

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  
7 and Judge Robert Fremr  
8 Trial Hearing  
9 (The hearing starts in open session at 9.36 a.m.)

10 THE COURT USHER: All rise. The International Criminal Court is  
11 now in session. Please be seated.

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

13 Court officer, please announce the case.

14 THE COURT OFFICER: (Interpretation) The situation in the  
15 republic of Kenya, the Prosecutor versus William Samoei Ruto and Joshua  
16 Arap Sang, ICC-01/09-01/11. We're in public session, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. If we can  
18 refresh appearances.

19 Prosecution.

20 MR STEYNBERG: Thank you, your Honours. The appearances for the  
21 Prosecution are the same as last week. It is Anton Steynberg, myself;  
22 Laura Renton; Lorenzo Pugliatti; and Grace Goh, our case manager.

23 PRESIDING JUDGE EBOE-OSUJI: Defence.

24 MR FAAL: Mr President, appearances for Mr Ruto remain the same.

25 PRESIDING JUDGE EBOE-OSUJI: Sang Defence.

1 MS BUISMAN: Good morning, Mr President. We haven't changed.  
2 Lead counsel, Mr Katwa-Kigen is absent today and tomorrow, so you will  
3 hear from me instead. And otherwise, the team remains the same. And Mr  
4 Sang is here today as usual. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Sorry, Counsel. You have to put  
6 your name on the record.

7 MS BUISMAN: My apologies, Caroline Buisman, co-counsel. Thank  
8 you.

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

10 We ended last week with the cross-examination of the witness  
11 continuing from the Ruto Defence. Mr Faal, how much longer do you say  
12 you have with the witness?

13 MR FAAL: I envisage that by the first break at 11.00 a.m., I  
14 should be finished.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 And just for purposes of our planning, Ms Buisman, would you be  
17 anticipating any cross-examination? I know Mr Kigen-Katwa said he would  
18 not as of last week. Does that remain the same, unless something  
19 changes?

20 MS BUISMAN: Indeed, your Honour. Yes, your Honour.

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

22 (The witness enters the courtroom)

23 WITNESS: KEN-OTP-P-0376 (On former oath)

24 Please proceed then, Mr Faal. The witness is on the stand.

25 Sir, welcome back. I hope you had a nice weekend. Mr Faal will

Witness: KEN-OTP-P-0376 (Upon former oath) (Private Session)  
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1 continue your cross-examination this morning.

2 THE WITNESS: Thank you.

3 MR FAAL: Mr President, we were in private session on Friday when  
4 we adjourned. I would wish that we go back into private session for  
5 about ten minutes so that I can clear up most of the issues that we need  
6 to deal with in private session.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We then go  
8 into private session.  
9 (Private session at 9.42 a.m.)

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

12 PRESIDING JUDGE EBOE-OSUJI: Mr Faal.

13 MR FAAL: Thank you, Mr President.

14 QUESTIONED BY MR FAAL: (Continuing)

15 Q. Mr Witness, good morning. I do hope that you had a good weekend.

16 A. Yes.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, sorry to interrupt you so  
18 quickly. It occurred to us that the document you referred to,  
19 KEN-OTP-1039, that you said it's a corrected version of a different  
20 version of the same document that the OTP had used.

21 MR FAAL: That was our impression.

22 PRESIDING JUDGE EBOE-OSUJI: It had not been tendered in. Have  
23 you tendered it?

24 MR FAAL: I do believe that I -- yes, I expect that I -- yes, it  
25 was admitted as Exhibit 64, Mr President, by our records.

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

2           MR FAAL: Thank you. Thank you, Mr President.

3           Q. Mr Witness, before I start I would like to remind you to pause  
4 after hearing my question before you go ahead to answer. Is that all  
5 right with you?

6           A. Yes.

7           Q. May I also encourage you to speak a little bit faster so that we  
8 can finish with you this morning. Is that okay with you, sir?

9           A. I'll try.

10          Q. Thank you very much. On Friday we were talking about the  
11 rebuilding of the houses of a few individuals in (Redacted), in  
12 particular the house (Redacted), that is person number 2 on the  
13 list.

14          A. Yes.

15          Q. Today, this morning I would like to talk to you (Redacted)  
16 (Redacted)  
17 (Redacted)

18          A. Yes, I remember.

19          Q. (Redacted)

20          A. Yes.

21          Q. (Redacted)

22          (Redacted)

23          A. Yes.

24          MR FAAL: Mr President, it appears that the transcript is not  
25 working. Or at least I am not getting realtime transcript.

1           PRESIDING JUDGE EBOE-OSUJI: That appears to be our own  
2           predicament as well. Court officer I can see is monitoring the  
3           situation.

4           Mr Faal, let's just give it a few seconds and see what's going  
5           on.

6           Is there any improvement, court reporters? It looks like  
7           something is happening.

8           All right, Mr Faal, can you start again?

9           MR FAAL: Much obliged, Mr President.

10          Q. Mr Witness, when we -- before we left off on Friday afternoon, we  
11          were talking about the rebuilding of the house of (Redacted), person  
12          number 2 on the Prosecution list. Do you remember that?

13          A. Yes.

14          Q. This morning I propose to discuss with you (Redacted)  
15          (Redacted)  
16          (Redacted)  
17          (Redacted)  
18          (Redacted)

19          A. (Redacted)

20          Q. Thank you for that clarification.

21          A. Yeah.

22          Q. (Redacted)

23          A. Yes.

24          Q. (Redacted)

25          (Redacted)

1 A. Yes.

2 Q. (Redacted)

3 A. (Redacted)

4 Q. (Redacted)

5 A. (Redacted)

6 Q. (Redacted)

7 (Redacted)

8 A. Yes.

9 Q. And by merry-go-round, it means that people would contribute a  
10 specific sum at periodic intervals and the whole sum would be paid to one  
11 individual, and it would continue until each person has his turn  
12 (realtime transcript read in error "stone"); is that right?

13 A. Yes.

14 Q. (Redacted) the campaign of  
15 person number one --

16 PRESIDING JUDGE EBOE-OSUJI: Counsel, one second, line 15 of the  
17 transcript, counsel had said -- the word there is "turn" not stone.

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

19 Q. (Redacted) the campaign of person number

20 1. Is that okay with you, Mr Witness?

21 A. Yes.

22 Q. And according to your testimony, (Redacted)  
23 (Redacted). Do you recall telling the Court that?

24 A. Yes.

25 (Redacted)

26

Witness: KEN-OTP-P-0376 (Upon former oath) (Private Session)  
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Page 7

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Do you recall saying that to the Prosecutor?

8 A. Yes.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Do you remember that?

15 A. Yes.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

Witness: KEN-OTP-P-0376 (Upon former oath) (Private Session)  
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Page 8

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And the elections took place in December 2007; is that right?

7 A. Yes.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. And you said that you were going to meet person 1 when you  
12 happened upon Mr Ruto addressing a group of people at around  
13 Paradise Hotel And Transnational Bank?

14 A. Yes.

15 Q. And you eventually met person 1 that day, did you?

16 A. Yes.

17 Q. And you discussed with person 1 what you saw happening at  
18 Transnational Bank and Paradise Hotel?

19 A. No.

20 Q. I mean, you did not discuss with him what you saw, did you?

21 A. No.

22 Q. Mr Witness, (Redacted)  
23 (Redacted), in fact, not correct. Do you know  
24 that?

25 A. It's correct.

26



Witness: KEN-OTP-P-0376 (Upon former oath) (Private Session)  
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Page 9 redacted

1 (Redacted)

2 (Redacted)

3 Q. I would show you a document and then ask you a few questions  
4 about it.

5 MR FAAL: Court officer, could you bring up the screen  
6 KEN-D09-0021-0021.

7 It should be contained in tab 12 of your bundle, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: While the court officer is pulling  
9 up that document, person number 1 (Redacted). Witness,  
10 what ethnicity is he? Is he Kikuyu as well?

11 THE WITNESS: He's a Kikuyu.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR FAAL:

14 Q. Mr Witness, do you see that document on the screen?

15 A. Yes.

16 Q. Would this be the person number 1 we are talking about?

17 A. Yes.

18 Q. Would you agree with me that this was a campaign material for him  
19 during the 2007 election?

20 A. It could be one of them.

21 Q. But would you agree that it is one of them?

22 A. Yes, I would agree.

23 Q. And, Mr Witness, do you know a person called (Redacted)

24 A. Yes.

25 Q. And you would agree with me that (Redacted) was a candidate  
26

1 for the (Redacted)

2 A. Yes.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Could you take a look at the portion -- the bottom half of the  
13 document in front of you, and it says: "For further details" about this  
14 programme, to call the individuals listed below. Do you see that?

15 A. Yes.

16 Q. And it indicated the first person to call as (Redacted)  
17 and also provided his telephone number, doesn't it?

18 A. It does.

19 Q. And the second person to call would be (Redacted)  
20 correct?

21 A. As it is stated, yes.

22 Q. And then the next person would be (Redacted) correct?

23 A. Yes.

24 Q. And then the next person would be (Redacted) correct?

25 A. Yes.

26

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. All right. I would leave that point and move on.

8 MR FAAL: Mr President, we would ask that the poster be admitted  
9 into evidence.

10 PRESIDING JUDGE EBOE-OSUJI: Any objection?

11 MR STEYNBERG: No objection, your Honours.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

13 MS BUISMAN: No objection.

14 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the  
15 next exhibit to the Ruto Defence case.

16 THE COURT OFFICER: (Interpretation) Document KEN-D09-0021-0021  
17 confidential shall be marked as follows: EVD-T-D09-00068, Exhibit Number  
18 68.

19 MR FAAL: Mr President, I can do most of what I have left in  
20 public session. May I ask that we go in public session now.

21 PRESIDING JUDGE EBOE-OSUJI: Before we do, I asked you earlier  
22 whether (Redacted) was also a Kikuyu and you say yes. The reason I was  
23 asking that question is you said after you heard this speech that you  
24 testified to, you speak about Mr Ruto giving that speech near the  
25 Transnational Bank in which he said, according to you, that the madoadoa,

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1 all efforts must be made to remove madoadoa or words to that fact. You  
2 said it troubled you. But then you say also that you later met  
3 (Redacted) who is a Kikuyu. Why didn't you tell him about the speech  
4 that troubled you so which also concerns him as a Kikuyu?

5 THE WITNESS: Oh, I kept quiet just to avoid (Redacted)  
6 (Redacted), and I found it necessary to keep  
7 silent on the matter not to allow some feelings to (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Does any question arise from --

10 MR FAAL: No. No, Mr President. But we would come back to this  
11 particular issue and ask a few more questions around that area, not so  
12 much about why he did not discuss with (Redacted) but on the whole issue  
13 that surrounds this madoadoa statement, we would come back to that in due  
14 course.

15 PRESIDING JUDGE EBOE-OSUJI: Counsel, my question was whether any  
16 question arises from my own questions. And you say no.

17 MR FAAL: No, not at all.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. So we will then go into  
19 public session.

20 (Open session at 10.04 a.m.)

21 THE COURT OFFICER: (Interpretation) Mr President, we are in  
22 open session.

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

24 Q. Mr Witness, we are now in public session.

25 A. Yes.

1 Q. So as you answer questions, please try not to give out  
2 information that would reveal your identity. Do you understand?

3 A. Yes, I do.

4 Q. Mr Witness, earlier on Friday morning we discussed the violence  
5 in Langas. Would you agree with me that the violence was not just  
6 between Kikuyu and Kalenjin. Other ethnic groups or other communities  
7 were also involved?

8 A. I would say the violence was against -- both between the  
9 Kalenjins, Kikuyus, Luos, and Kikuyus.

10 Q. But would you agree with me that other communities were also  
11 involved, for instance, the Luhyas and the Kisiis were also involved?

12 A. I cannot confirm that.

13 Q. Okay. I would leave that issue and move on to something else.  
14 Now let's talk about the police in Langas. You did say that you met  
15 somebody in the Langas police station who you believed was the head or  
16 the commander of the station. Do you remember that?

17 A. Yes.

18 MR STEYNBERG: It may be a small matter, your Honours, but I  
19 believe he clarified it was a police post.

20 MR FAAL: Yes, the witness did in fact say it was a police post.  
21 But Langas was in fact a police station and not a police post, but be  
22 that as it may, we'd just ask more questions about the leadership.

23 Q. Are you aware that at the time you went to Langas police station  
24 that the commander was in fact a Kikuyu?

25 A. I'm not aware.

26

1 Q. Have you ever heard of the name Jinaru Mwangi --

2 MR FAAL: It's in public, Mr President.

3 Q. Jinaru (\* phon) Mwangi, have you heard about him?

4 A. No.

5 Q. No. Were you also aware, Mr Witness, that the highest-ranking  
6 Kalenjin police officer in Langas was a police constable?

7 A. I'm not aware.

8 Q. And you would agree with me, of course, Mr Witness that a  
9 constable is, in fact, the lowest rank in the police force in Kenya,  
10 wouldn't you?

11 A. Yes.

12 Q. You would therefore agree with me that the power, the authority,  
13 at the Langas police station rested with a Kikuyu at the time, Mr Mwangi?

14 A. I'm not aware.

15 Q. You have lived in your neighbourhood for a very long time;  
16 correct?

17 A. Yes.

18 Q. And during (Redacted)  
19 (Redacted) correct?

20 A. In my neighbourhood, yes.

21 Q. You are, therefore, familiar with a lot of the people in your  
22 neighbourhood; correct?

23 A. Yes.

24 Q. You also have friends among the Kalenjin community, don't you?

25 A. Yes.

26

1 Q. In your business, you had a lot of dealings with members from the  
2 Kalenjin community, didn't you?

3 PRESIDING JUDGE EBOE-OSUJI: Caution.

4 Witness, you can say yes or no to that question. Do not tell us  
5 what your business is.

6 Can you repeat the question, just yes or no.

7 MR FAAL:

8 Q. In your business dealings -- in your business, rather, you had a  
9 lot of dealings with people from the Kalenjin community. Don't tell us  
10 who. Just answer yes or no.

11 A. Yes.

12 Q. And, in fact, Mr Witness you had daily interactions with some of  
13 these people? Again don't tell us who.

14 A. Yes.

15 Q. And when the violence broke out, it took you by surprise, did it  
16 not?

17 A. It did.

18 Q. And no one amongst the people you knew told you that there was  
19 going to be violence; correct?

20 A. Yes.

21 Q. Now I would like to move on to the event you testified about,  
22 which allegedly occurred at the junction of Trans-National Bank and  
23 Paradise Hotel? Do you remember that?

24 A. Yes.

25 Q. I now want to return to what you heard Mr Ruto say during that  
26



1 event. This vehicle in which you said you saw the speaker who you claim  
2 is Mr Ruto must have been in a convoy, wasn't it?

3 A. Well, a vehicle on this road stops other vehicles though not in  
4 the convoy following that vehicle would have -- would stop. So one would  
5 think the vehicles behind the vehicle, the same vehicle are in the same  
6 procession but that could be not true.

7 Q. And these vehicles were not parked, were they?

8 A. Were not parked.

9 Q. Their engines were on at the time you happened on them; correct?

10 A. Once, because his vehicle had stopped, it is a rule that a driver  
11 usually switch off an engine of a vehicle.

12 Q. You mean to say that all other vehicles switched off their  
13 engines; is that your testimony?

14 A. I'm not aware whether they all switched their engines.

15 Q. This event occurred during working hours; correct?

16 A. Yes.

17 Q. In a very busy street in Eldoret city centre; is that right?

18 A. Yes.

19 Q. And of course there was the usual background noise you would find  
20 in a busy street in Eldoret in a -- in -- during normal working hours;  
21 correct?

22 A. Yes.

23 Q. And the people that were present there were making noise in  
24 support of their candidate; correct?

25 A. They were not making noise. They had just stopped the vehicle  
26

1 for their candidate to address them, so they could not have been making  
2 noise.

3 Q. And they would clap and yell and shout in support of the things  
4 they hear from their candidate, wouldn't they?

5 A. Yes.

6 Q. There were a lot of people around; correct?

7 A. Not very many because it was not a public rally. It so happened  
8 that he was passing by so just a group of people who happened to see him  
9 that surrounded the vehicle and made him stop.

10 Q. There were people from all ethnic groups present; correct?

11 A. Well, I cannot confirm that.

12 Q. It cannot be ruled out that there were Kikuyus present; correct?

13 A. Correct.

14 Q. And it cannot be ruled out that there were people present from  
15 different -- from political affiliations that are different from the  
16 party in which these people -- which the speaker supported; is that  
17 right?

18 A. Yes.

19 Q. And you were in a hurry that day to go and make your appointment;  
20 correct?

21 A. Yes.

22 Q. And you just had a brief look at what was going on and you moved  
23 on; correct?

24 A. Yes.

25 Q. And this speaker was not using a microphone to address the crowd;  
26

1 correct?

2 A. Yes.

3 Q. And you saw the speaker only from a distance away; correct?

4 A. Not far away.

5 Q. 20 metres? 30? 50? How far away?

6 A. 10, 20.

7 Q. Would 20 metres be a fair assessment?

8 A. Well, I cannot truly say how long -- how far I was from the --  
9 from the politician.

10 Q. And am I right to say that that location was just about 300  
11 metres away from the headquarters of the police at Eldoret; correct?

12 A. More than 300 metres.

13 Q. Would 400 metres be a fair assessment?

14 A. Well, I've not -- I cannot confirm, but it's -- it was more  
15 than -- it is more than 300 metres.

16 Q. But you would agree with me that the police station was just  
17 nearby; correct?

18 A. When you say about nearby, I don't understand exactly which  
19 nearby in length you really want me to answer.

20 Q. You can see and recognise a person from 200 metres away, couldn't  
21 you?

22 A. Yes.

23 Q. And this event occurred on the main road in Eldoret at the  
24 Trans-National Bank and Paradise Hotel; isn't it the place?

25 A. Yes.

26

1 Q. And that place, Mr Witness, is not far away from the Eldoret  
2 police station --

3 A. Yes --

4 Q. Wouldn't you agree?

5 A. Yes.

6 Q. And you said that the speaker spoke in Kiswahili?

7 A. Yes.

8 Q. And he did so for the Kikuyus to understand; that's what you  
9 said, isn't it?

10 A. He didn't mention that I want the Kikuyu to understand what I'm  
11 saying, but he just spoke the words.

12 Q. In your statement to the Prosecution, you said that the speaker  
13 intended the Kikuyus to understand the threat. Do you remember saying  
14 that to the Prosecution?

15 A. Yes, but he did not mention that I'm saying this for you Kikuyus  
16 to understand.

17 Q. But it was your assessment --

18 A. Yes --

19 Q. -- that the speaker intended the Kikuyus to understand his  
20 threat?

21 A. Yes.

22 Q. And of course Ruto's statement, you say, was both deliberately  
23 said. What he said was deliberate, wasn't it? No mistake at all, he  
24 intended what he said?

25 A. Yes.

26

1 Q. So according to you, Mr Witness, that statement you said Ruto  
2 made that day was part of his campaign narrative, wasn't it?

3 A. I can't tell.

4 Q. Was this the only time you heard Ruto say this?

5 A. It was the only time that I happened to come across Mr Ruto  
6 during campaign period.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, I notice you've been  
8 referring to your client as simply "Ruto." I recall that your side had  
9 complained once when the Prosecution did that, and we said let's use the  
10 "Mr "for everyone in the courtroom.

11 MR FAAL: Yes, Mr President, and indeed that is very true. But I  
12 did not say it in any way that suggests any form of disrespect.

13 PRESIDING JUDGE EBOE-OSUJI: It doesn't matter. Let's just use  
14 the title.

15 MR FAAL: And for us that was the key thing, but I take what you  
16 say. You're right. Thank you, Mr President.

17 Q. So, Mr Witness, yes, we were talking about whether that was the  
18 only time you heard Mr Ruto say this. You said that this was the only  
19 time that you happened on Mr Ruto talking during the campaign. Is that  
20 what you said?

21 A. Yes.

22 Q. Am I right, Mr Witness, that you attended a rally at 64 stadium  
23 in 2007?

24 A. I did not attend.

25 Q. Is it your testimony that you did not attend a rally at 64  
26

1 stadium in 2007?

2 A. I don't remember attending a political rally at 64 stadium.

3 Q. Do you recall holding a clarification session with the

4 Prosecution on 14 October 2013, do you remember that?

5 A. Can you repeat, please.

6 Q. Do you recall having a meeting with the Prosecution on 14 October

7 in which or during which you sought to clarify a lot of things that were

8 contained in your statement? Do you remember that?

9 A. Yes.

10 Q. And do you remember that during that session you clarified what

11 you perceived to be inaccuracies in your statement, do you recall?

12 A. I can't recall.

13 Q. Do you recall clarifying what you perceived to be inaccuracies in

14 your statement?

15 A. I can't recall.

16 Q. Mr Witness, we have the clarification document here which was

17 provided to us by the Office of the Prosecutor, and it says as follows in

18 paragraph 8 and I would read it out. It says:

19 "The witness also indicated that he attended a rally at 64

20 stadium in Eldoret sometime during the campaign period. Ruto didn't

21 mention madoadoa in this rally. He was just campaigning for his party."

22 Do you recall saying that to the Prosecution?

23 A. I can't recall.

24 Q. Mr Witness, this event occurred just one week ago. You cannot

25 recall what you said to the Prosecution one week ago?

26

1 A. Unless -- I might have forgotten.

2 Q. I have read it out to you for you to remember. You still can't  
3 remember; is that the case?

4 A. You have read it to me?

5 PRESIDING JUDGE EBOE-OSUJI: Counsel, can you give him the  
6 document, the statement, and refer him precisely to the part you have in  
7 mind.

8 MR FAAL: If the court officer could kindly be of assistance,  
9 please.

10 PRESIDING JUDGE EBOE-OSUJI: And do we have the document?

11 MR FAAL: It's in tab 16, Mr President, I have been advised. We  
12 can also provide the ERN number. It is KEN-D09-0021-0027, specifically  
13 0028.

14 PRESIDING JUDGE EBOE-OSUJI: There is nothing in my tab 16 --

15 MR FAAL: Ah --

16 PRESIDING JUDGE EBOE-OSUJI: 1-6 --

17 MR FAAL: Yes, yes --

18 PRESIDING JUDGE EBOE-OSUJI: And also in Judge Herrera's tab  
19 16 --

20 MR FAAL: You are right, Mr President. We deliberately omitted  
21 them from that because we did not wish to expose the Chamber to previous  
22 statements because we did not know whether we would use them. But my  
23 apologies. We can put it up the screen so that the Judges would have  
24 access. My apologies, Mr President.

25 Court officer, could you kindly put the document up the screen.

26

Witness: KEN-OTP-P-0376 (Upon former oath) (Open Session)  
Questioned by Mr Faal (Continuing)

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1 And could you kindly zoom at paragraph 8. And, please, perhaps this  
2 document should not be publicly screened. Thank you.

3 Court officer, may I proceed?

4 Q. Mr Witness, you now have the document right in front of you.

5 PRESIDING JUDGE EBOE-OSUJI: So we confirm, court officer, that  
6 this document is not in the public domain being displayed. Thank you.

7 THE COURT OFFICER: The document is showed in the courtroom but  
8 not outside the courtroom, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR FAAL: Thank you very much.

11 PRESIDING JUDGE EBOE-OSUJI: What paragraph are we looking at?

12 MR FAAL: Paragraph 8, Mr Witness.

13 Q. Mr --

14 PRESIDING JUDGE EBOE-OSUJI: But this -- is this -- can we go to  
15 the beginning of this document.

16 MR FAAL: Kindly go to the first page, please, 0027. Kindly go  
17 to the top part of the document. And, Mr President, you would notice it  
18 reads: "Witness clarifications/corrections to prior statement."

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 MR FAAL: And the note was --

21 PRESIDING JUDGE EBOE-OSUJI: Okay. Let's not go any further. Is  
22 this a note or a statement of the witness? Because if we're going to  
23 seek to contradict a witness, you know what needs to be done and with  
24 what.

25 MR FAAL: . Mr President, I believe this was video-recorded by  
26



1 the Prosecution as required under the protocol --

2 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go to the bottom  
3 of the document as well, to the end of it.

4 MR FAAL: The bottom of the document, Mr President --

5 PRESIDING JUDGE EBOE-OSUJI: Court officer, can you show us the  
6 bottom, the end of the document, rather, not the bottom of the page. The  
7 end of the document.

8 MR STEYNBERG: Your Honour, perhaps I can assist here. If your  
9 Honours are looking for a signature of the witness, you will not find  
10 one. As your Honour has correctly pointed out, this is a note of the  
11 consultation which was made by the Prosecution after the consultation.  
12 So the witness will not have seen the document, but I do confirm that the  
13 information contained in it comes from the witness, albeit not verbatim,  
14 but in our estimation is an accurate reflection of what he told us.

15 PRESIDING JUDGE EBOE-OSUJI: That's evidence you should not have  
16 given, Mr -- it would have been enough to simply say it was a note. The  
17 additional material that it comes from him we cannot take because if the  
18 witness disputes that we don't want your testimony as to the fact of it  
19 to override his own position. He's free to disagree that whoever took  
20 down this note got it right. Now, that said can we go back to paragraph  
21 8.

22 MR FAAL: Thank you. Thank you very much, Mr President. While  
23 we would proceed as directed, I would also wish to state that in the  
24 event that there is a doubt whether this statement was made by the  
25 witness, we would ask that the audio recording be produced so that we can  
26

1 decide whether we would want to put it in evidence.

2 PRESIDING JUDGE EBOE-OSUJI: If we need to go there --

3 MR FAAL: Indeed.

4 PRESIDING JUDGE EBOE-OSUJI: -- we will, but for now it's enough  
5 that there is paragraph 8 there.

6 Now, Witness, can you look at paragraph 8 and see whether this  
7 may refresh your memory as to what you might have said to the Prosecutor.

8 THE WITNESS: All what I can say, I don't remember having  
9 attended a rally at 64 during campaign period where Mr Ruto was  
10 addressing that rally.

11 PRESIDING JUDGE EBOE-OSUJI: All right.

12 Proceed.

13 MR FAAL:

14 Q. You do not also recall whether or not you said this statement  
15 contained in paragraph 8 to the Prosecution, do you?

16 A. I don't have anything to say on that.

17 Q. Mr Witness, this statement that you attributed to Mr Ruto ...  
18 (Defence counsel confer)

19 MR FAAL:

20 Q. Perhaps we should take this document from you, Mr Witness, before  
21 I proceed.

22 Did you ever see Mr Ruto's words you say about madoadoa reported  
23 on any TV in Kenya?

24 A. I can't remember.

25 Q. Did you ever hear these words reported on radio in Kenya?

26

1 A. I can't remember.

2 Q. Did you ever read about these words in the newspaper covering the  
3 campaign?

4 A. The words that were mostly used in the newspapers was the  
5 madoadoa.

6 Q. Is it your testimony that it's been reported in a newspaper in  
7 Kenya that Mr Ruto used madoadoa in reference to Kikuyus; is that your  
8 testimony?

9 A. I cannot confirm that newspapers ever reported that.

10 Q. And can you confirm also that you have never read or seen the  
11 issue reported in any newspaper in Kenya?

12 A. It must have been reported, only that I cannot recall the date  
13 and time that were reported, especially in the newspapers.

14 Q. Mr Witness, we know that you are an avid reader of the  
15 newspapers, but is it your testimony that it was reported in a newspaper?

16 A. It have been -- it might have been reported once or twice.

17 Q. Did you ever read it, Mr Witness? Did you ever see it printed on  
18 a paper that Ruto said this, that Mr Ruto said this?

19 A. I could not have read it because not that I usually read all the  
20 papers that were published that -- in Kenya daily.

21 Q. So --

22 A. There are all different publications in Kenya. I do not read all  
23 the publications. I just read one public newspaper.

24 Q. Mr Witness, you said you could not have read it, but you still  
25 want the Court to believe that it must have been published. Is that the

26

1 case?

2 A. Yes.

3 Q. In fact, you are only guessing, Mr Witness, isn't that the case?

4 A. I'm not guessing because the publications in Kenya do not report  
5 same issues daily. They normally come with different publications and  
6 stories every day which do not correspond the other.

7 Q. Mr Witness, I am right in saying that the reason you did not read  
8 about this in the paper is because it was never said?

9 A. It was ever said in some of the publications, only that I do not  
10 have the publications in my possession nor did I ever buy most of those  
11 papers.

12 Q. Mr Witness, if Ruto -- Mr Ruto had said that in the heart of the  
13 city of Eldoret, three minutes away from the police station, he would  
14 have been arrested on the spot?

15 A. The arrest of Mr Ruto could not have happened during that  
16 particular day. He was not on a incitement rally and he does not repeat  
17 himself. He says one thing once and that ends there. So if he did keep  
18 on repeating that, I wonder whether the police had enough evidence to  
19 arrest Mr Ruto.

20 Q. You said he was not on an incitement rally; is that what you  
21 said?

22 A. Yes.

23 Q. And you said also that there was not enough evidence; is that  
24 right?

25 A. There could have been not enough evidence because I do not know  
26

1 to what extent police take their action.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you have to move away from  
3 what the police would or may or should have done but would or may or  
4 shouldn't do.

5 MR FAAL: Thank you. Much obliged, Mr President. I would move  
6 away from this issue.

7 Q. Mr Witness, you told the Court that you had -- you read the  
8 newspapers on a daily basis as a matter of habit; is that right?

9 A. Yes, when finances allow.

10 Q. And did you watch the confirmation hearing about the case against  
11 Mr Ruto, did you?

12 A. In fact, that particular day I was in a remote area doing some  
13 work there for the (Redacted)

14 Q. The question is: Did you watch the hearings for two weeks during  
15 the confirmation hearing in Mr Ruto's case?

16 A. No.

17 Q. Did you read about it in the newspapers?

18 A. What I read in the newspapers were the six names that were  
19 contained in the work and thereof, when they were made public.

20 Q. Did you read about the proceedings in the newspaper?

21 A. No.

22 Q. Mr Witness, is it the case, therefore, that for two weeks during  
23 the confirmation hearing you did not read a newspaper at all in Kenya?

24 A. I'm saying - and let me repeat it again - during that period I  
25 was working in a remote area within Uasin Gishu where there were -- I

26

1 didn't have a television, there were no newspapers.

2 Q. That must have been the decision; right?

3 A. Can you repeat, please?

4 Q. That must have been the decision confirming the charges?

5 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase the question,  
6 counsel, in clearer terms.

7 MR FAAL:

8 Q. This period in which you were away in some remote place in  
9 Eldoret (Redacted)  
10 (Redacted)  
11 (Redacted)  
12 (Redacted)  
13 (Redacted)  
14 (Redacted)

15 Q. Do you know what are the allegations against Mr Ruto?

16 A. I can just remember one -- yeah, I can remember one.

17 Q. Would you be kind enough to tell us, Mr Witness.

18 A. That one, if I'm right, was causing forceful evictions of humans.

19 Q. Are you aware what is the Prosecution allegation as to how he  
20 caused that forceful eviction?

21 A. I'm not aware.

22 Q. You know, Mr Witness, that the Prosecution theory is that Mr Ruto  
23 incited the eviction of the Kikuyus? Are you aware of that?

24 A. That would be for the Court to decide.

25 Q. The question, Mr Witness, is that: Are you aware of it?

26

1 A. Yes, I'm aware of it.

2 Q. You are also aware that Jackson Kibor is implicated as having  
3 also participated in this?

4 A. I just heard it from people.

5 Q. You also know that the allegations link him with Mr Ruto, don't  
6 you?

7 A. I don't know the charges against Mr Kibor.

8 Q. The question is that you know that the allegation against Mr Ruto  
9 is that he is linked with Mr Kibor, do you know that?

10 A. I cannot confirm whether the allegations about Mr Kibor are  
11 linked to allegations linked to Mr William Ruto.

12 Q. You know that there are allegations against Mr Kibor, don't you?

13 A. Yes.

14 Q. And you know that the allegations against Mr Kibor include that  
15 he incited the commission of violence against the Kikuyus, don't you?

16 A. I cannot confirm the allegations because I've not seen it written  
17 or I've not read it anywhere.

18 Q. But did you hear that these are the allegations against him?

19 A. Please?

20 Q. Did you hear that these are the allegations against him, inciting  
21 violence?

22 A. What I know about Mr Jackson Kibor was that he was once arrested  
23 by Kenya security forces and later on released.

24 MR FAAL: Mr President, may I go into private session for five  
25 minutes at most, five.

1           PRESIDING JUDGE EBOE-OSUJI: And hopefully that will be your last  
2 run of the cross-examination.

3           MR FAAL: Mr President, I did promise that I would finish by  
4 11.00.

5           PRESIDING JUDGE EBOE-OSUJI: We'll go now into private session  
6 for five minutes.

7 (Private session at 10.45 a.m.)

8           THE COURT OFFICER: (Interpretation) Mr President, we are in  
9 private session.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16           MR FAAL: Thank you.

17           Q. Mr Witness, now we are in private session so feel free to mention  
18 names, and once we go back into public session I would remind you not to  
19 mention names. Is that all right with you?

20           A. It will be good.

21           PRESIDING JUDGE EBOE-OSUJI: Counsel, so there's no confusion in  
22 the mind of the witness.

23           Witness, what the Prosecution did was to use the opportunity of  
24 the private session when nobody is hearing us to indicate that you had  
25 mentioned some things in your -- in the public session that you -- we  
26



1       should have been more careful about. So it doesn't mean that now we are  
2       in a private session you should not mention names. It means you can  
3       mention names freely now, but when we go back into public session be more  
4       careful.

5           THE WITNESS: Thank you.

6           MR FAAL:

7       Q. Immediately after the charges were confirmed against Mr Ruto, (Redacted)  
8       (Redacted)  
9       (Redacted)  
10      (Redacted)  
11      (Redacted)  
12      (Redacted)  
13      (Redacted)  
14      (Redacted)  
15      (Redacted)  
16      (Redacted)  
17      (Redacted)  
18      (Redacted)  
19      (Redacted)  
20      (Redacted)  
21      (Redacted)

22           MR FAAL: Mr President, we can now move into open session.

23           PRESIDING JUDGE EBOE-OSUJI: What do you intend to do with (Redacted)  
24      (Redacted)

25           MR FAAL: Nothing, Mr President. I do not intend to put them in  
26

1 evidence. It's -- it's not a disputed fact, so nothing really. We don't  
2 intend to put it in evidence, we submit. In the event that your Honours  
3 think it is relevant, we would ask that it be put in evidence, but we  
4 would have been content to proceed without it.

5 PRESIDING JUDGE EBOE-OSUJI: Well, the thing is the manner in  
6 which the thing has now been raised on the record leaves some sort of  
7 pregnant question about the implication of it. Don't you think it's fair  
8 to put on record what (Redacted) I'm not asking  
9 you to do it. Think about it. If you don't think it's fair, then we can  
10 proceed. I've flagged my worry about how it's been done, but we can  
11 proceed. If you don't think you need to do it. I'm not asking you to do  
12 it.

13 MR FAAL: Thank you, Mr President. I mean, we do not need it as  
14 part of our evidence.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Then let's move on.

16 You want to go back into public session?

17 MR FAAL: Public session.

18 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into public  
19 session.

20 (Open session at 10.50 a.m.)

21 THE COURT OFFICER: (Interpretation) Mr President, we're in open  
22 session.

23 MR FAAL:

24 Q. Mr Witness, we are now back into public session, so please when  
25 you answer my questions avoid reveal -- making statements that would

Witness: KEN-OTP-P-0376 (Upon former oath) (Open Session)  
Questioned by Mr Faal (Continuing)

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1 reveal your identity.

2 A. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: And you also please use your right  
4 to pose --

5 MR FAAL: Will do, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: -- direct questions -- leading  
7 questions, I mean.

8 MR FAAL: Thank you, Mr President.

9 Q. Mr Witness, (Redacted)  
10 (Redacted), they told you that they were  
11 carrying out investigations against Mr Ruto and Mr Sang; correct?

12 A. Please repeat the date.

13 Q. (Redacted), you spoke to the staff of the Office of the  
14 Prosecutor and they told you that they were carrying out investigations  
15 against Mr Ruto and Mr Sang; correct?

16 A. I received a call --

17 PRESIDING JUDGE EBOE-OSUJI: Witness, let's not -- the question  
18 is one you can answer yes or no. If you don't remember, you can say you  
19 don't remember. But we're now in public session. If you start telling  
20 us about --

21 THE WITNESS: Okay.

22 PRESIDING JUDGE EBOE-OSUJI: -- calls you received, I worry that  
23 before you finish you might end up telling us who called you, when, and  
24 where.

25 THE WITNESS: Thank you.

26

1 Yes.

2 MR FAAL:

3 Q. And they told you that they were from the Office of the  
4 Prosecutor of the ICC, did they not?

5 A. They did.

6 PRESIDING JUDGE EBOE-OSUJI: Let's -- let's take that question  
7 again. He said "yes," but after a caution to him. So we want to be  
8 clear on what he said "yes" to.

9 MR FAAL: Much obliged, Mr President.

10 Q. Those people who called you, they told you that they were from  
11 the Office of the Prosecutor of the ICC; correct?

12 A. No.

13 Q. Is it your testimony, Mr Witness, that the people you spoke to  
14 did not tell you that they were from the Office of the Prosecutor of the  
15 ICC?

16 A. They told me after we arranged another call with them, after, but  
17 not that particular day.

18 MR FAAL: Mr President, on this particular issue we may have to  
19 call investigators from the Office of the Prosecutor. But we would make  
20 that application at another date.

21 Q. But, Mr Witness, is it your suggestion that you were never told  
22 who you were talking to when you spoke to them?

23 A. That is what I'm saying. After we had arranged another call from  
24 them is when I questioned them, where they were calling from, and who  
25 they were. That is when they clarified and told me that they were

26

1 officials from the Court.

2 Q. And after they told you that they were officials from the Court  
3 you agreed to talk to them; correct?

4 A. Yes.

5 Q. And it was during this conversation that you gave them your story  
6 about what happened in Langas; correct?

7 A. Yes.

8 Q. And in that story you told them, you in fact said that the  
9 violence was not planned, do you remember that?

10 A. I do.

11 Q. You also told them, and I quote:

12 "I would learn about the plans if there had been any. I had  
13 friends from various communities and I met them on a daily basis."

14 Do you remember that?

15 A. Yes.

16 Q. You also told them that all tribes were involved in the violence,  
17 didn't you?

18 A. Yes.

19 Q. You told them that the people from your area were fighting each  
20 other, didn't you?

21 A. Yes.

22 Q. You told them that houses were being burnt but not from one  
23 community. Do you remember telling them that?

24 A. I do.

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, what is the date of this

26

1 communication? Can you put it on the record for clarity.

2 MR FAAL: It's already on the record, (Redacted), Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Witness, is that the date that you  
4 had this conversation -- you had this conversation with members of the  
5 Office of the Prosecutor or people who say they were from that office?

6 THE WITNESS: There were two days, your Lord, that I talked to  
7 the people through the phone. So the first one could be this one, the  
8 first one, but I can't remember the actual date, but it was the first --  
9 it should have been the first one when I declined to talk to them because  
10 I didn't know their identity. I told them if they wanted to get my story  
11 to call me back, and we agreed after three days, I think it was on a  
12 Friday or a Thursday, they called me on a Monday, that is when they  
13 introduced themselves, they asked me why I did not talk to them the  
14 previous day. I told them it was hard for me to talk to people I do not  
15 understand. That is why I had declined. So when they introduced me --  
16 to me that they were the officials from the Court, I decided to answer  
17 some various questions from them. But I told them because I'm in a  
18 public place it's hard for me to talk through the phone, narrating all  
19 what happened in my neighbourhood. It would have been better if you  
20 people from the Court want to know more about my neighbourhood, why don't  
21 you arrange a meeting with me where I would shed light and tell the whole  
22 story to you.

23 PRESIDING JUDGE EBOE-OSUJI: And did they then arrange that  
24 meeting where they came and met with you and you shed light on the whole  
25 story.

26

1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: At what meeting or during what  
3 communication was it that you told them that the violence had not been  
4 planned?

5 THE WITNESS: It was the second ever conversation because where I  
6 was by then -- in my concerns it was bad to start talking through the  
7 phone and telling people far away that it so happened this way and that  
8 way. I found it -- it was not a good time, I was not in a good position  
9 to tell everything that happened in public.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Counsel, please proceed.

12 MR FAAL:

13 Q. And, Mr Witness, it was during that second meeting in which you  
14 said this to the Prosecution, and I will read it out, and you can confirm  
15 whether this is what you said --

16 PRESIDING JUDGE EBOE-OSUJI: I'm sorry, one second. One second.

17 Let's -- so we don't lose ourselves in this story. The witness  
18 said that there were two phone calls and then a meeting. In your  
19 question now, counsel, you are talking about "during that second  
20 meeting."

21 MR FAAL: I'll clarify.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR FAAL: I'll correct myself, Mr President.

24 Q. And, Mr Witness, it was in that second phone call that you gave a  
25 story to the Prosecution; correct?

26

1 A. A half story.

2 Q. And the story you gave them was as follows that on the day of the  
3 election and before it was very calm and peaceful. Young boys and women  
4 were celebrating. Only after the results were announced arguments  
5 started and a commotion erupted. Do you recall saying that to them?

6 A. Yes.

7 Q. You continued to say that everyone rallied, people from your area  
8 started fighting each other, nobody could tell people to stop. Do you  
9 recall telling them that?

10 A. That could have been my second meeting now.

11 Q. Do you mean the second telephone call?

12 A. No.

13 Q. The second meeting?

14 A. The first meeting with them, not a telephone call but a meeting  
15 with them.

16 Q. Do you recall telling them that?

17 A. Yes.

18 PRESIDING JUDGE EBOE-OSUJI: Counsel, I know we are two minutes  
19 past 11.00.

20 MR FAAL: I --

21 PRESIDING JUDGE EBOE-OSUJI: This would be a convenient time to  
22 take the morning break. I know that you promised to finish before the  
23 morning break and I also know that I asked questions. So we will give  
24 you another ten minutes to wrap it up.

25 MR FAAL: That would be fair, Mr President.



1           PRESIDING JUDGE EBOE-OSUJI: We will rise, but first the blinds  
2           will come down before we do for the witness to be escorted.

3           (Closed session at 11.03 a.m.)

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

6           (The witness stands down)

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

8           THE COURT OFFICER: All rise.

9           (Recess taken at 11.04 a.m.)

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

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

12          PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Faal.

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

14          Q. Welcome back, Mr Witness, and may I remind you that we are still  
15          in public session and please remember not to say things that would reveal  
16          your identity.

17          A. Thank you.

18          Q. And, Mr Witness, before we took that short break, we were talking  
19          about what you said to the Prosecution on the second telephone  
20          conversation. Do you remember that?

21          A. Yes.

22          Q. And do you recall telling them as follows: That it was not  
23          planned. All tribes were involved. I say it was not planned because I  
24          live in that area and I know these people. I would have learnt about  
25          plans if there had been any. I had friends from various communities and

1 I met them on a daily basis.

2 Do you recall telling them that?

3 A. Yes, I do.

4 Q. And then you went on to say: When the fighting started we had to  
5 call the police. They reacted quickly. Do you remember telling them  
6 that?

7 A. Yes.

8 Q. And then you also told them that houses started burning but not  
9 only in one community. It was on all sides. Do you remember that?

10 A. Yes.

11 Q. You also went on to say there were different communities at  
12 Langas police station. They sought refuge. I also -- I also sought  
13 refuge there. Then I went to a church. Do you recall saying that?

14 A. Yes.

15 Q. You went on to say that my property was burnt, the houses of my  
16 neighbours were also burnt. My neighbours are from a different  
17 community. I could not exactly tell who was burning the houses. Do you  
18 recall saying that?

19 A. Yes.

20 Q. And, Mr Witness, it is true that during the violence you suffered  
21 some losses; correct?

22 A. Yes.

23 Q. And your losses have been such that you have been unable to  
24 re-open your business; correct?

25 A. Yes.

1 Q. And even (Redacted)

2 PRESIDING JUDGE EBOE-OSUJI: Counsel, all right, let's stop now.

3 Let us go into private session.

4 (Private session at 11.40 a.m.)

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

6 Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Mr Faal, it looks like we're putting too much bits and pieces on  
9 the record and the public session. I'm not saying you shouldn't ask  
10 these questions, but it's matter of the more you give --

11 MR FAAL: I was --

12 PRESIDING JUDGE EBOE-OSUJI: -- the easier it is for those who  
13 want to make composite for the witnesses, connect the dots.

14 MR FAAL: Much obliged, Mr President. I will take the safer  
15 route, which is go into private session for this question, and then move  
16 on -- back to public session. Thank you very much, Mr President.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. And you would say, Mr Witness, that your financial situation was  
22 in fact badly affected by the violence; correct?

23 A. Yes.

24 Q. And, Mr Witness, when you spoke to the Office of the Prosecutor,  
25 at least when you met them, in (Redacted) they explained to you what  
26

1 protection measures were available to witnesses of the Court; correct?

2 A. Yes.

3 Q. They also explained to you that among the measures available  
4 include relocation of witnesses; correct?

5 A. Yes.

6 MR FAAL: Mr President, perhaps we may move back into public  
7 session.

8 PRESIDING JUDGE EBOE-OSUJI: Let's go back into public session  
9 then.

10 (Open session at 11.42 a.m.)

11 THE COURT OFFICER: (Interpretation) We are in open session,  
12 Mr President.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 MR FAAL: Thank you, Mr President.

15 Q. Mr Witness, we are back in public session, and please remember  
16 not to say anything that would reveal your identity. Is that all right  
17 with you?

18 A. Yes.

19 Q. And when you met the Prosecution (Redacted)  
20 they paid for all your expenses, didn't they?

21 A. Travel expenses, yes.

22 Q. And they also paid for your loss of income for the days you spent  
23 with them; correct?

24 A. Repeat again, please.

25 Q. They also paid for your loss of income for the period you spent

1 with them; correct?

2 A. It was not loss of my income that I was paid. It was just  
3 subsistence allowance when I was with them.

4 Q. And while you were with them during this period, you changed your  
5 story, didn't you?

6 A. About what, please?

7 Q. While you were with them this second time you changed the story  
8 you told them; didn't you change it?

9 A. Yes, I did.

10 Q. And now you say that the violence was planned, when previously  
11 you said it wasn't planned; correct?

12 A. There was a reason for me to have said so in the first place.

13 Q. Did you or did you not?

14 A. I did, and I gave the reasons.

15 Q. And you changed your story because now there were benefits  
16 available. Wasn't that the reason, Mr Witness?

17 A. By the time --

18 PRESIDING JUDGE EBOE-OSUJI: Witness, one second.

19 THE WITNESS: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: You can just limit yourself to a yes  
21 or no answer to the version that the counsel is putting to you. You  
22 don't have to agree with him, but if you do agree with him you can say  
23 so. Now, we know that when we were in private session we had explored  
24 that, how the story changed and you had indicated why you changed the  
25 story. That's already on the record. There is no need for you to keep  
26

1 repeating that unless there is something different you want to add, that  
2 you can do so, but mindful that we are in the public session.

3 THE WITNESS: Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: But just listen to his questions,  
5 and if you agree you say, I agree; and if you disagree, you say, I  
6 disagree.

7 MR FAAL:

8 Q. And, Mr Witness, you changed your story this time because  
9 benefits were available to you; wasn't that the reason?

10 A. No.

11 MR FAAL: No further questions, Mr President. Perhaps before I  
12 wrap it up, we should ask that the PIS be admitted into evidence. Thank  
13 you, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 The PIS would go in as the next protected information sheet, PIS,  
16 for the Ruto Defence.

17 MR FAAL: (Microphone not activated)

18 I was consulting with my colleague so I missed what you said.  
19 Okay. Yes. Yes, the answer is yes, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Yes, I see you looked at the  
21 transcript and you've seen what I said.

22 MR FAAL: Thank you, Mr President. My apologies.

23 THE COURT OFFICER: (Interpretation) The Ruto Defence document  
24 will be KEN-PIS-0001-0008 and will be confidential. It is a two-page  
25 document.

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

2           Witness, that is the end of the questions from the Defence  
3           counsel for Mr Ruto. They will no longer ask you questions in  
4           cross-examination.

5           Prosecutor, do you have re-examination?

6           MR STEYNBERG: (Microphone not activated)

7           THE INTERPRETER: Microphone.

8           MR STEYNBERG: I beg your pardon. My microphone. I do have five  
9           issues I need to address arising out of cross-examination.

10          PRESIDING JUDGE EBOE-OSUJI: And also you do recall that I had  
11          also posed some questions in the course of cross-examination. I take it  
12          you will also, if need be, taking those up in your re-examination if you  
13          have any questions arising from those?

14          MR STEYNBERG: I will, your Honour.

15          PRESIDING JUDGE EBOE-OSUJI: Witness, the lawyer who called  
16          you --

17          MS BUISMAN: Mr President, I do apologise, I come here a bit  
18          late, but we might actually have two questions, if that's still possible.

19          PRESIDING JUDGE EBOE-OSUJI: Fair enough. Two questions in  
20          public or private?

21          MS BUISMAN: It can be public.

22          PRESIDING JUDGE EBOE-OSUJI: All right.

23          Witness, I maybe spoke too fast because counsel for Mr Sang had  
24          earlier said they did not have any questions, but it looks like towards  
25          the end of Mr Faal's questions some questions might have occurred to them

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1 to ask you. So they will ask you two questions now in cross-examination,  
2 that's Ms Buisman, the lawyer representing Mr Sang today. So she would  
3 also ask you questions in cross-examination.

4 Ms Buisman.

5 MS BUISMAN: Thank you, Mr President.

6 QUESTIONED BY MS BUISMAN:

7 Q. Good morning, Mr Witness.

8 A. Good morning to you.

9 Q. Two questions on behalf of the Defence of Mr Sang. The first is  
10 just for you to confirm that you do not know Mr Ruto personally; is that  
11 correct?

12 PRESIDING JUDGE EBOE-OSUJI: One second. That who does not know  
13 Mr Ruto personally?

14 MS BUISMAN: The witness.

15 PRESIDING JUDGE EBOE-OSUJI: That's a question for Mr Ruto.

16 MS BUISMAN: That's correct. Can I ask it or not?

17 PRESIDING JUDGE EBOE-OSUJI: No.

18 MS BUISMAN: I can always move on to the second question.

19 PRESIDING JUDGE EBOE-OSUJI: Please move on to the second one.

20 MS BUISMAN:

21 Q. Mr Witness, can you confirm that you do not know Mr Sang  
22 personally; is that correct?

23 A. It's correct.

24 Q. That you only saw him on television?

25 A. Yes.



1 Q. Thank you, Mr Witness. I have no further questions. I just wish  
2 you a safe journey back home. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: Witness, that comes -- brings to an  
4 end the questions for Mr Sang's lawyer. Now I will hand you back to the  
5 Prosecutor, Mr Steynberg, for re-examination.

6 MR STEYNBERG: Thank you, your Honours.

7 Your Honours, I have two matters I can deal with in open session.  
8 The other matters I will ask to go into private session to deal with.

9 FURTHER QUESTIONED BY MR STEYNBERG:

10 Q. Mr Witness, my learned friend has for the first accused, Mr Ruto,  
11 asked you a number of questions relating to the use of the term  
12 "madoadoa," do you remember that?

13 A. Yes.

14 Q. And he played you a video showing a different person,  
15 Mr Raila Odinga, using that term on another occasion at a rally. You  
16 recall that?

17 A. Yes.

18 Q. Now, I then want to take you back to your evidence relating to  
19 what exactly you heard Mr Ruto say on the occasion you've testified about  
20 when you happened upon him addressing a group of people near the  
21 Paradise Hotel. You recall that?

22 A. Yes.

23 Q. And I will read from the edited transcript of the 17th of  
24 October, page 27, from line 11. You told the Court:

25 "The specific words that I heard from Mr Ruto, he told the crowd  
26

1 and the people present that time had come for the people in that area to  
2 show their true colours and do all what is necessary and what is  
3 available to make sure the madoadoa are removed. Because the people  
4 referred to as madoadoa were not in good terms with the area residents  
5 because of their political affiliation."

6 Do you recall saying that?

7 A. Yes.

8 Q. Now, my question is: On this occasion, did Mr Ruto mention  
9 anything to do with a three-piece suit?

10 A. No.

11 Q. You were asked to estimate the distance from which you observed  
12 Mr Ruto saying these words, and you gave an estimate of 10, 20 metres.  
13 Is it possible for you to estimate in this courtroom from where you sit  
14 or from one end of the courtroom to the other as to how far it was, or is  
15 that not big enough?

16 MR FAAL: Mr President, I'll object to that question. I'll  
17 object to that question because the witness's answer is perhaps being  
18 restricted to the size of this courtroom. We do not know what this  
19 witness would say with regards to what is 10 metres. And also,  
20 Mr President, this is a question that he should have asked during  
21 examination-in-chief. The question asked during cross-examination  
22 elicited very clear answers from the witness. There is no need to really  
23 re-open the issue.

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained.

1 MR STEYNBERG: As the Court pleases.

2 Q. The distance at which you were when Mr Ruto was speaking, would  
3 you estimate it as 10 to 20 metres? From that distance, how is your  
4 ability to hear what Mr Ruto said?

5 MR FAAL: Mr President, isn't this the same question just put  
6 differently?

7 MR STEYNBERG: Your Honours, it's an entirely different question  
8 as it doesn't relate at all to the distance but to the ability of the  
9 witness to observe which has been put at issue in cross-examination.

10 PRESIDING JUDGE EBOE-OSUJI: Counsel, I will sustain the  
11 objection for the reason that that is a question that counsel ought to  
12 have foreseen in examination-in-chief.

13 MR STEYNBERG: As the Court pleases.

14 Q. Let me move on then, Mr Witness, to evidence -- or your answers  
15 to questions relating to person number 6's (Redacted). I don't know whether you  
16 still have the Prosecution PIS in front of you.

17 A. Yes.

18 Q. And you testified that on the -- in your evidence in chief that  
19 on the 30th of December, 2007, while on your way to Kona-Mbaya centre you  
20 received a call from person number 6 telling you that his house had been  
21 attacked and burnt the previous night; correct?

22 A. Yes.

23 Q. And that later that day while at the centre, you received a  
24 second call during which person number 6 reported that (Redacted)  
25 (Redacted)

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1 A. Yes.

2 Q. (Redacted)

3 A. Yes.

4 Q. Do you know (Redacted) person number 6 in fact had?

5 A. No.

6 Q. Very well. I'll move on.

7 MR STEYNBERG: Your Honours, the next matters I will require --  
8 require to show documents to the witness. I ask that we go into  
9 private session, please.

10 PRESIDING JUDGE EBOE-OSUJI: We go into private session.  
11 (Private session at 11.57 a.m.)

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

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

15 MR STEYNBERG: Thank you, your Honours.

16 Mr court officer, can I ask you, please, to bring up the  
17 annotated version, I believe it's Exhibit 14 of the sketch plan that this  
18 witness identified.

19 PRESIDING JUDGE EBOE-OSUJI: What tab in your bundle?

20 MR STEYNBERG: Your Honours, it's -- the unannotated version is  
21 at tab 3 of the Prosecution bundle.

22 Q. And perhaps while that's being brought up, can I ask you -- you were asked  
23 questions by my learned friends about Kalenjin houses that were burnt, and you  
24 confirmed that there was a house burnt of one of  
25 your neighbours by the name of --

26

1           PRESIDING JUDGE EBOE-OSUJI: Wait, wait. Are we in private?

2           Yes.

3           MR STEYNBERG: Yes. I was also checking, your Honours.

4           Q. By the name of (Redacted); is that correct?

5           A. Yes.

6           Q. And have you included the location of his house on your sketch  
7 plan --

8           A. Yes.

9           Q. -- Exhibit 14? I don't think it's necessary to give it a number.

10          But is it correct there are just above the homes identified as "my home"  
11 and (Redacted) there are two figures that look like huts with  
12 conical roofs and the word (Redacted) written below them. Is -- are  
13 those the buildings you're referring to?

14          A. Yes.

15          Q. It has been suggested to you by the Defence that you yourself  
16 were responsible or involved in the burning of these houses. What do you  
17 say to that?

18          A. I say I was not responsible at all.

19          Q. Were you present when these houses of (Redacted) were in fact  
20 burnt by the Kikuyu youth?

21          A. I was not present.

22          Q. Where were you?

23          A. It was a time I ran away to go and seek for more help from the --  
24 at the trading centre.

25          Q. And how did you find out that this house was, in fact, burnt?

26

1 A. When I returned back and I found the houses on fire, the reasons  
2 people thought those who were attacking had taken -- had hidden in those  
3 huts.

4 Q. And who told you that?

5 A. The youth and the people who had accompanied me first.

6 Q. Are those persons on your list?

7 A. Yes.

8 Q. Please confirm the numbers.

9 A. We have number 3, we have number 4, those are the ones that are  
10 on the list.

11 Q. Thank you. Very well. I would like to move on from this topic.

12 MR STEYNBERG: If I can please ask the court officer to call up  
13 (Redacted) which my learned friend referred to in  
14 cross-examination. The number is KEN-OTP-0076-0552. It is at tab 2 of  
15 your Honours' binder and it is unredacted. And, your Honours, perhaps I  
16 can clarify that the only reason I'm really doing this is as your Honour  
17 pointed out there was a pregnant pause or a pregnant question that  
18 remained at the end of my learned friend's cross-examination as to the  
19 contents of (Redacted)

20 MR FAAL: Mr President, the Prosecution did lead the witness in  
21 evidence, and the witness talked about (Redacted)  
22 (Redacted) They had ample opportunity to put into evidence exactly what he  
23 said if that was relevant in their case. In fact, this is disclosed to  
24 us by the Prosecution. They had their opportunity; they didn't take it.  
25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Objection is overruled.

4 MR STEYNBERG: As the Court pleases.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Thank you. We can move on to the last issue and that is relating  
6 to the planning of the violence. Now, my learned friend for accused  
7 number one has asked you several questions relating to what you told the  
8 Prosecution investigators during the course of the second phone call and  
9 in private session that's -- the date is the (Redacted). Do you  
10 recall those questions?

11 A. Yes.

12 Q. And they point out that what you told the investigators during  
13 that phone call differs in certain respects from what you told the  
14 investigators when you met them face-to-face and deposed a statement; is  
15 that correct?

16 A. Yes.

17 Q. And also differs to what you told the Court during your evidence;  
18 correct?

19 A. Yes.

20 Q. When you met the investigators face-to-face and deposed your  
21 statement, did you at that time explain why you had not told them the  
22 truth or why you had told them a different version when you spoke to them  
23 on the phone?

24 A. Yes.

25 Q. What did you tell them?

26



1       A. I told them it was hard for me to speak through a phone call in  
2       public and start throwing dirty words to people I don't understand  
3       properly and talking about people who, in one way or the other, could  
4       have given them their number and seek my opinion. So I requested them to  
5       arrange, if possible, a meeting if they are so much interested in what I  
6       know so that I could tell them the whole story in private.

7       Q. And when you met with the investigators and gave them this  
8       explanation, was it recorded in your statement?

9       A. Yes.

10      Q. And finally, what you told them on the phone to the effect that  
11      the violence was not planned, did you also correct that when you gave  
12      your statement?

13      A. I did.

14      Q. Now, it's been suggested to you, Mr Witness, that you changed  
15      your version because of some financial inducement or the desire to  
16      benefit financially from the ICC. What do you say to that?

17      A. It is not true.

18      Q. Has anybody promised you any financial benefit in order to  
19      testify a certain way or to give certain evidence?

20      A. Not at all.

21      Q. You say that you were not paid for loss of wages when you met  
22      with the Prosecutor. You were only paid -- you were given compensation,  
23      you were paid a daily allowance, I think daily subsistence allowance you  
24      said. Is that correct?

25      A. Yes.

1 Q. When you returned home from that meeting which took place over  
2 three days according to your statement, did you have any money left in  
3 your pocket from what the investigators had paid you?

4 A. No.

5 MR STEYNBERG: Thank you, your Honours. I have nothing further.  
6 Your Honours, I've neglected to ask that (Redacted) I referred  
7 to be entered as an exhibit, please.

8 PRESIDING JUDGE EBOE-OSUJI: Any objection?

9 MR FAAL: No objection, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

11 MS BUISMAN: No objection, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: (Redacted) will be entered in the  
13 next -- as the next in the Prosecution exhibits, the article appearing at  
14 KEN-OTP-0076-0552.

15 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0076-0552,  
16 confidential, will be marked as EVD-T-OTP-00017 and shall be exhibit  
17 number 17 for the Prosecutor.

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

19 MR FAAL: Mr President, we would like to ask about three  
20 questions -- pursuant to our right under Rule 140(D) to have the last  
21 word. It's just three questions to clarify just a few issues. Thank you  
22 very much, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: What does Rule 140(D) say?

24 MR FAAL: It says, I quote, Mr President:

25 "The Defence shall have the right to be the last to examine a  
26

1 witness ..."

2 So we want to ask three questions in light of that rule,

3 Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: What questions exactly do you want  
5 to ask? We do not accept the proposition that the Defence will always  
6 have a right to ask the last question. A question has to fairly arise  
7 for that right to be so.

8 MR FAAL: Indeed, Mr President. The issue here is the witness  
9 has said in cross-examination that he was informed by the Office of the  
10 Prosecutor that the people he was speaking with were staff from their  
11 office. And in his statement, the explanation is that he didn't know who  
12 he was speaking to. These are two completely different things. In the  
13 first instance they introduced themselves the first time he refused to  
14 talk to them. The second time they introduced themselves properly and he  
15 felt comfortable and -- to speak to them and he did. In the explanation  
16 he gave he said he didn't know who he was speaking to and that's why he  
17 gave falsehood, and that is an important area to question him on.

18 And --

19 PRESIDING JUDGE EBOE-OSUJI: Sorry, in the explanation he gave  
20 where, on the stand now or --

21 MR FAAL: In the --

22 PRESIDING JUDGE EBOE-OSUJI: -- in the witness statement?

23 MR FAAL: In both the witness statement as well as when he was  
24 questioned in re-examination. He said he didn't know who he was talking  
25 to.

26

1           PRESIDING JUDGE EBOE-OSUJI: All right. That's one question.

2           What is the next?

3           MR FAAL: Mr President, all our three questions related to that  
4           and just one other question is when he spoke to the Prosecution the  
5           second time, he stated something about Mr Ruto, and I just wanted to  
6           confirm whether he said that. And that is he said: I do not know Ruto  
7           personally. He is social and hard-working. We wanted to confirm that he  
8           said that. So those are the two issues we just wanted to raise.

9           PRESIDING JUDGE EBOE-OSUJI: The last question is promptly  
10          overruled because you could have explored it. It did not arise from  
11          re-examination.

12          MR FAAL: Fair enough, Mr President.

13          PRESIDING JUDGE EBOE-OSUJI: Let me consult my colleagues as to  
14          the first one.

15          MR FAAL: Thank you, Mr President.

16          (Trial Chamber confers)

17          MR STEYNBERG: I beg your pardon, your Honour. Before you give  
18          your ruling, may I just clarify one or two things because I'm afraid my  
19          learned friend has not given an accurate summary in relation to his  
20          first -- the first matter he raises. And that's in respect to what this  
21          witness said about who was calling him. What he said in re-examination,  
22          I'm quoting from the record, at line --

23          MR FAAL: Mr President, perhaps we could ask the witness to  
24          remove his earphones --

25          PRESIDING JUDGE EBOE-OSUJI: Let's do this, Mr Steynberg, so we  
26

1 can make some progress on this thing. Although the matter had been  
2 explored before the Chamber is minded to allow Defence -- how many  
3 questions did you say you had in mind?

4 MR FAAL: Three at the most, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: You must do that in five minutes.

6 MR FAAL: Much obliged, Mr President.

7 FURTHER QUESTIONED BY MR FAAL:

8 Q. Mr Witness, I have a few questions for you. In your statement to  
9 the Prosecutor, paragraph 60 specifically, you stated as follows:

10 "When I first spoke to the OTP investigators on the telephone, I  
11 told them that I believed the violence was not planned. I said this  
12 because I did not know whom I was dealing with at that stage."

13 Do you recall saying that?

14 A. Yes.

15 Q. But in fact I asked you in cross-examination whether the OTP  
16 investigators introduced themselves to you. Do you recall that?

17 A. Yes.

18 Q. And your answer was that they in fact introduced themselves to  
19 you; correct?

20 A. Days after.

21 Q. On the first instance you did not talk to them at all; correct?

22 A. I talked to them and I declined to answer the questions they were  
23 asking.

24 Q. And during the second telephone call they introduced themselves  
25 to you again, didn't they?

1 A. They did.

2 Q. And on this instance you answered their questions, didn't you?

3 A. I did.

4 Q. And that was the instance in which you explained to them that the  
5 violence was not planned, people were fighting one another; correct?

6 A. Yes.

7 Q. So when -- so when you spoke to the Prosecution again and told  
8 them that you did not know who you were really dealing with, that was not  
9 correct, wasn't it, or was it correct?

10 A. Put it again, please.

11 Q. When --

12 PRESIDING JUDGE EBOE-OSUJI: Counsel, that question appears  
13 argumentative; it borders on the argumentative. But can you rephrase it.

14 MR FAAL:

15 Q. So when you spoke to the Prosecution, the -- on the -- on the --  
16 between the (Redacted) and told them that when you spoke to  
17 the staff from the Prosecution and gave them some explanation, you did  
18 not know who you were talking to, that wasn't entirely correct, was it?

19 PRESIDING JUDGE EBOE-OSUJI: Don't answer that question, Witness.  
20 Counsel, is that on the record?

21 MR FAAL: Well, Mr President, I'm not sure I understand the  
22 question. It is on the record that --

23 PRESIDING JUDGE EBOE-OSUJI: What I mean is: Is it -- the  
24 proposition to him now which you want him to admit is incorrect, is that  
25 proposition on the record, as in on the transcript of these proceedings?

26

1 MR FAAL: Not so much, Mr President, but it is something that  
2 could be deduced from the evidence that is already there. He said that  
3 in the second telephone call they had introduced themselves to him. He  
4 was comfortable with them and answered their questions. That is the  
5 document I read out, wherein he said there was no plan, nothing. During  
6 the actual interview when he sat face-to-face with them, he explained  
7 that he didn't know who he was speaking to. So the issue is these people  
8 had indeed introduced themselves to him and he was comfortable giving a  
9 statement to them. So the question I now put to him is when he said to  
10 the Prosecution that he didn't know who he was talking to that was not  
11 correct.

12 MR STEYNBERG: Your Honours, I must, I'm afraid, intervene at  
13 this stage because my learned friend is not accurately reflecting what  
14 the contained in the statement. On the first occasion when he quoted  
15 from the statement he left out a word which in the circumstances may be  
16 crucial. What was read into the record on the first occasion was: "I  
17 said this because I did not know whom I was dealing with at that stage."  
18 What it actually says is: "I did not know whom I was really dealing with  
19 at that stage."

20 Now, if it's being suggested that that means I did not know who I  
21 was talking to, my submission is that those are not the same proposition  
22 whatsoever. So I'm worried that my learned -- the witness is being  
23 cross-examined on a misleading basis.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, we have to end it there.

25 MR FAAL: That is fine by me, Mr President. Thank you.

1           PRESIDING JUDGE EBOE-OSUJI: Can we now go back into the open  
2 session, court officer.

3 (Open session at 12.22 p.m.)

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

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

7           Witness, thank you very much. We now come to the end of your  
8 sitting with us and answering questions from both the Prosecutor and the  
9 Defence counsel. We thank you for coming to assist and answering  
10 questions to the best of your ability in the circumstances. We know you  
11 travelled a long way to get here, and we wish you good luck as you  
12 return. You are now discharged from the witness seat.

13          Court officer, please bring down the blinds and escort the  
14 witness.

15          THE WITNESS: Thank you very much.

16 (Closed session at 12.23 p.m.)

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

19          PRESIDING JUDGE EBOE-OSUJI: Thank you.

20          Please escort the witness.

21 (The witness withdrew)

22          PRESIDING JUDGE EBOE-OSUJI: Thank you. We go back into public  
23 session, open session.

24 (Open session at 12.25 p.m.)

25          THE COURT OFFICER: (Interpretation) Mr President, we are in



1 open session.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Prosecutor, who's your next witness?

4 MR STEYNBERG: Your Honour, the next witness is witness number  
5 P-0487. We will require -- my learned colleague Mr Omofade will be  
6 leading this witness. I wonder whether we might reconstitute ourselves.  
7 I'm not sure whether the Court would like to take a brief adjournment or  
8 whether we can just move ourselves around.

9 PRESIDING JUDGE EBOE-OSUJI: If you can quickly move yourselves  
10 around.

11 MR STEYNBERG: (Overlapping speakers)

12 PRESIDING JUDGE EBOE-OSUJI: -- you can do something quickly.

13 MR FAAL: We are allowed to do the same, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade and Defence counsel, are  
15 we ready to proceed now?

16 MR OMOFADE: Mr President, I -- I do apologise, your Honours.  
17 I'm trying to tune in to the right channel. I was just trying to log on  
18 to the transcript for the records, but perhaps before we proceed I could  
19 introduce the team as currently constituted --

20 PRESIDING JUDGE EBOE-OSUJI: Let's not do that again. We do that  
21 in the morning. The question for you actually would be -- you have an  
22 application pending, don't you, for protective measures?

23 MR OMOFADE: That's correct, your Honours. There was an  
24 application filed on the 16th of this month. It's pending a decision  
25 from your Honours for protective measures for this witness as well as  
26

1 three other witnesses. I wonder if your Honours want to hear further  
2 submissions? We have nothing that's transpired since the 16th of  
3 October, so the request, obviously subject to what the Defence and the  
4 Victims and Witnesses Unit might have to contribute, the request will be  
5 for protective measures in the terms of the application.

6 PRESIDING JUDGE EBOE-OSUJI: Was it on the 16th or the 17th that  
7 you made the request, for the accuracy of the record?

8 MR OMOFADE: I'm sure your Honour is probably correct and I'm  
9 mistaken. I believe it was the 16th. It might have been notified on the  
10 17th, that might be the confusion.

11 PRESIDING JUDGE EBOE-OSUJI: Fair enough. And the Chamber had  
12 indicated that the submissions on the application will be taken orally  
13 and an oral ruling will be made. Wasn't that the case?

14 MR OMOFADE: Would your Honours forgive me for a minute, please.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Your point,  
16 Mr Omofade, is that your written matter suffices for any submissions you  
17 have. You have nothing more to say beyond what you've submitted in  
18 writing?

19 MR OMOFADE: Your Honours, that's the position. Nothing's  
20 transpired since we made the filing and now to revise matters.

21 PRESIDING JUDGE EBOE-OSUJI: Then the Defence have not responded  
22 to this application, Mr Hooper.

23 MR HOOPER: Good afternoon, your Honours. Indeed, that's right.  
24 So we can make some brief oral submissions now which really come to this  
25 because you'll see from the filing 1044 of the 17th of October that in  
26

1       respect of Witness 487 the Prosecutor -- Prosecution state that when the  
2       issue of in-Court protective measures was raised with the witness on, and  
3       there's a redacted date, he said that he could testify publicly. And so  
4       it was seeing that that the Defence hope's were raised that indeed this  
5       would be a witness who could give his evidence in public without  
6       resorting to the protective measures that we recognise the Court has  
7       found necessary but which at the same time we can observe, of course,  
8       disrupts the public's knowledge of the evidence that's given. And I  
9       don't need to repeat to your Honours the very strongly held view of this  
10      Defence, that public evidence is preferred as it's the most likely, in  
11      our submission, to expose the truth. And those are our submissions.

12           PRESIDING JUDGE EBOE-OSUJI: Ms Buisman.

13           MS BUISMAN: Thank you, Mr President. We fully support the  
14      submissions made by the Ruto Defence. We also would like to make a few  
15      observations because the application is again based on very general  
16      observations about Kenya and the situation there with the proposal to  
17      withdraw from the ICC Statute. This has been debated upon and I will  
18      also not repeat what you said. I just note that there's nothing specific  
19      to this witness to justify what I would say is a subjective fear on  
20      behalf of the Prosecution. It's not even a subjective fear of this  
21      witness because, as my learned colleague just pointed out, he himself has  
22      indicated he was willing to testify publicly. But nonetheless, the  
23      Prosecution is asking protective measures on the basis that -- it's not  
24      very clear, in fact, there's nothing specific as I said. They make these  
25      two general observations and one is about Kenya. I would like to point  
26

1 out that we have this filing of the government on 15 of October, 2013, I  
2 think you're well aware of that. And in this filing the government  
3 actually explains how it works. Until now there's no bill has been  
4 presented, so there's no change between now and the 18th of September  
5 when we discussed this matter earlier. Also, they point out at paragraph  
6 12 of their submission that in addition to a bill there must also be a  
7 cabinet memorandum prepared and submitted. None of that at this stage  
8 has been done. So the position of the Kenyan government is still a  
9 future matter, your Honour, and it should not have any impact on this  
10 particular case.

11 We also note that they go on about, generally speaking, the  
12 problem we had with protective measures, and it's true that the first  
13 witness had some issues but there's not been a pattern so far. We know  
14 there was some concern about the second witness, but we are not privy to  
15 that information so I can't comment on it. But we've had three witnesses  
16 now without a difficulty. So we submit that you should stick by your own  
17 decision going with an individual case-by-case determination and at this  
18 moment there's no reason to grant the protective measures. Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, are you in a position to  
20 discuss this fully? We're in open session. The Defence have said that  
21 it appears to them that the witness has indicated no subjective fear, and  
22 in fact had indicated that testimony of the witness could be given in  
23 public. Do you respond to that?

24 MR OMOFADE: Well, your Honours,  
25 firstly just to correct the

1 record, the indication seems to be from my friend for Mr Sang that as  
2 regards the first three witnesses there's been no issue; that's far from  
3 the truth. I go no further than that.

4 PRESIDING JUDGE EBOE-OSUJI: No. I think she said as regards the  
5 last three.

6 MR OMOFADE: Well, even so, your Honours. Secondly, and to the  
7 extent that I can explore this in the public session I will, the fact  
8 that a witness subjectively states that they do not have concerns about  
9 testifying publicly and, in fact, this statement is more nuanced than has  
10 been put forward by the Defence, and your Honours have the benefit of the  
11 filing itself, but even if a witness does say so, it is not the only  
12 considerations that your Honours would have in mind. Your Honours would  
13 also consider whether the witness that states this is completely aware of  
14 all the facts that could mitigate against the removal or the decline of  
15 protective measures. And I say this for a number of reasons, the first  
16 being that the witness might not fully appreciate the risk to them from  
17 testifying in the absence of certain protective measures --

18 PRESIDING JUDGE EBOE-OSUJI: That's -- that would be where the  
19 Victims and Witnesses Unit assessment comes in?

20 MR OMOFADE: Which is why I said subject to submissions by the  
21 Victims and Witnesses Unit and of course the Defence. It's all in the  
22 realm that your Honours make a decision as to whether or not protective  
23 measures are granted. But I go further. The witness might not also  
24 appreciate the risk to family members, friends, other associates that  
25 could amount as a result of the witness's identity being exposed. So

1       there are a number of issues that your Honours take into account in  
2       addition to the subjective wishes of the witness. But I go further to  
3       say that on this occasion even the witness might not have fully  
4       appreciated the concerns when that statement was made.

5           PRESIDING JUDGE EBOE-OSUJI: Are you -- do you have more to say  
6       either in public or in private?

7           MR OMOFADE: Your Honours have the benefit of the filing. I have  
8       nothing to add.

9           MS BUISMAN: Mr President.

10          PRESIDING JUDGE EBOE-OSUJI: Mr Narantsetseg, I forgot to get  
11       back to you. The computer has a way of blocking it. That's no excuse,  
12       of course.

13         You may proceed. This is a witness of interest to you, isn't it?

14          MR NARANTSETSEG: To answer your question directly, your Honour,  
15       no. But if you give us an opportunity, we also would like to make our  
16       contribution as to the protective measures to be implemented in this  
17       courtroom.

18          PRESIDING JUDGE EBOE-OSUJI: Please proceed.

19          MR NARANTSETSEG: About the protective measures to be provided to  
20       each witness, I have personally consulted with Mr Nderitu, the common  
21       legal representative, and made our position common. We believe that in  
22       this case the Prosecution's request should be granted in light of the  
23       fear that this witness expressed for his safety and the safety of his  
24       family. And we believe that those limited protective measures are  
25       justified and necessary at the same time proportional. This concludes

1       our submission, your Honour. Thank you.

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

3               MR HOOPER: Your Honours, before you come to a decision on this,  
4       can I -- can I just make one point and that is that we understand that  
5       now the protocol is such that there is a joint threat assessment. And so  
6       we have a position where the Prosecution, no access to the Defence, but  
7       the Prosecution have been discussing with VWU the threat assessment. In  
8       those circumstances and against a background where the witness himself  
9       has said that he'd be happy to give his evidence publicly, we hope and  
10      trust that the Chamber will necessarily scrutinise whatever the VWU say,  
11      because we don't have access to it and we are blind on that, that you  
12      scrutinise that with the care that those facts and fact obviously made.

13      Thank you very much.

14      (Trial Chamber confers)

15              PRESIDING JUDGE EBOE-OSUJI: The Chamber rules as follows. The  
16      Chamber was seized of a Prosecution application for grant of protective  
17      measures in the courtroom for Witness 487. In the manner of voice  
18      distortion, facial pixilation or distortion, use of pseudonym, and  
19      limited use of private sessions to discuss sensitive information that may  
20      reveal the identity of the witness or those of family. The Chamber has  
21      since received the recommendation of the VWU in which the unit indicates  
22      that they have spoken with the witness and assessed the witness and the  
23      witness has, indeed, expressed fear for his security and psychological  
24      well-being.

25              In the circumstances, the Victims and Witnesses Unit recommends

1 the measures indicated, which is voice distortion, facial distortion or  
2 pixilation, use of pseudonym, and limited use of private sessions. Of  
3 course we heard Mr Hooper's brief but pointed observation that the  
4 Chamber must assess what the Victims and Witnesses Unit recommends, and  
5 that is a correct observation. Nevertheless, the Chamber also notes that  
6 the Victims and Witnesses Unit have a measure of expert that is peculiar  
7 to their work and some deference -- curial deference, as we say, curial  
8 deference would need to be accorded to their recommendation.  
9 Accordingly, the Chamber grants the measures requested by the  
10 Prosecution. That is the ruling.

11 It is now 17 minutes to 1.00. I think we should begin the  
12 testimony of the witness, notwithstanding that we will have to put the  
13 witness -- leave the witness for break in 17 minutes.

14 MR OMOFADE: Your Honours, I think some progress can be made in  
15 that time.

16 PRESIDING JUDGE EBOE-OSUJI: So let us then bring down the blinds  
17 and bring the witness into the courtroom.

18 (Closed session at 12.44 p.m.)

19 MR OMOFADE: And, your Honours ...

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Please bring in the witness.

24 MR OMOFADE: Your Honours, I was about to say before the  
25 court officer announced the closed session that to save time I could hand



1 out some binders prepared by the Prosecution as well as the PIS form for  
2 this particular witness.

3 PRESIDING JUDGE EBOE-OSUJI: Please proceed.  
4 (The witness entered court)

5 PRESIDING JUDGE EBOE-OSUJI: Court officer, in the meantime can  
6 you return these PIS's to the counsel gave them to us for the previous  
7 witnesses. That's for the Prosecution and that's for the Defence.

8 Now we need to go back into public session.  
9 (Open session at 12.47 p.m.)

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

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

13 Can you please administer the oath to the witness or the solemn  
14 declaration as the case may be.

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

17 WITNESS: KEN-OTP-P-0487  
18 (The witness speaks English)

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness. And  
20 welcome to the courtroom. I have a habit of saying "welcome" and I also  
21 have a habit of explaining to witnesses that it does not mean you're a  
22 stranger in this courtroom. It is a public courtroom; it belongs to the  
23 international community of which you are a part. So feel completely  
24 comfortable in the witness seat to assist us in finding out what  
25 happened. In doing that, you have heard the declaration that you've just

1 given, solemnly declare to tell the truth and nothing but the truth.

2 That is all that we ask of you. That is all we require of you. It  
3 becomes easier to do that if you listen very carefully to the questions  
4 that the lawyers would ask you, beginning with the Prosecutor would ask  
5 you questions in examination-in-chief at the end of which Defence counsel  
6 would ask you questions in cross-examination either beginning with  
7 Defence counsel for Mr Ruto or Defence counsel for Mr Sang.

8 It is important for you to understand the questions they ask  
9 before you start answering them. Do your best to answer according to  
10 what you perceived personally, what you saw, what you heard with your own  
11 ears, what you felt, what you smelled, things like that, things that  
12 you're able to give us first-hand account of the evidence as you  
13 perceived it. Try not to guess. If you must guess inevitably, it is  
14 important that you keep it to the barest minimum and to warn us that you  
15 are guessing, but try not to guess. Also, try not to draw inferences as  
16 in 1 plus 1 equals 2. I know that's a mathematical precision, but in the  
17 Court of law try not to do it. What we'd want would be your 1 plus 1.  
18 Let the Prosecutors or the lawyers at the end of it argue that that  
19 equals 2. Some may disagree. But just give us the raw information that  
20 you perceived and leave out the arguments that follow. If you do that,  
21 you would have been assisting us in our work.

22 There is one little matter, it might seem little but it is really  
23 very significant, and that is how you help with the recording of the  
24 evidence. Up there you will see interpreters who are interpreting what  
25 you say into the different languages of the Court and on that side are

1 court reporters who are actually writing down what you say. Their  
2 ability to do their work well depends a lot on you. You need to speak  
3 not very, very slowly because that will keep us here forever, but speak  
4 sufficiently slowly to enable them to do their work while still moving  
5 with some speed, if you can. That I will be advising you when you are  
6 doing it too much or too slow. But it's important for you to keep in  
7 mind that there are people interpreting what you say and writing it down  
8 too. There is -- it's important for you to speak then in chunks of  
9 information in terms of sentences and not to string as many as four, five  
10 sentences in rapid succession together. It will make it difficult for  
11 them to follow. And also, there is something we call the gap rule. That  
12 is a gap that needs to be observed between the question you are asked and  
13 you're beginning to answer the question. It also enables them to do  
14 their work well. Try and observe those. With that I believe that we  
15 will be in a better position to understand and record what you say.  
16 Thank you.

17 Unfortunately you will not be on the stand for too long this  
18 morning. We will be taking our lunch break in about seven minutes, but  
19 we thought we could ask you a few questions during that time. Okay?

20 THE WITNESS: Okay.

21 PRESIDING JUDGE EBOE-OSUJI: The Prosecutor will then begin.

22 MR HOOPER: Your Honour, before the Prosecutor begins can I  
23 have -- I'd just brave two matters. The first is could we have an idea  
24 from the Prosecutor how long he is likely to be in chief  
25 so that we can

1 better prepare ourselves in terms of any disclosure documents that we may  
2 be using. And secondly, when we were handed this bundle, relatively  
3 small though it is, we notice that the very first document is the  
4 witness's statement to the OTP. Now, we're unclear as to the practice,  
5 but my understanding is - our understanding is - that you, the Judges,  
6 don't receive the statements of the witnesses, though there may come a  
7 time in any process when previous statements are going to be introduced  
8 or excerpts from them. But as a general principle my understanding is  
9 that the Chamber, Judges themselves, do not receive the statements. We  
10 notice that you did have a statement on the last occasion, so it would be  
11 helpful to us to know and to clarify the position. But in any event, it  
12 should not form part of a Prosecution bundle and circulated in our  
13 submission. It's perhaps less important here where than we -- I'll give  
14 way to your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: On the last point first, the first  
16 question you asked would be for the Prosecution, of course, how long they  
17 would take. But then the last matter, yes, we do generally receive the  
18 statement, and it is something I too have noticed in the practice of  
19 international criminal law. I remember once making that objection as  
20 Prosecution counsel in Arusha and the Judges overruled the objection that  
21 they are not to receive the witness statement. Generally, it's a matter  
22 of Judges, when the need comes to look at it, the document is already  
23 there. If there's a need to refresh memory, we know what's being talked  
24 about. If there's a need to contradict, we have the material before us.  
25 So it saves time to have it in the bundle. It depends, of course, on

1        what the party who introduced the -- who wants to -- who put the document  
2        in the bundle, the use they want to make of it at the time. It will be  
3        then that the objection will be appropriate.

4            How long do you intend to take?

5            MR OMOFADE: Your Honours, the indication that we gave  
6        previously, I don't know if that's been adumbrated in one of the previous  
7        sessions, the previous indication was one and a half days to two days. I  
8        see that if we adjourn now for the luncheon adjournment, we might have  
9        just the one session left this afternoon, in which case we'll certainly  
10       be taking all the sessions tomorrow. It could be that saying, how long  
11       is a piece of string. It could be that by the end of tomorrow we would  
12       have completed. I doubt very much that we'll go into the first  
13       session -- rather, I doubt that we'll go into the second session of  
14       Wednesday.

15           PRESIDING JUDGE EBOE-OSUJI: Fair enough. But you do know why  
16       they've made the request, so the more precision you can give the easier  
17       it is?

18           MR OMOFADE: I think it's safe to say close of business tomorrow.

19           PRESIDING JUDGE EBOE-OSUJI: Fair enough. Then we can --

20           MR HOOPER: Yes, that's very helpful. And it would be even more  
21       helpful if we could get your blessing on our disclosing documents  
22       tomorrow morning, not earlier than tomorrow morning.

23           PRESIDING JUDGE EBOE-OSUJI: We cannot give you that blessing,  
24       Mr Hooper. You do it at your own risk. The Prosecution have told you  
25       and you've heard the policy of the Chamber that if you play it so close

1 to the line and miss it, then you will be in their hands.

2 MR HOOPER: Well, I understand that and we see and observe the  
3 risk as on an earlier occasion, but in this particular case because of  
4 the way in which witnesses are being shuffled, and the pack's been  
5 shuffled, as your Honours know, it's meant that our investigatory  
6 resources have -- have had to be refocussed to some extent, which has  
7 meant this: That we are getting relevant information but we are getting  
8 it, for example, this morning and I anticipate later today. And it's in  
9 those circumstances, therefore, that particularly given what my friend  
10 has said about going into some distance into Wednesday morning, that if  
11 we felt that we could provide our information tomorrow, that that would  
12 perhaps serve our interests in those circumstances and we hope would not  
13 be a risk that would jeopardise the introduction of any documents. I  
14 must emphasise, it's not a question of holding things back and doing  
15 that; it's a question of resources --

16 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, we have to stop it there.  
17 The point that I -- remains the same. We in the course of the  
18 proceedings encourage counsel to liaise and communicate with one another  
19 on these things, and I'm not going to change what I said earlier that you  
20 do this at your own risk, so we're not going to give you any blessing.  
21 Let's not argue the point.

22 MR HOOPER: All right. That's very clear. Thank you.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MR OMOFADE: Your Honours, the clock has been wound down,  
25 unfortunately. I do think this is an appropriate moment to break for the

1 luncheon adjournment.

2 PRESIDING JUDGE EBOE-OSUJI: It is indeed one minute to 1.00.

3 Witness, regrettably we weren't -- no question, not even a single

4 one was able to be put to you before the lunch break, but it's all right.

5 These logistical difficulties need to be ironed out from time to time.

6 We will now be rising for the lunch break, and when we come back we will

7 go straight into your examination-in-chief from the Prosecution. The

8 witness will be escorted off the witness-stand and then brought back at

9 2.30.

10 Blinds down first, please.

11 (Closed session at 1.00 p.m.)

12 THE COURT OFFICER: (Interpretation) We are in closed session,

13 plenty.

14 PRESIDING JUDGE EBOE-OSUJI: (Previous translation continues) ...

15 the stand.

16 (The witness stands down)

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

18 THE COURT OFFICER: All rise.

19 (Recess taken at 1.01 p.m.)

20 (Upon resuming in open session at 2.38 p.m.)

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Welcome back, Witness. We will now begin with the

24 examination-in-chief.

25 Mr Omofade.

1 MR OMOFADE: I'm grateful, Mr President. A minor matter before I  
2 proceed. Over the luncheon adjournment we made a slight amendment to the  
3 PIS form by adding a single location. Three copies of the revised  
4 version have been handed to the court officer and those might be added to  
5 your Honours' bundle now.

6 PRESIDING JUDGE EBOE-OSUJI: You mean replaced with the one we  
7 already have?

8 MR OMOFADE: To replace the ones your Honours already have.

9 THE COURT OFFICER: (Interpretation) We are in open session,  
10 your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 So in the revised version of the PIS, we now have seven  
13 locations; is that it?

14 MR OMOFADE: Seven locations rather than six.

15 PRESIDING JUDGE EBOE-OSUJI: Okay. Please proceed.

16 MR OMOFADE: And, your Honour -- Mr President, for the first few  
17 questions we would need to go into private session. The information that  
18 I propose to elicit from the witness relates to his personal information.

19 PRESIDING JUDGE EBOE-OSUJI: For how long?

20 MR OMOFADE: I anticipate 15 minutes. I've been informed by my  
21 friend, Mr Hooper, that I can lead on some of these matters.

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

23 (Private session at 2.41 p.m.)

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



1           PRESIDING JUDGE EBOE-OSUJI: Thank you.

2           QUESTIONED BY MR OMOFADE:

3           MR OMOFADE:

4           Q. Good afternoon, sir. Mr Witness, we've met briefly before last  
5           week, to be precise on the 17 of October when there was a witness  
6           preparation session between you, myself, and my colleague Ms Zago. Do  
7           you recall that?

8           A. Yes, I recall it.

9           Q. Could you tell the Court your full names, please.

10          A. My full names are (Redacted)

11          Q. And is it correct that (Redacted)

12          (Redacted)

13          A. Yes.

14          Q. (Redacted) is

15          that correct?

16          A. Yes.

17          Q. And could you help us with your date of birth, please.

18          A. I was born on (Redacted)

19          Q. And was that in (Redacted) where you were born?

20          A. Yes.

21          Q. And did you (Redacted)

22          (Redacted)

23          A. Yes.

24          Q. And there --

25          PRESIDING JUDGE EBOE-OSUJI: Prosecutor, one second. Can you --

1 I indicated this thing a few times in the past. Would it not have been  
2 possible for a CV of this sort of information to be prepared and attached  
3 to the PIS of its own, have the witness sit there, have the witness go  
4 through it, and, Witness, is that information correct to the best of your  
5 ability? If the witness says yes you tender it. So that saves us  
6 something like 30 minutes of questioning, subject to any -- the Defence  
7 saying on a particular -- with regard to particular witnesses they insist  
8 questions to be put, that will be the more efficient way of proceeding  
9 with these sort of non-contested curriculum vitae sort of information.

10 MR OMOFADE: Your Honours, I -- it's difficult to tell what the  
11 position of the Defence will be from witness to witness. Unfortunately,  
12 the first opportunity that I had to discuss this with my colleague  
13 Mr Hooper for Mr Ruto's team was in between the break that we had. I do  
14 concede that this could shorten matters -- it may well also shorten  
15 matters. If the Defence can indicate in circumstances where this could  
16 be led, it could normally be done in five or ten minutes.

17 PRESIDING JUDGE EBOE-OSUJI: All right. See how we can do it.  
18 When you prepare a PIS along those lines, you come to Court ahead of  
19 commencement, you show it to your learned friends on the opposite side,  
20 say this is what we intend to tender. If they look it over and say fine,  
21 then you know you can tender it and you do that; but if they say no, then  
22 you lead. Or even -- you might even litigate the question briefly before  
23 beginning to lead. Again, it's so that we can cut down the time it takes  
24 to -- in the business of questioning of witnesses. That is all.

25 MR OMOFADE: Your Honour's suggestion is taken on board.

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1 MR HOOPER: Just before we go, can I invite my friend just to  
2 confirm the date of birth.

3 MR OMOFADE:

4 Q. Mr Witness, did you provide your date of birth as (Redacted)  
5 Is that what you said?

6 A. (Redacted)

7 Q. Thank you. And (Redacted)  
8 (Redacted)

9 A. Yes.

10 Q. (Redacted)  
11 (Redacted)

12 A. Yes.

13 Q. (Redacted)  
14 (Redacted)

15 A. Yes.

16 Q. (Redacted)

17 A. Yes.

18 Q. (Redacted)  
19 (Redacted)

20 A. Yes.

21 Q. And help us, please, what do you mean when you describe yourself  
22 as (Redacted)

23 A. The best definition I can give to (Redacted)  
24 (Redacted)  
25 (Redacted)

1 (Redacted) Maybe this is -- well, (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. And (Redacted)

5 (Redacted)

6 A. It was at location 2.

7 Q. Mr Witness, if you leave the form in front of you aside for the  
8 time being, could you tell the Court whereabouts (Redacted)

9 (Redacted)

10 A. (Redacted) Eldoret town.

11 Q. And do you know how far (Redacted)

12 A. I'm not good in distance, but it's around -- (Redacted)

13 (Redacted)

14 Q. And (Redacted) What is

15 it?

16 A. We call it (Redacted). So it's a -- I can call it

17 just -- it would be (Redacted)

18 highly populated.

19 Q. And I believe you said (Redacted) is that -- would a correct

20 spelling be (Redacted)

21 A. Yes.

22 Q. And you say it's highly populated. I'll speak to you about that

23 in a minute, but are there different parts, are there different areas

24 (Redacted)

25 A. Yes. I can start by saying (Redacted) is a -- maybe I can

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1 start from the beginning.

2 Q. If you do that, please. Thank you.

3 A. Okay. (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Well, pause there. (Redacted)

16 (Redacted)

17 A. Initially before the sale of this land, (Redacted)

18 (Redacted)

19 Q. And I'm just going to help the transcript with the spelling

20 there. Is it correct that (Redacted)

21 A. Yes.

22 Q. Now, (Redacted)

23 (Redacted)

24 A. Yes. According to history I was told they were Kalenjin.

25 Q. And help us, (Redacted)

1 (Redacted), do you know what ethnicity

2 purchased this property, this land?

3 A. Yes, majority were Kikuyus.

4 Q. And you've told us that this area became known as (Redacted)

5 (Redacted)

6 (Redacted)

7 A. Repeat.

8 Q. (Redacted)

9 A. Yes. (Redacted)

10 (Redacted)

11 Q. And could you tell us any of the neighbouring areas to (Redacted)

12 (Redacted)

13 A. (Redacted)

14 Q. And if you pause there, I see that the transcript has picked up  
15 the spelling. Just sometimes when you provide long names or names that  
16 the transcribers are not familiar with, I will ask you to pause so we can  
17 provide a spelling. Do you understand that?

18 A. Okay.

19 Q. So you got as far as as (Redacted) Are there any others? Are  
20 there any other districts?

21 A. They're not districts. They were -- I cannot -- I don't know  
22 right now because whenever the area is highly populated, they usually  
23 subdivide areas and change names of those areas. So the politicians know  
24 most about it. I don't know. They keep on changing.

25 Q. Okay. But you've given us (Redacted)

1 A. Yes.

2 Q. You've given us (Redacted)

3 (Redacted)

4 A. (Redacted)

5 Q. Any others?.

6 A. I think those are the surrounding areas.

7 Q. Now, (Redacted)

8 (Redacted)

9 A. These areas that I have named, (Redacted)

10 (Redacted)

11 Q. Okay. (Redacted)

12 A. (Redacted)

13 Q. And you mentioned earlier something to do with the population of

14 (Redacted). Could you help us with an estimate of how many

15 people might have lived in that area in the 2007 period?

16 A. There were a lot of people, a lot of people were -- I don't

17 know -- I can't -- I can't estimate, but there were a lot of people.

18 Q. Okay. Would you say it's in the thousands or in the tens of

19 thousands or in the hundreds of thousands? I know it might be difficult.

20 If you don't know, please don't guess.

21 A. Around thousands, thousands of ...

22 Q. And of the ethnicities that you've mentioned previously, the

23 Kalenjin who predominantly owned this area before they subdivided and

24 sold on and the Kikuyu who predominantly purchased this land from them,

25 are you able to help us as to the percentage of each ethnicity in the

1 period 2007?

2 A. In this 2007, as I have said earlier, people started purchasing

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. And -- I'm now going to ask that we go back into private  
8 session -- into public session. The location that you've mentioned,  
9 these locations, some of them -- some of them exist on the form that is  
10 in front of you. So if you help, if you need to refer to any of these  
11 locations in the course of my answers -- in my questions and your answers  
12 in public session, you could do so by just referring to location 1,  
13 location 2, and so on.

14 Now, if you turn over leaf -- over the page, you'll see a list  
15 of -- you'll see a list of persons as well. And if you need at any point  
16 to refer to any of those persons where you think by doing so it might  
17 identify you or your connection with those persons, then if you do so by  
18 just referring to person 1, person 2, and so on, up to person 11, do you  
19 understand that?

20 A. Yes.

21 MR OMOFADE: Mr President, I think we can safely go into public  
22 session.

23 PRESIDING JUDGE EBOE-OSUJI: We move now into public session.

24 (Open session at 3.04 p.m.)

25 THE COURT OFFICER: (Interpretation) We are in open session,



1 Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

3 MR OMOFADE:

4 Q. So, Mr Witness, you've been telling us about the area of location

5 1. And what I would like to ask you is in the period 2006 were you  
6 living in this area?

7 A. I was living at location 2.

8 Q. And generally could you tell us in the period 2005-2006 what the  
9 relationship was between the Kalenjin community and the Kikuyus?

10 A. For 2005 and 2006 -- please repeat, please.

11 Q. You've told us already in the private session that there were  
12 both Kalenjin and Kikuyus living in the areas of location 1 as well as  
13 location 2. Now, between these two ethnic groups, what was the  
14 relationship? Were they friendly to each other? Was there any tension?

15 A. Yes, the differences between our ethnicity started after --  
16 after -- let me say after referendum, after referendum when ODM was  
17 formed. So -- and the campaign started, this is when the relation  
18 started getting not good.

19 Q. Okay. Help us. The referendum you refer to, is this the  
20 referendum in 2005?

21 A. Yes.

22 Q. Now, without revealing your identity, just answer yes or no.  
23 Were you personally involved in politics during this period?

24 A. No.

25 Q. But can you help us, what was the issue for the referendum in

1 2005?

2 A. The issue of the referendum was to change constitution.

3 Q. And where you resided in location 2 and even in the wider  
4 surrounding areas, including location 1, what was the impact of this  
5 referendum on the people living there?

6 A. The impact was not -- let me -- after referendum, I remember  
7 President Kibaki sacked the ODM people who were opposing the referendum.  
8 So after that sacking, the relationship began to be -- it began to  
9 separate. Yeah, I don't know how I can explain it.

10 Q. Okay. Let's -- let's break it down. In your area which people  
11 predominantly supported the ODM?

12 A. They were Luos, Kalenjins, Luhyas, those were most supporters  
13 ODM.

14 Q. And the Kikuyus, do you know who they -- which party they  
15 predominantly supported?

16 A. They supported PNU. That was the yes campaign.

17 Q. And do you know what the outcome of the referendum was?

18 A. Yes. The yes was defeated.

19 Q. And you said President Kibaki then sacked certain people and this  
20 had an impact on your area. What impact did this have?

21 A. The friending -- the friendship which we had with our neighbours,  
22 maybe Kalenjins and Luos, started to differ because they regarded -- they  
23 also regarded Kikuyu people as people who rigs election, people who  
24 steals votes, and something of that sort. The relationship started to  
25 differ.

1 Q. And were you still living in location 2 in 2007?

2 A. Yes.

3 Q. And it's an agreed fact that there were elections in Kenya in  
4 December 2007. Were you living in location 2 in the period of the  
5 campaigns for these elections?

6 A. Yes, I was living there.

7 Q. Did you happen to attend any of the campaign rallies that took  
8 place in this period?

9 A. Yes, I attended one and that -- I think I attended two, one for  
10 Bii, one for ODM, and the other one was not a rally because Uhuru was  
11 passing within -- within Eldoret, so I went there to just have seen him.

12 Q. Okay. We'll take those in stages. I believe you said one for  
13 Bii. Is Bii a name?

14 A. Yes.

15 Q. Could you spell Bii, please.

16 A. It was Sei, S-e-i, then I usually spell it B-i-i.

17 Q. So the surname is B-i-i?

18 A. Yes.

19 Q. Okay. We'll come back to that. And did you say one for ODM?

20 A. Yes.

21 Q. And did you say the final one was just when the current  
22 president, Kenyatta, was passing; is that correct?

23 A. Yes. But Kenyatta I think had come earlier before ODM, had  
24 passed earlier.

25 Q. Okay. For the time being let's restrict it to the ones you

1 physically attended. So let's start with the first one, the one for the  
2 person you referred to as Sei Bii. Firstly, who was Sei Bii, do you  
3 know?

4 A. Yes, he was campaigning to be an MP of Eldoret North  
5 constituency.

6 Q. And do you know under what platform he was seeking to become an  
7 MP for Eldoret North, under what political party?

8 A. Yes, he was in PNU, but PNU was -- they were some various parties  
9 who had formed together to form PNU.

10 Q. But is it correct that he was seeking to become the PNU MP for  
11 Eldoret North; is that right?

12 A. Yes.

13 Q. Now, you said you attended this rally. Do you recall when it was  
14 that you attended it?

15 A. I can't recall the date. It was around -- but I remember it was  
16 around -- between 12.00 to 1.00 p.m. is when I went there, around 12.00.

17 Q. And do you recall the month in 2007?

18 A. That I can't get, but -- I can't recall.

19 Q. That's fine. And what -- well, what was the turnout? Was this  
20 well attended? How -- how many people attended? Just an estimate.

21 A. There was not a lot of people, just around a hundred or 200  
22 people who had attended.

23 Q. And where was this particular rally, just the location?

24 A. It was location 1.

25 Q. Now, moving on you say you also attended or at least you became

1       aware of a time when the current president, Kenyatta, also passed through  
2       and was this a campaign rally as well?

3       A. Yes, it was a campaign rally.

4       Q. And do you recall where this occurred, where this particular  
5       rally took place?

6       A. I remember he was heading to a place called Ziwa, that was where  
7       that rally was to be held.

8       Q. So he was heading to Ziwa. Did he stop-off somewhere?

9       A. Yes, he stopped for a short period in Eldoret because it was on  
10      the same way where he was heading to.

11      Q. And when he stopped off in Eldoret, was there a rally that was  
12      held?

13      A. No, I can't say -- it was not a rally because people blocked his  
14      convoy and they demanded that he address them.

15      Q. The people that blocked his convoy and demanded that he address  
16      them, did they do this in an aggressive way or did they -- was it a  
17      peaceful request?

18      MR HOOPER: Yes, I hope I'm not criticised for not rising on a  
19      previous occasion, but my friend has asked one or two leading questions  
20      which may not have been wholly appropriate. And that is, I submit, even  
21      though it's in the alternative, a somewhat leading question.

22      PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, are you saying on this  
23      occasion you do mind the leading question?

24      MR HOOPER: Yes, because it could have been dealt with in another  
25      way. Just ask him what happened.

1 MR OMOFADE: Well, your Honours, I did put both alternatives to  
2 the witness, but I could ask the question differently. It's -- I don't  
3 think this is controversial.

4 PRESIDING JUDGE EBOE-OSUJI: Right. Proceed then.

5 MR OMOFADE:

6 Q. Were you present when the current president, Kenyatta's convoy  
7 was stopped? Were you there? Did you see it?

8 A. Yes, I saw it.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, can we be more precise  
10 and also not introduce terminology that might confuse either the record  
11 or the witness. Here we're talking about 2007, isn't it?

12 MR OMOFADE: That's correct, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Was there a need of talking about  
14 the current president, Kenyatta? The witness had indicated that  
15 Mr Kenyatta was passing by. Can we limit it to that? By the name he was  
16 known or title he had at the time and not lace it up with current affairs  
17 in a way that may lead to confusion --

18 MR OMOFADE: I'm sure we can --

19 PRESIDING JUDGE EBOE-OSUJI: -- so that he doesn't have to think  
20 all the time to overcome that obstacle you threw in. Thank you.

21 MR OMOFADE: I'm sure we can do that, your Honours.

22 Q. So you said you saw it. Could you tell us what happened? What  
23 did you see?

24 A. Yes. President Kenyatta -- by then he was not a president but he  
25 was heading to Ziwa. So I happened to be a place called Paradise. So at

1       this place is when I saw the convoy. I didn't know whether it was  
2       Kenyatta, but the way it approached that area, so many people started  
3       moving around the road, blocking the road and shouting: We want to hear  
4       from you, we want to hear from you, we want to hear from you. So because  
5       on these campaign rallies sometimes there could be -- whenever there is a  
6       rally they could -- fracas could erupt any time, so I decided to move far  
7       a bit. So where I was I could see Uhuru coming from at the top of the  
8       car and try to talk to the people, but I didn't hear exactly what he was  
9       talking because I was a bit far.

10       Q. And just for the sake of the transcript at line 11 did you say  
11       fracas could erupt; is that what you said?

12       A. Yes.

13       Q. Now, what then happened? Did you -- did you see anything else  
14       after the people demanded that he talk to them?

15       A. So there was -- nothing happened because when I saw it I didn't  
16       like to be in campaign areas most of the time because anything could  
17       happen in any of the campaign areas. So I decided to go. Whenever I saw  
18       he was talking to people, then I decided to go on my own again.

19       Q. And then you said you attended an ODM rally -- well, before I go  
20       there, do you remember what month this meeting, this encounter with the  
21       convoy of Mr Kenyatta happened in 2007? Do you remember the month?

22       A. It was either late November or early December.

23       Q. And then you said you also attended an ODM rally. Do you  
24       remember when this was?

25       A. It was on this month of December.

1 Q. And could you tell us where this rally took place?

2 A. It took place at 64 Stadium.

3 Q. And where is 64 Stadium? Where is it?

4 A. In Eldoret.

5 Q. You've said it was in December. Do you know how -- if you don't  
6 remember, please don't guess, but do you recall how close to the date of  
7 the elections it was? Was it the beginning of December? Was it the  
8 middle? Or was it towards the end?

9 A. It was close to election because it was the last meeting of ODM  
10 in that area.

11 Q. I just want you to help us with 64 Stadium itself. What is this  
12 stadium? Is it -- what kind of stadium is it?

13 A. Yes, it's a stadium. The people go there to practice football,  
14 there is a football field there on -- people may use. So you go there to  
15 run for -- to practice.

16 Q. So is it a sports stadium? Is it a sports stadium where they  
17 also play football?

18 A. Yes.

19 Q. And on this particular occasion, could you give an estimate of  
20 the number of people that attended this rally?

21 A. You see, there was a lot of people because it was packed.

22 Q. And again, I hesitate to do this because numbers are always  
23 difficult, but would you say it was in the tens of thousands? Hundreds  
24 of thousands? Hundreds? Can you estimate?

25 A. Maybe tens of thousands, maybe, but I could not guess.



1 MS BUISMAN: Sorry to disturb. We are having difficulties to  
2 understand the witness at this side. I'm just wondering if we could ask  
3 him to speak a little louder. Thank you.

4 MR OMOFADE: Witness --

5 PRESIDING JUDGE EBOE-OSUJI: Witness, if you can lean closer to  
6 the microphone and you can amplify the voice a little as well. Thank  
7 you.

8 THE WITNESS: Okay.

9 PRESIDING JUDGE EBOE-OSUJI: That's better.

10 MR OMOFADE: I'm grateful, your Honour.

11 Q. Now, this -- you said tens of thousands. This stadium, was there  
12 seating capacity as well as room for people to stand? Do you recall  
13 that?

14 A. The stadium itself has no -- has no seats itself. It has a small  
15 area where there are people who comes and they are being given seats to  
16 sit there, but there is no seating in the stadium. It is just an open,  
17 so people were standing.

18 Q. And do you recall what time of the day this particular rally took  
19 place or at least what time did you arrive there?

20 A. I arrived there when it was around 2.00 to 3.00 p.m., when I went  
21 there.

22 Q. And you say it was an ODM rally. How did you get to know about  
23 this rally?

24 A. During the past week it was so much advertised through posters,  
25 through radio medias, so there was a lot of advertisement on this rally.

1 Q. Now, you've told us that you weren't involved in politics  
2 yourself. What made you curious to attend this rally as well as the  
3 first rally for the PNU candidate?

4 A. It was because of my friends. My friends kept on insisting me:  
5 Let's go to this rally, let's go to this rally. And I attended this  
6 Kenyatta -- whilst Kenyatta was participating, it's -- and my friends who  
7 had also told me don't sit around. Let's go and see what is going on.  
8 So it's through friends that I attend because I don't like politics  
9 myself.

10 Q. Now, back to the ODM rally at 64 Stadium, did you see any members  
11 of the ODM there?

12 A. Yes, they were there.

13 Q. Did you know of members of the ODM before you attended that  
14 rally?

15 A. Yes, I knew them.

16 Q. Do you know if any leaders of the ODM were present at this rally?

17 A. Yes, they were there.

18 Q. Do you know the names of those leaders that attended?

19 A. Yes, I remember there was Raila Odinga, there was Ruto, there was  
20 Ngilu, and the others -- the others I can't remember whether  
21 (indiscernible \*) was there, but there was only ODM Pentagon was there.

22 Q. Did you say only ODM Pentagon was there?

23 A. Yeah, members of the Pentagon were there.

24 Q. Were all the members of the Pentagon there to your knowledge?

25 A. I can't remember, but I think they were there.

1 Q. And in a stadium packed with tens of thousands, as you say, how  
2 was it that you were able to see these Pentagon members from where you  
3 were?

4 A. Where I was they were a bit higher because they were -- the  
5 stadium itself is just down and where the people stand is just this  
6 raised up, so at least it's like this table. So the stadium was just  
7 down like this. So I was just at this up here.

8 Q. I think the witness has indicated with the -- I think it's the  
9 Legal Officers' table in the courtroom to indicate the raised area, just  
10 for the transcript.

11 But this raised area, are you saying this is where the Pentagon  
12 members were or where you were?

13 A. That is where I was.

14 Q. And what part of the stadium were the Pentagon members?

15 A. They were at the -- there were people who come -- there was a  
16 shed and they were in that shed. That's how. Like this -- like this  
17 court, actually, it's like this court. It will be like that, inside  
18 that.

19 Q. Did you say there was a shade?

20 A. Yes.

21 Q. And the Pentagon members were in this shade, underneath this  
22 shade?

23 PRESIDING JUDGE EBOE-OSUJI: It is shade or shed?

24 MR HOOPER: Yes.

25 MR OMOFADE: Which is what I was trying to clarify. I believe

1 the witness said "yes" when I said did you say there was a shade?

2 PRESIDING JUDGE EBOE-OSUJI: It may be a matter of -- okay.

3 MR OMOFADE: Perhaps I ask him to describe what --

4 Q. Mr Witness, what do you mean when you say there was a shade. Can  
5 you describe what you are referring to?

6 MR HOOPER: Yes, I'm wondering if your Honour could take  
7 (overlapping speakers) questions.

8 PRESIDING JUDGE EBOE-OSUJI: Yes. Did you say it was a shade or  
9 did you say there was a shed.

10 THE WITNESS: There was a shed. Can I describe?

11 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

12 THE WITNESS: I'll describe. It's a shed. What I mean by a shed  
13 is posts, only it was something built by a -- and then there are posts,  
14 then there is an iron shed roof on top of it but it's not covered,  
15 obviously.

16 PRESIDING JUDGE EBOE-OSUJI: I think that's an accurate  
17 description of what you had said earlier. You did say "shed" I heard.

18 Proceed.

19 THE WITNESS: I said a shed.

20 MR OMOFADE:

21 Q. And -- and were you able to see those under the shed clearly from  
22 where you were?

23 A. Yes, I could -- I could see them clearly but since they were --  
24 the stadium was packed there were -- these media people, they had cameras  
25 raised up, so I could see them clearly, but there was that interference

1 of people jumping here and there, and under those -- others were waving  
2 placards.

3 Q. What was the general atmosphere amongst those who attended the  
4 rally? Leave aside the Pentagon members for now. How would you describe  
5 it?

6 A. It was attended by the ODM members -- ODM supporters, majority of  
7 them.

8 Q. And were the ODM supporters doing anything or saying anything?

9 A. Yes. They were singing O-D-M, O-D-M. Some calling: We want to  
10 see Ruto, we want to see Baba, Baba is Raila.

11 Q. And just -- the last thing you said, you said we want to see --  
12 I'm sorry the transcript didn't pick up a number of the things --

13 PRESIDING JUDGE EBOE-OSUJI: Ruto. He said we want to see Ruto  
14 and they said we want to see Baba, by Baba they were referring to Raila.

15 THE WITNESS: Yes.

16 MR OMOFADE: I'm grateful, your Honour.

17 Q. And did any of the Pentagon members speak at this rally?

18 A. Yes, they spoke.

19 Q. Well, which ones spoke? Did all of them speak?

20 A. I remember there were others who spoke, then Mr Raila -- Mr Ruto  
21 spoke, and I could not wait for Raila to finish speaking, so I left the  
22 stadium.

23 Q. Okay. We'll come back to when you left. But how could you hear  
24 them speak from where you were?

25 A. They had an addressing system, microphone, big speakers.

1 Q. And then the next question is: How could you tell who was  
2 speaking at a particular time?

3 A. I could see them when they were speaking.

4 Q. Sorry, you started by saying Mr Ruto spoke. Did you hear what  
5 Mr Ruto said?

6 A. Yes, I heard.

7 Q. Please tell us what he said or what you heard.

8 A. Okay. He started addressing people, telling people that I want  
9 peace and they want all peace, and he went on just telling -- giving the  
10 manifesto for ODM. Then at -- before he could finish, unless he went on  
11 because he referred -- what I can say he referred Kikuyu people as  
12 grabbers, I don't know -- let me say it like this, as grabbers. So at  
13 the end of the speech before I left, he -- where he said that Kikuyu  
14 people will be put in a pickup and taken back to Central after ODM.

15 Q. And just the first parts of your response there, did you say he  
16 referred to Kikuyu people as grabbers?

17 A. He referred them as grabbers.

18 Q. Did you hear him say anything else?

19 A. I can't really remember, but what -- see, what touched me more  
20 than touching base is that word because he was speaking in -- sometimes  
21 he used to speak in a kind of code riddles, used to address his  
22 supporters in a different way. Whenever he is talking, his supporters --  
23 whenever they look at him when he is talking, they have -- they got a  
24 message which maybe other people could not get.

25 Q. Well --

1           PRESIDING JUDGE EBOE-OSUJI: Line 20, did you say he used to  
2           speak in riddles?

3           THE WITNESS: Yeah, sometimes on his speech.

4           MR OMOFADE:

5           Q. And can I ask what language was Mr Ruto speaking in on this  
6           particular occasion?

7           A. I remember he spoke -- or he was speaking in Swahili, but he  
8           spoke a very -- he spoke -- when he was -- he spoke very small in  
9           Kalenjin and he was speaking in Swahili but a few words in Kalenjin.

10          Q. Now, for the time being don't say what languages you do speak,  
11          but do you speak Kalenjin? Do you speak Kalenjin?

12          A. I cannot speak it fluently, but I can hear when someone is  
13          speaking, I can pick some words from the conversation.

14          Q. Now, going back to this speech you said you heard that the Kikuyu  
15          people will be put in a pickup and taken back to Central after ODM, what  
16          did you as a listener, what did you understand this to mean?

17          A. By then I didn't understand anything because I -- because I was  
18          not in -- I was not interested in anything, so I just took it off -- I  
19          took it off my head.

20          Q. What was the response of the crowd to Mr Ruto's speech?

21          A. It was very -- people started shouting, become -- people started  
22          shouting ODM, ODM, and they start saying all Kikuyu should go back to  
23          Central. So while this was going on, I became afraid and I decided to  
24          leave the stadium.

25          Q. What did you understand by "Central"?

1 A. Central is where Kikuyu came from.

2 Q. You said you became afraid and decided to leave. Why were you  
3 afraid?

4 A. Because of the behaviours of the ODM supporters and the impact of  
5 what Mr Ruto had said that time -- during that time.

6 Q. How long in total did you personally stay within that rally?

7 A. It was an hour or less than an hour.

8 Q. And I asked you what you understood "Central" to mean. What did  
9 you understand the word you used earlier to mean? When you said  
10 "grabbers," what do you understand that to mean?

11 A. "Grabbers" he referred them as Kikuyu because Kikuyu people are  
12 the ones who usually buy piece of land in -- at least in other  
13 communities some don't buy -- they prefer going back to where they came  
14 from. So Kikuyu doesn't prefer going back to Central, so he buys a land  
15 where he goes and he started -- he settles there.

16 Q. In any event, you left the rally and without telling us anything  
17 that will identify you where did you go after this?

18 A. After this I went to location 4.

19 Q. And what was the atmosphere like in locations 1, 2, and 4 after  
20 this rally?

21 A. So I'll start from there. When I went to location 4, the ODM  
22 supporters who had attended the meeting, some of them came at this  
23 location and they started speaking frankly -- well, frankly, telling us:  
24 You, you should go back to Central. We do not want you here. And after



1 election you should go back to Central. These were the ODM supporters

2  
3 who came to location 4 on that day. So I can say after -- after this  
4 rally the atmosphere changed.

5 Q. And how did you know these persons were ODM supporters, these  
6 persons saying: You should go back to Central?

7 A. During this time, they referred to ODM supporters putting 41  
8 community against one community. So these people were from -- they were  
9 not from Kikuyu community. They were from other communities. So during  
10 this time they preferred Kikuyus to be -- to be (indiscernible \*) and the  
11 other 41 communities to support ODM.

12 Q. When you say 41 communities, what do you mean?

13 A. I mean in Kenya there is 42 communities, and I mean these 41  
14 communities are -- I mean, just like Luos, Luhyas, Kisiis, and others,  
15 and they were against Kikuyu community.

16 Q. So, again, I ask you how did you know that the people who were  
17 saying go back to Central were ODM members, first, and ODM members that  
18 had attended the rally?

19 A. Yes. Those who were saying because in location -- in location 4  
20 most of them whom I work with are Luos, and the one who used to tell us  
21 you'll go back to Central Province, mostly Luos were the one in location  
22 4.

23 Q. And in the other locations?

24 A. Yeah, so when we moved to -- when -- after this meeting when we  
25 moved to other location, now there was a tension running, those people

1       who were friends, they started cutting their friendship and they could  
2       just pick for themselves these people, we have to evict them. And they  
3       used to say that.

4       Q. And for you personally, how did this make you feel?

5       A. The impact of the --

6       Q. The reaction of the ODM supporters that you've referred to, how  
7       did this make you feel in locations 1, 2, and 4?

8       A. So we became -- we became afraid and I didn't know what would  
9       happen, so I was just afraid, hoping the election will end up as quickly  
10      as possible such that we may see what will happen after the election.

11      Q. Now, are you aware of any meetings that took place in the lead-up  
12      to the elections themselves, any meetings between political parties and  
13      their members?

14      A. Repeat. I don't get it.

15      Q. Do you know of any meetings that took place, let's start with the  
16      ODM members and supporters?

17      A. Within Eldoret town?

18      Q. Within Eldoret town and within location 1, location 2?

19      A. Well, they used to have meeting, but -- I heard they used to have  
20      meetings, but I don't -- I had never attended one or ...

21      Q. In your location, location 2, do you know if there were any ODM  
22      supporters who lived in that area?

23      A. Yes, many of them lived there.

24      Q. And do you know what their ethnicity was, what their ethnic group  
25      was?

1 A. Yes, they are Kalenjins.

2 Q. And did you have any cause to interact with these persons before  
3 the election period in 2007? Were you friends with them before the  
4 election period in 2007?

5 A. Yes, before we were friends, we were working together, we were  
6 sharing, so -- our -- we were sharing so many things together before.

7 Q. As a result of that, did you get to know any of their cultural  
8 practices within the Kalenjin community? My question was: Because you  
9 were friends with these -- with some of the Kalenjin people who lived in  
10 location 2, did you get to know some of their cultural practices within  
11 the Kalenjin community?

12 A. I don't -- culture or cultural?

13 Q. Cultural. It's my accent this time.

14 A. Can you explain it so that I understand.

15 PRESIDING JUDGE EBOE-OSUJI: Traditions. The word "tradition,"  
16 the traditions of --

17 MR OMOFADE: Mr President took the question out of my mouth.

18 Q. Did you get to know any of the traditional practices within the  
19 Kalenjin community?

20 A. Yes.

21 Q. And what traditions did you get to know as a result of your  
22 friendship with members of the Kalenjin community? What kind of  
23 traditions? Give us some examples?

24 A. From before, it is a -- in a station -- in a situation when they  
25 are -- when Kalenjin youth were moving from childhood to adulthood, so

1       there was a tradition where they should -- they did the whole thing.

2       Q. Sorry, what do you mean by the whole thing, could you explain?

3       A. I mean, during this period they could -- they could go there when  
4       they were initiating these young boys to become manhood, to go -- they  
5       could go there and be as they could do -- perform some ceremonies there  
6       and they -- in that place, they could stay there on it.

7       Q. Do you know what the initiating of these young boys into manhood,  
8       do you know what it involved?

9       A. Repeat.

10      Q. What was involved in initiating the young boys, the young  
11      Kalenjin boys, into manhood? What -- do you know what took place?

12      A. No, they kept it a secret. No one knows apart from Kalenjin. No  
13      any other communities were allowed to -- who were there.

14      Q. Do you know what the ceremony was called?

15      A. Well, they usually call the ceremony tumdo, but I don't know what  
16      they -- what they usually call it, but tumdo, that is how I understand  
17      it.

18      Q. Could you attempt to spell tumdo, the word you just mentioned.

19      A. I think it's t-u-m-d-o, tumdo.

20      Q. And do you know if this is a Kalenjin word or a Kiswahili word?

21      A. It's a Kalenjin word.

22      MR OMOFADE: And, your Honours, before I move on from there to  
23      another topic, I think I probably ought to leave it there for the day.

24      PRESIDING JUDGE EBOE-OSUJI: Very well. We will then adjourn for  
25      the day. The curtains will -- or the blinds, rather, will come down and

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1 the witness will be escorted from the courtroom and the Chamber will  
2 rise.

3 (Closed session at 4.01 p.m.)

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

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

7 Witness, one minute, one second. We will -- we are adjourning  
8 for -- we are adjourning for the day. We will resume tomorrow at 9.30.  
9 You are still under oath so please do not discuss your testimony with  
10 anyone overnight. Okay?

11 THE WITNESS: Okay.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Thanks.

13 The witness will now be escorted out of the courtroom.  
14 Court officer.

15 THE WITNESS: Thank you.

16 (The witness stands down)

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

18 THE COURT OFFICER: All rise.

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

20 RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24  
22 September 2013, and the instructions in the email dated 22 January 2014,  
23 the version of the transcript with its redactions becomes Public.