesting the expert's own locations.
15 Of course, he acted on the basis of the co-ordinates he was given.

16 MR FAAL: Our contention, Mr President, is that just a mere co-ordinate is not enough. The
17 Court should have been provided with information as to the geographical boundaries of these
18 areas and with information as to what destruction falls within this particular area, and that
19 has not been done. And we are showing that in fact the areas that have been so provided to
20 represent, to depict some of the places that are talked about, if they are correct, they show
21 very little or no destruction. And where we believe that the information is incorrect, we
22 have tried to provide what we believe is the right information, but there is an extent to which
23 we can go. We do not have just the co-ordinates, because we believe a co-ordinate would not
24 be enough. We believe --

25 PRESIDING JUDGE EBOE-OSUJI: No, no, no, it would not be one co-ordinate. If you are

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1 talking about an area, that area can fall within some co-ordinates, perhaps four or more.

2 MR FAAL: Exactly.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. So at least that can give you a rough idea of what
4 you're saying. And you say you have the co-ordinates. If you plotted the map around
5 those co-ordinates, you will have the area.

6 MR FAAL: That is -- that is precisely the point. But at the moment, I do not have
7 co-ordinates as such for some of these locations. For some areas it's quite easy. It's obvious.
8 Say for instance Langas, we can easily tell what is Langas, but I really do not have any precise
9 co-ordinates that I can give. May I proceed, Mr President?

10 Q. So, Mr Witness, if you go through the areas that I have identified as Yamumbi, you
11 would see some destruction or what is seen -- showed as destruction on L4 and L3; correct?

12 A. As well as L5.

13 MR FAAL: Yes.

14 Mr President, this is something we would have to come to at a later stage. We
15 believe that portions that are depicted in L4 and L3 are in fact out of Yamumbi, but if
16 you look at the map it looks like a continuation of the same field. So for now we just
17 take it as Yamumbi. And I am prepared to count every destruction that is contained
18 in that area and take it for now to be in Yamumbi, just to be fair to the witness and to
19 the Prosecution, even though we believe that some of those areas are in fact out of
20 Yamumbi. And at the right stage we will bring evidence to that effect.

21 PRESIDING JUDGE EBOE-OSUJI: You can proceed with your questioning. If Prosecution
22 has an objection, they will make it and then we'll make a ruling.

23 MR FAAL: Thank you very much, Mr President.

24 Q. And we say that if you look at L5 you have identified about ten definitely destroyed
25 structures; is that right?

- 1 A. Approximately.
- 2 Q. If you look at L6, none. Correct?
- 3 MR STEYNBERG: I beg your pardon, I can see two in the bottom left-hand co-ordinate.
- 4 MR FAAL: Yes, thank you very much for that correction.
- 5 Q. Two in L6?
- 6 A. Correct.
- 7 Q. L7, none?
- 8 A. Correct.
- 9 Q. And L8, none?
- 10 A. Correct.
- 11 Q. So now let's move to Langas. Before we leave this page, L9, we have identified about
- 12 16 destroyed structures in the place called Kisumu Ndogo?
- 13 A. Approximately.
- 14 Q. And if you turn to the next page, L10, you would see a continuation of Langas?
- 15 A. Yes. Well, I see L10.
- 16 Q. Yes, we say that place is called Langas. And if you look at the Google Earth image we
- 17 have provided, you could see that the same image depicted on L10 is in fact the image
- 18 depicted on the middle of the Google Earth image we provided, precisely in the segment
- 19 written "Kisumu Ndogo Shopping Centre." Would you agree?
- 20 A. Yes, it appears that way.
- 21 PRESIDING JUDGE EBOE-OSUJI: Is this the same question you've asked before, saying
- 22 that -- where you said that the row or the cluster of destroyed structures appearing at 1132 are
- 23 in around the Kisumu Ndogo Shopping Centre? Is that the point you're making?
- 24 MR FAAL: In fact it's a different point, Mr President. This time I'm just trying to show that
- 25 what is contained in L10 --

1 PRESIDING JUDGE EBOE-OSUJI: Whereabouts in L10?

2 MR FAAL: All of L10, all of L10 is also contained in the Google Earth image we provided
3 showing the area of Langas.

4 PRESIDING JUDGE EBOE-OSUJI: No, but let's take our reference point now at least so there
5 is no confusion when you're saying it's a different point. Now, we see in L10, top west of the
6 image, also a cluster of destroyed structures. Are they the same as we see in L9, an overlap?

7 MR FAAL: Mr President, except I am mistaken, I have not seen any -- oh, yes, yes. The L10
8 is -- it's showing a bit of L9.

9 PRESIDING JUDGE EBOE-OSUJI: Capturing the destroyed?

10 MR FAAL: Capturing the destroyed.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Bromley, help us so that we don't argue about this
12 when you're not here.

13 MR FAAL:

14 Q. What is contained in the top left-hand corner of L10 --

15 A. Yes, you will --

16 Q. -- is in fact what is contained in the top right-hand corner of L9; is that right?

17 A. Yes. You will notice a black line forming the square, which is the grid cell. So there is
18 a small amount of overlap between each page just to avoid losing any of the data between
19 pages. So to the left of the black line on L10 is in fact cell L9 and correspondingly so on the
20 other side of the page.

21 Q. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you. Now, Mr Faal what is that different point
23 you're making?

24 MR FAAL:

25 Q. The different point I am making is that the rest of -- what is in the rest of the page of L9,

1 taking it from the second cell, would also be part of Langas, and it's also showed in the
2 middle of the Google Earth image we have provided; correct?

3 A. Again I can't say whether it's Langas or not, but I can say that it's the -- it appears to be
4 the same as what you have in the Google image you've provided.

5 Q. Thank you. And we say that all that area up to the main road, written "Stendi
6 Kisa-Yala Road" or "Kisumu Road," is Langas and beyond the road is in fact Race Course?

7 A. I can't comment on that. One clarification, though. Your map is actually a Google
8 map, not a Google Earth map.

9 Q. I wouldn't know the difference, Mr Bromley, but thank you very much for that. It's 6
10 in the morning for you, isn't it?

11 PRESIDING JUDGE EBOE-OSUJI: Is there a difference?

12 THE WITNESS: Sometimes there are, yes. Google Earth -- Google Earth and Google Maps
13 as far as I know use slightly different image libraries and so sometimes one is updated before
14 the other. Basically in the past sometimes I've noticed slightly different images between the
15 two, but for 99 per cent of the planet they're probably the same.

16 PRESIDING JUDGE EBOE-OSUJI: Now, Mr Faal, help us while you're there. Where then
17 would you put the Kisumu Road, that is Stendi Kisa-Yala Road? Where would you locate it
18 on either L10 or L11?

19 MR FAAL: It's quite visible on L11 and it is the road in the middle, in the middle of the page.
20 Can you see it, Mr President?

21 PRESIDING JUDGE EBOE-OSUJI: I do see a road there. I wanted to know whether that is
22 where you would put it.

23 MR FAAL: I --

24 PRESIDING JUDGE EBOE-OSUJI: All right. We can proceed.

25 MR FAAL: Yes. And --

1 PRESIDING JUDGE EBOE-OSUJI: Perhaps we can have him react to that, whether he agrees
2 with that.

3 Again, Mr Bromley, while we have you here we want to as much as possible get
4 information we can, because once you leave and lawyers start arguing about what
5 you said and the meaning of it it will be difficult for you to come back then and clarify
6 anything.

7 So do you agree that the road that's written on the Google map satellite photo that
8 says "Kisumu Road," continues on to say "Stendi Kisa-Yala Road," you would put it in
9 the middle of L11, if you can? If it's not clear, you can also let us know.

10 THE WITNESS: They do appear to be the same, your Honour.

11 MR FAAL:

12 Q. And we say that to the right of that road is Race Course and not Langas. What do you
13 say to that?

14 A. Again, I would not know.

15 Q. And, Mr Witness, if you look at the sheet showing Langas, the only destruction that we
16 have seen are the 16 dots in Kisumu Ndogo; right?

17 A. Again, as we discussed with Kimumu, there are additional destruction points in the area
18 of the co-ordinate that I have -- that I was given as Langas, but I think we would have to
19 determine the boundaries of what you consider Langas. Am I answering the --

20 Q. Well, we have provided you with the image of what we consider to be Langas, and we'd
21 be happy if you could show us destruction in places that would fall within the boundary of
22 Langas that is depicted in the Google image we have provided to you?

23 A. So you're saying from the shopping centre to the Kisumu Road is Langas?

24 Q. Yes.

25 A. In the image that you provided?

1 Q. Yes.

2 A. So it looks like we would have one in L10 -- actually, several -- three within L10, two or
3 three of which may be would be just south of the -- or just to the -- below the shopping centre
4 you've identified.

5 Q. But those are the ones in Kisumu Ndogo, isn't it?

6 A. Depending -- again, depending on where your boundaries are. And then there's one in
7 the middle right of sheet L10, which is a yellow point and so a possibly destroyed.

8 Q. Yes, I am more concerned about the definitely destroyed.

9 A. Okay.

10 Q. Could you find any other?

11 A. No.

12 Q. Thank you very much. I would now move on to Huruma, and Huruma was identified
13 in the grid point H4 that is in 0092-1067. Grid point, or Atlas point, sheet H4. Could you
14 put that up the screen, please. Could you see it?

15 A. Yes.

16 Q. And this is the point you have identified as Huruma; is that right?

17 A. Correct, based on the co-ordinates I was given.

18 Q. Okay. We say that Huruma extends to the wheat farm - the popular wheat farm - just
19 in the outskirts of Eldoret. What do you say to that?

20 A. I wouldn't know.

21 Q. And we say that sheets G4 and G3 show Huruma up to the wheat farm. Could you
22 take a look at G4 and G3, please?

23 Could you kindly put G4 up the screen? And G4 is 0092-1052.

24 Can you see it? And the what looks like a triangular space is in fact the wheat farm
25 in -- no, that place would be Rai Ply. And below it on the left-hand side - middle

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1 left-hand side - of the page is the wheat farm and that is where Huruma ends. What
2 do you say?

3 A. Again, I wouldn't know.

4 Q. Did the OTP provide you with information as to the geographical boundaries of
5 Huruma?

6 A. No, they provided an approximate co-ordinate point.

7 Q. May I take you to grid point G3, which is 1051.

8 Could you kindly put that up the screen, please? Yes, could you expand it a little bit
9 please?

10 And we say that that empty space on the middle right-hand side of the page is the
11 wheat farm which separates Huruma from Roadblock. What do you say to that?

12 A. I wouldn't know.

13 Q. May I now ask you to take a look at this document contained in tab 3 of the Defence
14 bundle?

15 Could you kindly put up the screen document KEN-D09-0034-0002? Kindly put it up the
16 screen, please.

17 And, Mr Bromley, you would notice that on the top centre of the page there is this
18 place marked "Wheat Farm." Can you see it, to the left of the road? Can you see it?

19 A. Yes.

20 Q. If you take a look at G3, you would see that the wheat farm is in fact the empty space, or
21 the empty field, depicted in the lower half of G3; is that right?

22 A. Yes, it appears so.

23 Q. And if you follow the Eldoret-Jua Kali Road that is showed on the Google image, you
24 would come to another field which has this writing "Huruma Sub-District Hospital." Can
25 you see it?

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1 A. Yes.

2 Q. And you would agree -- just a minute. You would agree with me that that is depicted
3 in H4 of the Atlas sheets we provided? H4, that would be 0092-1067. H4.

4 A. Yes, it appears so.

5 PRESIDING JUDGE EBOE-OSUJI: Why is that?

6 MR FAAL: H4 on --

7 PRESIDING JUDGE EBOE-OSUJI: I know, I know. I'm asking what -- how do they relate
8 so as to say we are seeing the same thing?

9 MR FAAL: If you -- from wheat farm, if you take the Eldoret-Jua Kali Road going down into
10 Eldoret, that is going south, you would see a field and in the centre of that there is this point
11 marked "Huruma Sub-District Hospital." Okay. That is the same location that is depicted
12 on the right-hand side of H4.

13 THE WITNESS: It's in the H5 cell just right on the edge of the page; correct?

14 MR FAAL: Yes.

15 Mr President --

16 PRESIDING JUDGE EBOE-OSUJI: I see the road that appears on H5, quite clearly, that
17 moves from I would say northwest to sort of east on that map -- on that plate.

18 MR FAAL: Yes. It is a continuation of what is contained in the last cell in H4, and we say,
19 Mr President, that that place is the field that is depicted in the Google Earth map, the point
20 that shows Huruma Sub-District Hospital.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Bromley, you say you agree with that proposition?

22 THE WITNESS: Yes. And just as a reminder, the Atlas pages north is rotated slightly to the
23 left so there is some -- some difference between the Google maps you're being shown, where
24 north is directly up, and on my Atlas where north is pointed slightly to the left. You can see
25 the north arrow at the top left of the page. So the road that you see on H5 looks to be the

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1 Eldoret Road. The building that you see to the left in the middle of the field on H5 is also
2 visible to the right side of the page on H4.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed, Mr Faal.

4 MR FAAL:

5 Q. So you agree that the Google Earth image covers the area that you have in H3/H4; is that
6 right?

7 A. Yes.

8 Q. And it also covers the area G4, H3 and -- yes, G4 and H3 and H4; right?

9 A. Yes.

10 Q. And looking at the Atlas sheets you have provided, let's start from H4. There is no
11 destruction that is visible there; correct?

12 A. Correct.

13 Q. And H3 no destruction; correct?

14 A. There may be three on H3.

15 Q. There may be. You have to struggle to find them. Definitely destruction?

16 A. Well, the printout -- can we look at H3 on the screen?

17 MR FAAL: Yes. Could you kindly put 0092-1066 up the screen, please? Kindly expand it,
18 please.

19 THE WITNESS: That's H4. We need H3. Can you scroll down?

20 MR FAAL:

21 Q. You have to struggle to find any?

22 A. Just -- yeah, with the PDF it's always harder. It's possible there's three, or four, five.
23 In the adjoining cell there is at least three.

24 Q. Which adjoining cell is that?

25 A. To the -- to the left.

1 Q. Yes, but that -- that would not be Huruma.

2 A. Right. Okay.

3 Q. That is -- that is beyond the river, and that place would not be Huruma. That place
4 would be Kipkenya. All right, let's go to G3 where -- are you able to find any -- rather, G4.
5 Are you able to find any in G4?

6 A. No.

7 Q. So this is the extent of the destruction in Huruma; correct?

8 A. It's the destruction in those grid cells.

9 Q. Mr Bromley, taking the evidence at its highest, we were able to see about 56 structures
10 destroyed in Kimumu. Do you recall that?

11 A. Yes.

12 Q. About 48 in Yamumbi. Do you recall that?

13 A. Yes.

14 Q. About 16 in Kisumu Ndogo in Langas. Do you remember that?

15 A. Yes.

16 Q. And almost zero in Huruma; correct?

17 A. Yes.

18 Q. Thank you very much. I will not trouble you any further. I would leave it at that.

19 And have a very nice journey back and hopefully we will see you again in another case.

20 In the meantime, let me do the housekeeping and ask that certain items that we have used in
21 the cross-examination be admitted in evidence. And for that I would ask that the map that
22 we used to show Better Farm and Kimumu KEN-D09-0034-0001 and the map we've used for
23 Kiambaa, KEN-D09-0034 --

24 PRESIDING JUDGE EBOE-OSUJI: One at a time.

25 MR FAAL: All right.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Did you use both -- or, let's process one ERN number at a
2 time.
- 3 MR FAAL: Yes, thank you, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: Which one?
- 5 MR FAAL: I would start with the one for Kiambaa.
- 6 PRESIDING JUDGE EBOE-OSUJI: Where is the tab?
- 7 MR FAAL: It's tab 11 and it's KEN-D09-0034-0009.
- 8 PRESIDING JUDGE EBOE-OSUJI: Prosecution?
- 9 MR STEYNBERG: No objection, your Honour.
- 10 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next of the Ruto Defence exhibits. So
11 we don't call upon you one at a time, would you prepare that each of them be admitted so --
- 12 MR STEYNBERG: Your Honours, I don't think I will have any objections, but if we could
13 just identify the tab numbers so I could have --
- 14 PRESIDING JUDGE EBOE-OSUJI: We'll still go one at a time.
- 15 MR STEYNBERG: Yes. I don't -- I don't believe I will have any objection to these
16 documents.
- 17 PRESIDING JUDGE EBOE-OSUJI: All right. So we've admitted the document 0009.
- 18 THE COURT OFFICER: (Interpretation) Document KEN-D09-0034-0009, a public
19 document, will be assigned the following number: EVD-T-D09-00193.
- 20 MR FAAL: And may I ask that the map showing Kimumu and Better Farm be admitted into
21 evidence. And the reference number is KEN-D09-0034-0001.
- 22 PRESIDING JUDGE EBOE-OSUJI: Where is it?
- 23 MR FAAL: Tab 2, Mr President.
- 24 PRESIDING JUDGE EBOE-OSUJI: It will be admitted as the next of the Ruto Defence
25 exhibits.

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- 1 MR STEYNBERG: Your Honour, for the record, I have no objection, but I might wish to
2 show the witness a slightly larger version of this map because I think there's important
3 information that's been left off the map on which he's been asked to --
- 4 PRESIDING JUDGE EBOE-OSUJI: In re-examination?
- 5 MR STEYNBERG: In re-examination, yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
- 7 MR STEYNBERG: I just want to flag that at this stage.
- 8 PRESIDING JUDGE EBOE-OSUJI: So, in the meantime, the document is admitted.
- 9 THE COURT OFFICER: (Interpretation) KEN-D09-0034-0001, a public document, shall be
10 assigned the following number: EVD-T-D09-00194.
- 11 MR FAAL: And the next document would be the Google Earth map of Kisumu Ndogo,
12 contained in tab 4, with ERN number KEN-D09-0034-0003.
- 13 PRESIDING JUDGE EBOE-OSUJI: Admitted.
- 14 THE COURT OFFICER: (Interpretation) Document KEN-D09-0034-0003 will be given the
15 following number: EVD-T-D09-00195. This is a public document.
- 16 MR FAAL: And the next would be the Google Earth image for Huruma sub-location, and it's
17 tab 3, KEN-D09-0034-0002.
- 18 MR STEYNBERG: No objection.
- 19 PRESIDING JUDGE EBOE-OSUJI: Do you accept that it is Huruma sub-location, or you are
20 not objecting merely to the admission of the document?
- 21 MR STEYNBERG: I have no objection to the admission of the document. I don't make any
22 admission about the correctness of the area that he's put.
- 23 PRESIDING JUDGE EBOE-OSUJI: That document is admitted.
- 24 THE COURT OFFICER: (Interpretation) Document KEN-D09-0034-0002, a public
25 document, shall be assigned the following number: EVD-T-D09-00196.

1 MR FAAL: Thank you very much, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Faal.

3 Mr Kigen-Katwa, you will then take us to lunchtime?

4 MR KIGEN-KATWA: Yes, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: And I understand you don't expect to be more than that?

6 MR KIGEN-KATWA: I don't recall you asking me, Mr President, but I shouldn't be more
7 than on the higher side one hour, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Proceed.

9 QUESTIONED BY MR KIGEN-KATWA:

10 Q. Good afternoon, Mr Bromley.

11 A. Good afternoon.

12 Q. Now, my questions will be entirely on the issue of the estimates you did in terms of
13 distance and time travel, and that is the understanding we had with the other team.
14 Now, the letter of instructions given to you, or the letter requesting for your expertise,
15 is reference -- it is at tab 5 and it is KEN-OTP-0092-0928. Now, Mr Bromley, I want
16 to ask you first -- initially, three general questions before we go into the question of
17 the use of the helicopter and travel by road. The first one is: Could you kindly
18 confirm that the co-ordinates you used were the ones given to you by the
19 Prosecution?

20 A. Yes. All the co-ordinates I used were provided by OTP.

21 Q. And did you countercheck whether those co-ordinates as counterchecked with the
22 names of the places referred to by the Prosecution were accurate?

23 A. If I recall, in some cases, I was able to see them on Google maps, in some cases I had no
24 other information on -- on where they might be. I certainly checked that the -- that the
25 co-ordinates were in the -- the right general area just a matter of normal confirmation.

1 Sometimes they get reversed basically. So, but, yeah, I had no ability to check where these
2 locations were other than something like Google Maps.

3 Q. Mr Bromley, are you in a position to tell this Court that each of those co-ordinates is an
4 accurate reference to the locations referred to by the Prosecution?

5 A. Not specifically -- not at this time, no. I would have to go back and see which ones
6 were visible on Google Maps, but I essentially took them at face value other than a basic check
7 of their possible accuracy.

8 Q. Now, in terms of the -- your report on the use of helicopters, Mr Bromley, you have
9 stated at page KEN-OTP-0092-0928 that there are some limitations to your ability. Could I
10 read the reference again, sorry: KEN-OTP-0092-0919. In that report, Mr Bromley, you have
11 said that your estimates as to time taken to travel between the locations given to you were
12 subject to a couple of caveats, isn't it?

13 A. Yes.

14 Q. And, Mr Bromley, the ones you've identified, are the same page 0919, are the time it
15 would take to take off, time it would take to land and any in-flight maneuvers, isn't it,
16 Mr Bromley?

17 A. The calculations did not take those three variables into account. It just essentially
18 assumed a take-off, straight flight, landing without any manoeuvring, essentially.

19 Q. In fact, Mr Bromley, it assumes that it takes off at the estimates of the speeds you've
20 given at the bottom of your -- at the -- in your conclusions, at page 0920, being at the first
21 speed 248 kilometres per hour and at a slow speed 200 kilometres per hour, isn't it?

22 A. It essentially starts the flight after take-off from a position where it would then
23 accelerate to those speeds.

24 Q. Now, Mr Bromley, you would also confirm that apart from what you acknowledge as
25 likely to be issues that will affect the time taken, you would also accept that weight -- weight

1 carried in the helicopter would also affect the time taken to travel between the points, isn't it?

2 A. That's -- I think that's a little beyond what I can speculate. I would assume the top
3 speed of the helicopters mentioned in their manufacturer's specifications would take into -- I
4 mean, they have a certain carrying capacity which they're not going to exceed or else they
5 can't fly.

6 Q. Okay. What of altitudes, Mr Bromley?

7 A. No, there was no -- no calculation involving altitude. Again, it was just from a
8 hovering position flying to the destination.

9 Q. I understand, Mr Bromley. What I'm saying is, depending on the situation of the
10 altitude or the location where the aircraft is flying, speed and time taken would be affected by
11 altitude, isn't it?

12 A. Possibly. I guess I don't know enough about helicopter flight to answer that.

13 Q. Mr Bromley, temperature would also affect the time taken to travel, isn't it?

14 A. Again, I couldn't speculate on that. It was the manufacturer's specifications plugged
15 into the distance equals time.

16 Q. Now, Mr Bromley, you identified a couple of specific helicopters that you said you
17 reference from the Kenya media, and that's Eurocopter AS350, 365, EC145, MD/Hughes 500
18 and Robinson R44, isn't it?

19 A. Correct.

20 Q. Could you confirm, Mr Bromley, that these models that you have used to make your
21 estimates were not given to you by the Prosecution?

22 A. Correct.

23 Q. Mr Bromley, all the items we've made reference to, the takeoff time, the flight time,
24 the -- sorry -- the landing, the flight manoeuvres and whether or not weight and altitude
25 would affect the time taken by a flight to travel from one point to another, all of them would

1 increase the time it would take to fly from one point to the next, isn't it?

2 PRESIDING JUDGE EBOE-OSUJI: What did you say he made reference to as affecting the
3 flight time?

4 MR KIGEN-KATWA: Mr President, he acknowledged that takeoff, landing and flight
5 manoeuvres were not taken into account in calculating the time it would take to fly from one
6 point to another.

7 PRESIDING JUDGE EBOE-OSUJI: All right, okay. Your question is again?

8 MR KIGEN-KATWA: Then additionally I have put propositions to him in respect to weight,
9 altitude and temperature, and he acknowledges that altitude could possibly be. He didn't
10 acknowledge on weight and temperature.

11 Q. And my question is this: That all those would go into in every likelihood increasing
12 the time it would take to travel from one point to the next, isn't it, Mr Bromley?

13 A. That seems logical. That was essentially why I provided the fast air travel time and the
14 slow air travel time, to give some variability in the results to account for these factors and the
15 helicopter speed.

16 Q. Now, Mr Bromley, in your report, there is a particular reference to travelling from the
17 first location being Kipkaren Salient Trading Centre and then location 2. That is at page 0920.
18 Are you there, Mr Bromley?

19 A. Yes.

20 Q. And can you see the item I'm referring to, Kipkaren Salient Trading Centre to Diani
21 Road? Can you see that?

22 A. Yes.

23 Q. Now, on that item, Mr Bromley, you've said that it would take at the slow speed 63
24 minutes to travel from Kipkaren Salient Trading Centre to Kass FM studio, Diani Road off
25 Oledume Road, Nairobi. And it would take 78 minutes when you're going faster. That's

1 what you said, Mr Bromley, isn't it?

2 PRESIDING JUDGE EBOE-OSUJI: It is the other way around, isn't it?

3 THE WITNESS: It's the other way around, yes.

4 MR KIGEN-KATWA:

5 Q. Sorry, I'm sorry, I'm sorry. That if you are going fast you would use 63 minutes and if
6 you are going slow you would use 78 minutes, isn't it?

7 A. Correct, that's what it indicated.

8 Q. Now, in terms of this location Kass FM, Diani Road off Oledume Road, the presumption
9 is that in fact there is a landing pad for an helicopter, isn't it?

10 A. I mean, possibly or an area to land.

11 Q. Thank you, Mr Bromley. Could you confirm if you actually checked whether that is a
12 possibility that there is a landing ground whether in terms of a landing field or a landing pad?

13 A. No, I did not check that.

14 Q. You've also said in the next item that it would take zero minutes to travel from Kipkaren
15 Salient to Kass FM office Barng'etuny Plaza. You can see that?

16 A. Yes. Since they're 2 kilometres apart at that speed, it's essentially less than 1 minute.

17 Q. In practical sense, Mr Bromley, is that possible that you would not use any time to travel
18 between the two points?

19 A. Well, the unit of time here is minutes. So zero indicates less than 1 minute. But I'm
20 sure you could fly at 200 kilometres in less than 1 minute over 2 and a half kilometres is how
21 I would interpret that.

22 Q. Now, Mr Bromley, this proposition in the first item I picked, Kass FM studio on Diani
23 Road, off Oledume Road, was it your idea that is Kass FM studio, which is marked there is on
24 that Diani Road or was it Prosecution's proposition?

25 A. That's a verbatim repeat of the information I was given by Prosecution.

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1 Q. Now, Mr Bromley, I would like, keeping your finger on that item, I would like you to
2 look at the letter of instructions you were given, KEN-OTP-0092-0928, page 0928. Are you
3 there?

4 A. Yes.

5 Q. Now, I want to read with you the last paragraph of what you are requested by the
6 Prosecution. The last sentence, the last sentence starts with the word "after having
7 identified." Can you see that?

8 A. Yes.

9 Q. It says this, this is what you were asked, "After having identified the requested
10 distance ..." --

11 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Kigen-Katwa. You said where is this?

12 MR KIGEN-KATWA: That is at tab 5, your Honours. KEN-OTP-0092-0928.

13 PRESIDING JUDGE EBOE-OSUJI: All right. "After having identified the requested
14 distances ...", you mean?

15 MR KIGEN-KATWA: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 MR KIGEN-KATWA:

18 Q. Mr Bromley, this is what you are asked, "After having identified the requested distances,
19 you are requested to estimate the average time required for a person transported by a
20 helicopter or an ordinary car to move from location 2 to location 1 on the given date." You
21 can see that, Mr Bromley?

22 A. Correct.

23 Q. Mr Bromley, it is on the item I've just shown you, Kipkaren Salient and Kass FM, Diani
24 Road, in the letter of instructions, you in the next page, you were given a specific time when it
25 is you were to make an estimate of both distance and time, being 6 December 2007. You can

1 see that at the next page, page 929, isn't it?

2 A. Yes.

3 Q. Now, Mr Bromley, my instructions is that Kass FM was not at this address, Diani Road
4 off Oledume Road, as at 6 December 2007. What did you have to say in response that?

5 A. That's not something I would know.

6 Q. Now, using the same item, Mr Bromley, you were asked how long it would take to
7 travel on that specific date from one point to the next. Is your estimation in any way
8 informed by 6 December 2007 when you estimate the times that it would take whether you're
9 going fast or slow?

10 A. No. The specific date did not figure into the -- 200 miles per hour or 200 kilometres per
11 hour is the same on one day or the next.

12 Q. And could you confirm that in fact in all the estimates you have done, the dates given to
13 you were not a factor you took into account in making the estimates?

14 A. That's correct.

15 Q. Mr Bromley, you said you used general media material to make an estimate of what
16 kind of models, models, helicopter models are in use in Kenya. That's what you said, isn't it?

17 A. Yeah, that was essentially a brief Internet search on what kind of helicopters I might
18 find in Kenya at that time, I mean, yeah.

19 Q. Thank you, Mr Witness, but basically you will confirm that in your report you have not
20 incorporated anything to show that data that you did to show that these kind of helicopters
21 are actually in use in Kenya?

22 A. They were referenced in some source relating to Kenya, but I can't -- I remember one
23 was a safari company, one was an executive limousine service, something like that.

24 Q. Now, Mr Bromley, I would like us to move on to the issue of the use of road transport.
25 And that's also at page 0092-0919 of your report. Could you confirm that you have raised the

1 following caveats? At the last paragraph -- at the first sentence -- the last sentence at page
2 0919 that you have said that making an estimate of how long it would take to go by road is
3 more complex than obtains in respect to an helicopter?

4 PRESIDING JUDGE EBOE-OSUJI: Before you embark on that line of questioning,
5 Mr Kigen-Katwa, I'm thinking about the witness's answer about the date indicated in the
6 Prosecutor's instructions. Would you know why a date would be indicated in your
7 instructions saying distance from point A to point B on a given date?

8 THE WITNESS: One moment. Yeah, there were dates for the same locations provided,
9 yeah, when I was searching for optical satellite imagery to see what had possibly been visible
10 at those locations. So, I mean, it seems to be the same dates that were mentioned in both
11 tables.

12 So the dates were very relevant when I was looking for the imagery, but to me they
13 did not seem relevant for the travel time calculation unless we want to get into the
14 road traffic conditions in Kenya on those particular dates, which again I had no
15 information on about whether there was possibly a traffic jam in a certain area on that
16 particular date.

17 PRESIDING JUDGE EBOE-OSUJI: No, this is about air travel now.

18 THE WITNESS: Yeah, right. So I can only speculate that the dates were provided to
19 possibly inform the road travel part of the assessment.

20 PRESIDING JUDGE EBOE-OSUJI: In terms of air travel, just so we get this off our chests,
21 mine at least, it may well be that you've responded to it in a way to Mr Kigen-Katwa's
22 questions, but if there was say heavy rainfall on one day, would it make a difference in how
23 fast a helicopter travels?

24 THE WITNESS: I would think so. That's speculation. And certainly if the weather was
25 bad enough a helicopter would not have been able to fly, but I did not check weather

1 conditions for those particular dates.

2 PRESIDING JUDGE EBOE-OSUJI: Or perhaps wind as well?

3 THE WITNESS: Correct, yeah. The same response. I'm sure it would theoretically have
4 an influence, but I did not check wind conditions.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Please proceed.

7 MR KIGEN-KATWA:

8 Q. And in specific terms, Mr Bromley, wind -- whether it's wind, or whether it is weather
9 factors, would inform the likely time it would take to move from one point to another, isn't it?

10 A. Yes, and again that was why I provided a slow and a fast travel time. That was -- that
11 was all I could do to address that particular variable.

12 Q. Now, the first question I wanted to ask you about the road transport is that you said it is
13 a more complex issue to address, isn't it?

14 A. Yes, very much so.

15 Q. And some of the caveats you identified was the question of reasonable and best route
16 along the road network, isn't it?

17 A. Yes, I would -- there would be multiple routes to get from point A to point B.

18 Q. The second one that you identified was traffic at page 920, isn't it?

19 A. Correct.

20 Q. The next one is weather conditions?

21 A. Correct.

22 Q. And then the next one is type of car?

23 A. Correct.

24 Q. Now, Mr Bromley, at page 0919, in the first sentence of your report in the introduction,
25 you've said, "In February 2013, the United Nations Institute of Training and Research

1 Operational Satellite Applications Programme conducted an analysis of possible travel times
2 between origins and destinations." You can see that?

3 A. Yes.

4 Q. Mr Bromley, having made your report in February 2013, the roads that you have
5 referenced in terms of time to be -- likely time to be taken between point 1 to point 2 in your
6 report, you wouldn't know whether or not those roads were in existence in 2007, would you?

7 A. The data that I used was from the Google Map Maker source, and we obtained that in
8 August of 2011 and there was no way to essentially take it back to 2008 -- or 7, sorry.

9 Q. So the routes that -- at page 0919, you've used the word "reasonable and best route along
10 the road network"?

11 A. Yes.

12 Q. And at page 922 you've used another word to describe the same thing. If you looked at
13 the last line of your report you said, "For a fast and slow car to travel along theoretical best
14 route between locations was provided." You can see that?

15 A. Yes.

16 Q. Are we to assume that "theoretical best route" is the same thing as at page 922? It's the
17 same thing as you have referred to as "reasonable and best route" at page 919?

18 A. Yes.

19 Q. Now, Mr Bromley, in the same way that you said you -- in the middle of your report on
20 the methods you said -- I'll just read. You will recognise what I'm reading. "To determine
21 possible travel time for helicopter between each point, helicopter speeds were estimated
22 based on review of five common helicopter types in operation by charter companies in Kenya
23 as referenced in Kenya media." You recall having made that reference, Mr Bromley?

24 A. Yes.

25 Q. Now, my point of interest is did you do any media search and reference as to the road

1 situation in Kenya in the year 2007, particularly the roads that you used to estimate the time
2 you would need to travel between points?

3 A. No. Just to be clear, I've taken the road from Nairobi to the airport once or twice.
4 I think that was in 2010. There was a traffic jam.

5 Q. Okay. Now, if I were to put to you, Mr Bromley, for instance, that what you've
6 referred to at page 921 being the time it would take from item number 3 -- you can see item
7 number 3, Mr Bromley? Item number 3 is travel from Sugoi to Nairobi. You can see that?

8 A. Yes.

9 Q. If I were to indicate to you that it would take seven hours to go from Sugoi to Nairobi
10 because of the bad road condition in the year 2007, what would you say?

11 A. I can't speculate on that.

12 Q. And in reference specifically to that item number 3, Mr Bromley, you would also
13 confirm that you did not countercheck it against the date that the Prosecution had proposed is
14 the reference date, isn't it?

15 A. Correct.

16 Q. And so that we are done with this issue of theoretical best route and reasonable and best
17 route, could you confirm that what you meant was the most direct route?

18 A. This is where we get into the particulars of the software that I used. It is essentially
19 choosing the most direct route. If you expand the analysis and start calculating every
20 possible route, then it goes on forever.

21 Q. Mr Bromley, then you would confirm that the time estimates that you used or you've
22 suggested are probably the minimum time, because it doesn't take into account for instance
23 traffic, road condition and all the other items we have acknowledged?

24 A. Correct.

25 Q. Mr Bromley, your report in terms of the motor vehicle does not suggest in any way

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1 what -- or rather let me put it this way. The time you'd spend to move from one point to
2 another would depend also on the engine capacity of the car you're using, isn't it?

3 A. Yes. Again those sorts of issues, the only way I could account for that was a theoretical
4 fast car versus slow car.

5 Q. And the same obtains for a helicopter that it would depend also on its capacity, isn't it?

6 A. Correct. So the sample helicopters that I chose were a range of, you know, very
7 modern fast ones to older smaller ones.

8 Q. Mr Bromley, I was going to ask you -- I know you've mentioned that you were in Kenya
9 and saw the road - at least one road - in the year 2010. Absent having done any
10 investigations using media reports for the period 2007, additionally you did not see the road
11 condition in the period 2007, isn't it, Mr Bromley?

12 A. Correct.

13 Q. And so, Mr Bromley, you will admit that your time estimates -- I know I have asked you
14 this question, but I want to ask you the last time as I finish my cross-examination. That the
15 time estimates you've given, even in terms of the fastest speed, are the minimum time it
16 would take to move from one point to another, isn't it?

17 A. Correct.

18 MR KIGEN-KATWA: Mr President, that should be all.

19 Thank you very much, Mr Bromley.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Bromley. Then that brings us
22 to our lunchtime.

23 Mr Steynberg, you said you have some questions?

24 MR STEYNBERG: I will have some questions. I don't imagine I'll be more than 15 or 20
25 minutes at the outside.

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1 MR KIGEN-KATWA: Mr President, I just realised there's a document which --

2 PRESIDING JUDGE EBOE-OSUJI: You want to put in?

3 MR KIGEN-KATWA: Yes, yes. It's a document that was already disclosed, KEN-0092-1516,
4 in respect to destruction in Huruma Estate and Kibera, Nairobi.

5 Mr President, this is an item we had agreed with my colleague for Ruto team would
6 handle, but seemingly as an oversight he did not put in the document.

7 PRESIDING JUDGE EBOE-OSUJI: Where is it? Is it in the tab?

8 MR KIGEN-KATWA: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: What tab is that?

10 MR KIGEN-KATWA: It should be tab I think 11. Tab 10, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

12 MR STEYNBERG: Your Honour, this is a document that was not shown to the witness, he
13 has not commented on it and I don't see on what basis it's being tendered into evidence.

14 PRESIDING JUDGE EBOE-OSUJI: Yes. What is -- I don't remember --

15 MR KIGEN-KATWA: Mr President, if I could have the witness identify it please? I know
16 I had closed my cross-examination, but it shouldn't take me more than five minutes. I very
17 kindly request for your indulgence. Let me say three minutes.

18 THE COURT OFFICER: (Interpretation) Mr Kigen-Katwa, we've noted that the document
19 is confidential. Please could you confirm that?

20 MR KIGEN-KATWA: It's not confidential.

21 PRESIDING JUDGE EBOE-OSUJI: We notice that it is an OTP document, is it?

22 MR KIGEN-KATWA: Yes, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

24 MR KIGEN-KATWA:

25 Q. Mr Bromley, I would like you to look at tab 10 and particularly look at the document

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1 KEN-OTP-0092-1516.

2 A. Yes, I see it.

3 Q. Could you confirm this is the document you said your employer made before you were
4 involved in this -- before you were engaged to do the report that you did? You recall that?

5 A. This appears to be a different document produced at the time. It was produced 23
6 January, I think 2008, which was quite some time before I came to UNOSAT.

7 Q. Yes, and you said it came to conclusions - similar conclusions - to what you had
8 already -- to the conclusions you arrived at, isn't it?

9 A. Well, again, I don't believe I've commented on this, or seen it honestly. I mean I think
10 I've seen it, but I haven't reviewed it closely.

11 Q. To the extent to which you have reviewed it, Mr Bromley, could you confirm that on its
12 face you can see that there is acknowledgement of destruction in Huruma Estate and Kibera
13 Estates in Nairobi?

14 A. That's the title of the map, correct.

15 PRESIDING JUDGE EBOE-OSUJI: Would it come from the same series of records that we
16 see at tabs 8 and 9 --

17 THE WITNESS: It --

18 PRESIDING JUDGE EBOE-OSUJI: -- of the OTP bundle?

19 THE WITNESS: Yes. There is an activation code as we call it, which is referred to as a glide
20 number, in the top right, and that appears to be the same activation code, although the map
21 on the screen was essentially produced, you know, 19 days later. 19 and 20 days later than
22 the other maps we discussed.

23 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, do you revise your position?

24 MR STEYNBERG: Your Honour, I've no real objection to it being put in, but I don't see the
25 relevance. We're talking about destruction in Nairobi, which is -- we've heard a lot

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- 1 about -- about destruction falling on this side or on that side of a particular boundary within a
2 kilometre or two. This is some 400 kilometres away, but other than relevance nothing.
- 3 PRESIDING JUDGE EBOE-OSUJI: We will admit it.
- 4 MR KIGEN-KATWA: Thank you very much, your Honours. Thank you very much for the
5 indulgence.
- 6 PRESIDING JUDGE EBOE-OSUJI: We will -- after the court officer records the document,
7 we will take our break now.
- 8 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Document
9 KEN-OTP-0092-1516, a public document, will be assigned the following number:
10 EVD-T-D11-00043.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 12 Witness, we will take our lunch break now and you too, a well-deserved lunch, and
13 then we will meet again at 2.30.
- 14 Court will rise.
- 15 THE COURT USHER: All rise.
- 16 (Recess taken at 1.05 p.m.)
- 17 (Upon resuming in open session at 2.33 p.m.)
- 18 THE COURT USHER: All rise.
- 19 Please be seated.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 21 And, Witness, welcome back.
- 22 Prosecutor? Mr Steynberg?
- 23 MR STEYNBERG: Thank you, your Honours. My apologies.
- 24 QUESTIONED BY MR STEYNBERG:
- 25 Q. Mr Bromley, there are just four areas I wish to briefly cover in re-examination and let me

1 commence with the cross-examination by counsel for Mr Sang relating to the travel times in
2 Kenya. And I refer you in this regard to tab number 5 and in particular to page 0921.
3 Please let me know when you have it.

4 A. I have it.

5 Q. Now, with reference to the third entry, and that is the travel time by car from Sugoi to
6 the Kass FM studios at Diani Road, Nairobi, my learned friend put to you that the travel time
7 between those two points would be seven hours. Do you recall that?

8 A. Yes.

9 Q. Expressed in minutes, how long would that be?

10 A. 420 minutes.

11 Q. And would you agree that that is almost exactly the median between the two times that
12 you have given? According to my calculation, the average would be 431 minutes.

13 PRESIDING JUDGE EBOE-OSUJI: But isn't that something we can all do the math at the
14 appropriate time? Do we need to ask the witness that, unless there is -- unless there is a
15 question that rides on it?

16 MR STEYNBERG: No question. More of an observation, and perhaps it's one that the
17 Court may draw for itself. Thank you, your Honours.

18 Q. If I can move on then to the questions that were put to you by counsel for Mr Ruto.
19 Firstly, you were taxed on the limitations of MODIS fire detection and this was in the first
20 session of cross-examination by Mr Faal, my learned friend. And in particular you were
21 shown the fire maps - fire detection maps - at tab number 8 and I refer to 0092-1514. In
22 particular, you were asked about the bottom left-hand map dated 29 to 30 December. Do
23 you recall that?

24 A. Yes.

25 Q. My learned friend pointed out to you that over the area -- well, in the centre of the map

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1 you see what appears to be the town of Eldoret, and it was pointed out to you that over that
2 area and surrounding areas there were no fire detections for those two days; correct?

3 A. Yes.

4 MR FAAL: Mr President, I think my learned friend should precise his questions. I never
5 suggested that there were no fires in Eldoret during those dates. My -- the work I did with
6 regards to this particular map is to show actually the fires that were listed there and not those
7 that are not listed there. So I think I may have been either misunderstood or misquoted.

8 PRESIDING JUDGE EBOE-OSUJI: Point taken.

9 MR STEYNBERG: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Noted, but then what's your question?

11 MR STEYNBERG: Well, it wasn't clear to me what in fact the point of Mr Faal's questions
12 were. He asked various questions about what appears on the map, but never then put any
13 propositions to this witness. I had assumed that the purpose of this cross-examination was
14 to show an absence of fires in the Eldoret -- Greater Eldoret area on those two dates, but
15 I -- since it wasn't clear to me, that was a supposition on my part, perhaps my learned friend
16 could clarify?

17 MR FAAL: And perhaps instead of criticising the way in which questions are asked, counsel
18 should not suppose what's not been asked. My questioning was very clear. All I was doing
19 was to show that there were particular fires on this map on certain areas on particular dates.
20 Whether counsel understood the purpose of those questions is not for us. The fact is we
21 have identified that there were fires at particular locations on dates that are different from the
22 dates that are the subject of this charge. That is important for us in our view. If counsel
23 does not see the importance, let it be.

24 MR STEYNBERG: Be that as it may, your Honours, I do not wish the Court, the Chamber to
25 be left with my misapprehensions, so maybe I can just ask one or two follow-up questions?

1 PRESIDING JUDGE EBOE-OSUJI: All right, let's hear the questions.

2 MR STEYNBERG:

3 Q. Mr Bromley, can any conclusion be drawn from the absence of fire detections in the
4 area surrounding the town marked "Eldoret" on those two days?

5 A. As I've said, there are various reasons a fire wouldn't be detected by MODIS; either it
6 wasn't burning when the satellites were overhead, or perhaps it was too small, or perhaps it's
7 at a phase and its burning where it's not quite active which would be essentially similar to not
8 burning.

9 A. So it's possible there would be fires in that area that -- that weren't detected.

10 Q. Thank you. One follow-up question: You also mentioned during both your
11 evidence-in-chief and cross-examination the effect of cloud cover on MODIS fire detection; is
12 that correct?

13 A. Correct. With any optical satellite system, cloud cover essentially obscures anything
14 which would be detected.

15 Q. And the fact that there are fires detected in other areas, does that tell us anything about
16 the cloud cover over the Eldoret area necessarily?

17 A. I wouldn't want to speculate on cloud cover from fire detections alone. If you're seeing
18 fire detections you can infer that the cloud cover was light or nonexistent in the area of the fire
19 detections, but the lack of a fire detection does not necessarily mean there was cloud cover.
20 Now, there are other ways to determine whether there were clouds in the area at the time and
21 that would just be to look at the raw imagery.

22 Q. All right. One final question on this map. I notice there that 31 December is not
23 reflected on this map. Does that accord with your observations regarding the availability of
24 data for the -- for this period, and please refer back to your report if necessary?

25 A. Right. I will refer to the report, if you don't mind.

1 Q. If I can assist, if you can perhaps look at page 0885 at tab 4, the final four lines of your
2 results.

3 A. On 0885?

4 Q. Sorry, 0886.

5 A. Right, so when I looked at the raw imagery, when I did this report, I found that "... the
6 area was relatively cloud free during the period of 31 December through 3 January."

7 Q. And if you read on to the end of that section, please.

8 A. "And was cloudy on 4 to 5 January 2008, which would have degraded fire detection
9 capability on those days."

10 Q. And the last sentence.

11 A. "Gaps in MODIS coverage were present on 31 December 2007." So, essentially on that
12 particular day the orbit of MODIS did not cover -- the orbit of the satellite that the MODIS
13 sensor was on did not cover that particular location.

14 Q. And would that account for the lack of data on that date?

15 A. Yes.

16 Q. Thank you. I'd like to move on then to the topic of various maps that were shown to
17 you in cross-examination, mainly derived from Google Maps and also Google map satellite
18 images. And you were taxed at some length on whether or not certain areas fell within or
19 without certain geographical boundaries with reference to Google Maps. Are you able to
20 comment on the correctness or accuracy of Google Maps data, specifically regarding
21 geographical boundaries of particular towns or suburbs within towns?

22 A. No, I've used the data, but I can't quite assess how accurate or valid it might be.

23 Q. In particular, you were shown a Google map image or a Google map relating to the area
24 of Kimumu. Do you recall that?

25 A. Yes.

1 Q. And, unfortunately, on my copy it's a little washed out, but it's -- the map was shown to
2 you at tab 1 of the Defence bundle, KEN-D09-0033 -- 0033-0011. To you have that?

3 A. Yes. And perhaps the following map would be the better one at tab 2.
4 That's -- unfortunately my copy does not have an ERN. There it is at the top. 0034-0001.
5 Could we perhaps just pull that image up that I have just quoted. I will read it again, it is
6 0034-0001. That's the Defence exhibit. Right. I can't see on my image, but it's more
7 visible -- on the screen is a shaded area just 45 degrees to the left and below the Y junction at
8 which you've identified several destroyed structures. Do you see what I am referring to?

9 A. Yes.

10 Q. Now, if I understand my learned friend's propositions, and I'm sure he will correct me if
11 I am wrong, the proposition was that this shaded area denotes the boundary of the area
12 known as Kimumu. Is that what you understand -- understood the proposition to be?

13 A. Yes.

14 Q. Are you able to comment in fact on whether this shaded area -- well, on what this
15 shaded area in fact denotes? Whether it denotes a particular area, or neighbourhood, or a
16 geographical feature, or anything like that?

17 A. No.

18 MR STEYNBERG: Your Honours, I would ask the court officer to please give the
19 Prosecution the floor and, as mentioned earlier, I would like to pull up a slightly larger
20 scale -- or, smaller scale, image of this map so that we can see the extent of the shaded area on
21 one photograph --

22 PRESIDING JUDGE EBOE-OSUJI: Now, we've all been --

23 MR STEYNBERG: -- on one picture.

24 PRESIDING JUDGE EBOE-OSUJI: Sorry, we've all been saying "shaded area." There are
25 different shaded areas. It would be more helpful if we made reference to any writings

1 appearing, any legends in writing appearing. Which one are you talking about? I know
2 you said 45 degrees to the left.

3 MR STEYNBERG: I will try to be more precise. On my screen, your Honours, I see two
4 shaded areas and I realise there's some colour variation. I am referring to what appears to be
5 a grey shaded area which is roughly an upside down triangle and contains red -- red points,
6 points marked in red.

7 PRESIDING JUDGE EBOE-OSUJI: Right, one second. Would it be where you -- towards
8 the top you see "Kimumu Primary School"?

9 MR STEYNBERG: Yes, your Honours, that would be the first point at the top, and just below
10 that to left "Kimumu High School", the area in which those are -- are contained.

11 PRESIDING JUDGE EBOE-OSUJI: All right. So that is the shaded area you are interested
12 in?

13 MR STEYNBERG: Indeed, your Honours.

14 Can I inquire if the parties have this map? You will have to switch to "PC1" on your
15 monitors.

16 Q. Do you have the image before you, Mr Bromley?

17 A. Yes.

18 Q. You will see on that image there is a Y junction visible with point A -- just above the red
19 point "A" on the map. Do you see that?

20 A. Yes.

21 Q. And between that Y junction and the town of Eldoret you can see a shaded area
22 which -- in which the point A falls. Do you have that?

23 A. Yes.

24 Q. Again, are you able to comment on what that shaded area might depict?

25 A. No.

1 Q. I'm going to ask to --

2 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, again, we want the record to be clear, so
3 we are now looking at a more distant image of the Defence's 0001; is that it?

4 MR STEYNBERG: Indeed, your Honours. In fact, point A, if it helps, represents Kimumu
5 Cathedral, which was what we searched on. It was visible on -- on one of the grid maps
6 my -- the witness referred to. So, essentially, what we've done is zoomed out in laymen's
7 terms, and perhaps now if we can zoom in to the area surrounding point A. A bit more.
8 And scroll down a bit. The other way. All right. And I think we can see now then that
9 this is the same area there. You can see "Better Farm" to the right of that point. Do you
10 agree that's the same junction we've been referring to?

11 A. Yes.

12 Q. Now, within that same shaded area, we've just zoomed in and scrolled down a bit,
13 you'll see a reference to "Kapsoya Catholic Church Compound". Do you see that?

14 A. Yes.

15 Q. Right. Now, I think my learned friends will agree that Kapsoya is a different area to
16 Kimumu. Do you agree, or do you have any knowledge of that?

17 A. No.

18 MR FAAL: Mr President, I am wondering what is happening here. Is this another
19 examination-in-chief, or these are issues arising out of cross-examination, I mean, because it
20 appears that my learned friend is now venturing into areas that are out of Kimumu? I do not
21 know whether this map is intended to show the boundaries of Kimumu. If that is the case
22 we have not been told that yet, but it appears that, really, he is going out of the issues that
23 have been covered during cross-examination. I leave it at that.

24 PRESIDING JUDGE EBOE-OSUJI: It appears he's cross-examine -- sorry, re-examining on
25 the basis of your Google map. Isn't that what you think is happening?

1 MR FAAL: No, I think he's gone beyond that. He's now gone into areas such as Kapsoya.

2 We have never mentioned that.

3 PRESIDING JUDGE EBOE-OSUJI: Isn't he telling us that he's zooming into the shaded area
4 introduced in your Google map?

5 MR FAAL: Yes, but I'm doing something different from what we did --

6 PRESIDING JUDGE EBOE-OSUJI: That's --

7 MR FAAL: -- and not anything arising out of what we did. But I leave it there.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, yes, let's leave it. Let's see where he goes.

9 MR STEYNBERG: Your Honours, if I can clarify? The purpose of this is to counter the
10 proposition which as I understand it was put to this witness that the shaded area on the map
11 at tab 2 of the Defence bundle, the limits of the shaded area denote the borders of Kimumu.
12 What I intend to demonstrate is that there are areas identified as being part of
13 Kimumu that fall outside the shaded area, and similarly there are other geographical
14 locations that fall inside the shaded area. And the conclusion I would argue at the
15 end of the day is that the shaded area actually represents something completely
16 different from a geographical location.

17 MR FAAL: Mr President, if that is the case, we are looking at completely different
18 documents. The search result that we put before the witness was a search for Kimumu, and
19 we presented the result as we got it from Google Earth.

20 I personally know the geographical area, I know the location, and I know where
21 Kimumu is. What we are being given by the Prosecution is a completely different
22 document. In fact, it is a search result for Kimumu Cathedral, and as such it would
23 be difficult to assume that what is contained in that document is the same thing as
24 what is contained in the documents the Prosecution used.

25 And also, when the Defence -- the witness was cross-examined, the Defence was

1 prepared to concede that other areas that are not depicted in here are also part of
2 Kimumu. And if you recall, Mr President, we looked at cells, grid cells which even
3 talked about -- which even show the Kimumu Cathedral and others. So we did not
4 show the extent of all the places that constitute Kimumu.

5 What we show is that this area in Better Farm is not part of Kimumu. We did not
6 show what is at the end of this map. And this -- this is a product of a different
7 search result from that of the Prosecution. They searched for Kimumu Cathedral.
8 We searched for Kimumu. This is the result we got. And as such the documents
9 are completely different in my view.

10 It may appear unfortunate, Mr President, but that is the fact. We searched for
11 different things and receive different results.

12 The important thing here is what are the burned areas that are within Kimumu.

13 And as far as I am concerned we are prepared to accept and look at all the grid cells
14 from Junction all the way to Jerusalem, and then all those dots be counted, and we are
15 happy to accept that. But the problem is the documents that the Prosecution is using
16 is different from the one we used.

17 Let him identify the boundaries for Kimumu, and we can do the maths. We would
18 be content with that. Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: All right. This is not something we can resolve right
20 now. It is something that will be resolved during arguments at the end of the day. But let's
21 get the Prosecutor's questions, and then we'll make those arguments later, or you will as
22 counsel.

23 MR STEYNBERG: Your Honours, I think perhaps rather than reply to my learned friend, if I
24 can just direct a question to the witness, and he I think will be able to clear this up.

25 Q. Mr Bromley, regardless of whether we search for Eldoret Cathedral

1 or -- sorry -- Kimumu Cathedral or Kimumu Primary School or St Catherine's Kimumu
2 Primary School, the area which is shown on this map, in particular the Y junction and the
3 grey-shaded area, is that the same area on a smaller scale, does that cover the same area as is
4 depicted in tab 2 of the Defence bundle, that's Defence document 0034-0001?

5 A. It depicts the same area, whereas the tab 2 depicts a smaller portion of that area.

6 Q. And grey-shaded area you see on your screen -- well, let me ask this. The top of the
7 grey-shaded area that you see on your screen, the roughly upside down triangular shape, just
8 to the left of the Y junction and above the letter A, can you comment on whether or not that
9 would correspond with the area depicted on tab 2 of the Defence binder?

10 A. To me, they appear to be the same shape at the top of the grey area.

11 MR STEYHBERG: Right. Your Honours, I think the rest can be left for argument. Thank
12 you.

13 Q. Then I would just like to turn to your annotated Atlas and certain of the pictures that
14 you were -- or the grids you were shown by my learned friend relating to Kimumu.

15 If the Chamber will bear with me. Your Honours, if I can just ask to give the floor
16 back to CMS, I am going to ask for certain tabs to be pulled up. And if I can ask the
17 court officer please pull up what is B12, and that is KEN-OTP-0092-0985.

18 PRESIDING JUDGE EBOE-OSUJI: What tab again?

19 MR STEYNBERG: It is tab 10 of the Prosecution binder at grid sheet B12.

20 Q. And while that's being done, Mr Bromley, if you can get in front of you again Defence
21 tab B2.

22 The ERN of the particular page again is 0985 for the court officer. And if you can
23 just zoom in to the extent, that's fine, yes.

24 Is it correct that we are looking at the same area as in fact my learned friend pointed
25 out?

1 A. Yes.

2 Q. Now, I'd just like to get some clarity about the orientation of these two maps. You
3 mentioned during cross-examination and indeed during evidence-in-chief that on your grid
4 maps, true north is not directly up but, rather, at an angle towards the left as depicted by the
5 north sign just below the A of Atlas; is that correct?

6 A. Correct.

7 Q. So if one were to orientate, and since we can't turn the computer screen, we will have to
8 turn B2. If we were to orientate B2 to match the orientation of -- sorry -- tab B2 to match the
9 orientation of Atlas sheet B12, we would have to tip it down to the left, as it were,
10 approximately 45 degrees, so that the stem of the "Y" formed by the yellow road runs top to
11 bottom roughly; correct?

12 A. Correct.

13 Q. Now, that road that we can see running top to bottom is the same road that disappears
14 off the bottom of Atlas sheet B12 and presumably continues on Atlas sheet C12; correct?

15 A. Correct.

16 Q. And would you agree that that area, or that road, travels through the shaded area which
17 my learned friends have identified as Kimumu on their version?

18 A. Yes.

19 Q. Then one or two more questions on this point. If I can ask the court officer --
20 PRESIDING JUDGE EBOE-OSUJI: One second. On C12, what is the mushroom-like
21 structure we see in the middle? Do we know?

22 MR STEYNBERG: I was just going to ask the court officer to call up C12. That might be
23 helpful.

24 If we can please have C12 on the screen? It's 0092-1000. Can you just zoom in
25 slightly, please?

1 Q. Mr Bromley, I believe the President is referring to the round structure at the bottom of
2 the image as it appears on the screen at the bottom centre. Do you recognise that -- that
3 structure?

4 A. As I pointed out, I think that's the Kimumu Cathedral.

5 Q. And just for clarity's sake, if you could turn to tab 2 of the Prosecution binder at ERN
6 0943, does that represent the same structure, a closer image of the same structure?

7 A. I'm sorry, which tab?

8 Q. Tab 2 of the Prosecution binder.

9 A. Ah, yes.

10 Q. The big one.

11 A. So, yes, that's figure 10 in the tab 2 report.

12 Q. Correct. Are you satisfied then that is Kimumu Cathedral?

13 A. Yes.

14 Q. Very well. On C12 then, can you comment on the number of presence of definitely and
15 possibly destroyed structures?

16 MR FAAL: Mr President, it looks like we are rehashing issues that have been dealt with
17 during cross-examination. There is no controversy. We had counted the structures that
18 were destroyed in C12. There was no dispute as to whether there were destroyed structures
19 there or not. So I do not see the essence of this line of questioning.

20 MR STEYNBERG: If that's accepted, your Honours, I'll move on.

21 Q. One last question on this issue. If we follow the road that is visible -- sorry. If we
22 go -- well, let's ask if we can go back to the Atlas sheet and look at ERN 1015. That is sheet
23 D12. Sorry. We are looking for D12. It's 1015.

24 MR FAAL: And, Mr President, the same objection.

25 PRESIDING JUDGE EBOE-OSUJI: Which is?

1 MR FAAL: That there is no dispute or disagreement that arose out of whether D12 is a
2 continuation of the same road and is part of Kimumu. We in fact counted the amount of
3 destroyed structures in that -- in that location and it was agreed. There shouldn't be any
4 difficulty with that.

5 MR STEYNBERG: I don't recall this particular Atlas sheet being -- being referred to, but --

6 MR FAAL: It's page 33. If you look at line 12, you would see it.

7 PRESIDING JUDGE EBOE-OSUJI: But what's your question, Mr Steynberg?

8 MR STEYNBERG: It was just to point out that this is the same road running down from the
9 junction through Kimumu and there are a number of structures that are destroyed there. I'll
10 leave it at that.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Faal is not disputing that.

12 MR FAAL: That is the point the cross-examination actually elicited from the witness.

13 MR STEYNBERG:

14 Q. Just one technical issue. My learned friend on various occasions put questions to you
15 about points and areas on the map, on your satellite images. The grid sections in which the
16 various locations that were given to you by the Prosecution fall, do those grid areas represent
17 any specific area, or are they arbitrary subsections of a larger image?

18 PRESIDING JUDGE EBOE-OSUJI: Do you understand that question?

19 THE WITNESS: Yes. Again, the grid sections used in the Atlas are completely arbitrary.
20 They were developed after the Atlas was -- or after the analysis was done and are primarily
21 based on how to divide up such a large image into a reasonable number of pages.

22 MR STEYNBERG:

23 Q. And a point, a grid reference, a point that is given to you, does that have any area? A
24 co-ordinate, does that have any area, or is it a point in an area?

25 A. It's simply a point with no area. And in the instruction letter I received it identified

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1 them as approximate points.

2 MR STEYNBERG: Thank you. Nothing further, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Steynberg.

4 And, Witness, thank you very much. That brings us to the end of your stay with us.

5 Thanks for your assistance in providing what information you have. At the end of

6 the day we will evaluate what the lawyers make of it, but thank you for coming and

7 safe travels back.

8 THE WITNESS: Thank you very much, sir.

9 (The witness is excused)

10 PRESIDING JUDGE EBOE-OSUJI: Now, we will be adjourning for the day here and

11 tomorrow we will reconvene for a status conference. You have, counsel, received the

12 communication to that effect, right? Okay. We will convene again tomorrow at the

13 indicated time. Thank you.

14 Court will rise.

15 THE COURT OFFICER: All rise.

16 (The hearing ends in open session at 3.11 p.m.)