

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 Wednesday, 6 November 2013

10 (Upon commencing in open session at 9.42 a.m.)

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Court officer,
14 please announce the case.

15 THE COURT OFFICER: (Interpretation) Thank you, Mr President.
16 Situation in the Republic of Kenya, in the case of The Prosecutor versus
17 William Samoei Ruto and Joshua Arap Sang, case number ICC-01/09-01/11.
18 And we are in public session.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Appearances
20 remain the same, I take it.

21 MR STEYNBERG: Your Honours, no. For the Prosecution we have a
22 new team this morning. Prosecution is represented by myself,
23 Anton Steynberg, Lara Renton, Regina Weiss (Realtime transcript read in
24 error "Vice"), and our case manager Grace Goh. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MR FAAL: Mr President, Mr William Ruto is today represented by
2 David Hooper, QC, Leigh Lawrie, Shalini Jayaraj, Grace Sullivan, and our
3 two pro bono legal assistance Ruth Stedman (* phon) and
4 Manuel Vincierra (* phon). My name is Essa Faal. Mr Khan and Shyamala
5 Alagendra are absent today.

6 PRESIDING JUDGE EBOE-OSUJI: So is your client.

7 MR FAAL: Indeed.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Mr Katwa.

10 MR KIGEN-KATWA: Mr President, Mr Sang is present, and he's
11 represented by myself, Katwa-Kigen and Mr Philemon Koech, Logan Hambrick,
12 and our case manager, Honor Lanham.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 Mr Narantsetseg.

15 MR NARANTSETSEG: Orchlon Narantsetseg for the victims, your
16 Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Before we proceed, we must keep our promise to you. You had --
19 we had run out of tape last evening, so we couldn't take your
20 submissions. We thought we will do that first thing.

21 We are in open session. Is there some submission you can make in
22 open session, on the scheduling? I imagine you can.

23 MR NARANTSETSEG: Your Honour, just to be careful can I ask for
24 private session?

25 PRESIDING JUDGE EBOE-OSUJI: All right. Then hold on a minute.

1 Before we do that.

2 Prosecutor, yesterday when we were discussing the matter of who
3 to fit in within the period we had in mind before the winter recess, a
4 suggestion was made by the Ruto Defence that you consider moving up
5 Witness 32, and you said you have concerns about doing that, which
6 concerns you did not want to discuss in the presence of opposing counsel.
7 Can you put that in writing and send it up to us today, to the Chamber?
8 An e-mail will do about the reasons why you feel very reluctant about
9 calling Witness 32, moving Witness 32 up. We will appreciate receiving
10 the things you wanted to say that you did not want to say in the presence
11 of opposing counsel. Put that in an e-mail and send it to us.

12 MR STEYNBERG: Certainly, your Honour. It's not that it's a
13 matter of huge secrecy, it's simply a matter of tactics, trial tactics,
14 which it would not be suitable for me to discuss inter partes.

15 PRESIDING JUDGE EBOE-OSUJI: That's what I said. It doesn't
16 matter. Just why. If you could give us those reasons in an e-mail
17 that's ex parte.

18 MR STEYNBERG: Your Honour, perhaps while I'm on my feet I could
19 just make one correction to the spelling of my colleague's name. It's --
20 lest her reputation be unnecessarily sullied. It is not Regina Vice,
21 V-I-C-E, it is W-E-I-S-S. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Mr Katwa.

24 MR KIGEN-KATWA: Mr President, I heard you observe that it is the
25 wish of the Ruto team that witness number 32 be brought up. We share the

1 same, Mr President, and we would pray that that position be understood
2 that we would also wish that witness number 32 be brought up.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you for the clarification,
4 Mr Katwa. All right. So that's -- we settled that matter. Now, we will
5 take submissions on the witness protection for Witness 423 as the next
6 witness, but in the meantime, if we can quickly go into private session
7 for Mr Narantsetseg to make his submission.

8 (Private session at 9.48 a.m.)

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

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

12 All right, Mr Narantsetseg?

13 MR NARANTSETSEG: Good morning, Mr President, your Honours. Very
14 briefly just two points. Firstly, as Mr Steynberg indicated yesterday,
15 if the Prosecution calls Witness P128, as you have -- as your Honours
16 have requested, we have checked our information and this witness is a
17 dual status witness. Therefore, if the Prosecution does call this
18 witness, the legal representative will be filing an application in lieu
19 of questioning the witness himself.

20 As for the other two suggested witnesses, that is 535 and 469,
21 the legal representative is in the process of reviewing their statements,
22 and if it decides to have these witnesses questioned, he will file the
23 application following the appropriate procedure, your Honour, and we will
24 of course give the 7 days notice in advance. That's all. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: But they are not dual status, is
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1 that it? 469 and --

2 MR NARANTSETSEG: Yes, your Honour, they are not dual status
3 witnesses. The only dual status witness is the one I referred, 128.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you. We will then
5 go back into open session.

6 (Open session at 9.50 a.m.)

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

9 PRESIDING JUDGE EBOE-OSUJI: We will now take submissions on the
10 protection measures in the courtroom for witness 423. Prosecutor, do you
11 need to supplement orally or update orally your written material on this?

12 MR STEYNBERG: Thank you, your Honours. My learned friend
13 Ms Renton will be leading this witness and she will make the submission.

14 MS RENTON: Good morning, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Good morning. You heard my
16 question?

17 MS RENTON: I did, yes. We have no further submissions other
18 than those that we put in our written filing 1044.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will now
20 take oral submissions from the Defence and the victims counsel. Is this
21 something we can safely do in the public session?

22 Mr Faal.

23 MR FAAL: Yes, Mr President, we can.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Then proceed, please.

25 MR FAAL: We do not oppose the application that was made by the

1 Prosecution. We do believe that measures similar to the ones that have
2 been put in place for the previous witness would be adequate. However,
3 Mr President, we would wish that much of the testimony of the witness be
4 done in public. I have here with me the PIS that was provided by the
5 Prosecution. We noticed that some of the locations that the witness
6 would testify about are included in the PIS. In my mind, it seems to be
7 that the information that would go out in the public would not include
8 the location about which this witness would be testifying, and we do
9 think that that is maybe taking it a little too far.

10 It is important that when the public hears the testimony, they
11 also are aware of the area it relates to because otherwise the testimony
12 would not have much meaning to the people who are listening to it
13 outside. Now, we agree with the measures requested but we crave the
14 indulgence of the Court to put in place mechanisms that would allow for
15 the public to be able to place the exact location that is being testified
16 about by the witness. Those are my submissions on this issue,
17 Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. Just so I understand you
19 clearly, are you saying that the locations indicated in the PIS should
20 not be protected information?

21 MR FAAL: Indeed, Mr President, because these locations do not
22 disclose the identity of the witness.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Katwa.

25 MR KIGEN-KATWA: Mr President, on our part we would not oppose
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1 the protective measures sought for -- for two reasons. The first one is
2 that the witness does not touch much on my client, that's the first one.
3 The second issue that I would want to take is that our concession as to
4 the protective measures sought by the Prosecution is in respect to this
5 witness only and should not be deemed that we concede that the protective
6 measures should apply to any future witnesses. Thank you, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Narantsetseg?

8 MR NARANTSETSEG: Thank you, Mr President, your Honours. Our
9 position is quite simple. Following the recommendations given by the
10 victims witnesses unit, the victims would support the use of the in-court
11 protective measures, thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Ms Renton, we are back to you. Mr Faal says the locations should
14 not be protected information.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: All right.

21 MR FAAL: Mr President, I was just going to add that this is not
22 an address. It is not an address that is identifiable only to the
23 witness. These are just general locations, so therefore they do not
24 identify this particular witness. These general locations relate to
25 hundreds, if not thousands, of people.

1 PRESIDING JUDGE EBOE-OSUJI: Well, let's go briefly into private
2 session.

3 (Public session at 9.55 a.m.)

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

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MS RENTON: Your Honours, the witness will be talking generally
16 about the violence that occurred in Yamumbi and that will be in open
17 session. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted). The charges are public and the charge surrounds events
6 that occurred in Yamumbi. It would be difficult for the public to know
7 what the witness is testifying about if the witness cannot talk about or
8 cannot mention Yamumbi in his testimony or cannot mention the
9 neighbouring villages, which are the subject of the charges. It would
10 really be difficult. Our interest is in ensuring that the public is able
11 to follow the testimony and place it to a particular location. Thank
12 you, Mr President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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20 (Redacted)

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3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: All right. The Chamber will --
5 sorry, before I do that, any observations from counsel?

6 MR FAAL: No observations.

7 MR KIGEN-KATWA: None, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: All right. The Chamber will rise
9 for five minutes or more likely ten, (Redacted)

10 (Redacted)

11 (Redacted)

12 MS RENTON: Yes, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. The Chamber will rise.

14 (Recess taken at 10.00 a.m.)

15 (Upon resuming in open session at 10.08 a.m.)

16 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The Chamber
17 has deliberated on the submissions of counsel on the matter of protection
18 for the witness while in the courtroom. The Chamber grants the request
19 of the Prosecution for protection measures, considering the consent of
20 the other counsel to the measures. In other words, the measures will be
21 in the usual menu, that is voice and face distortion and limited use of
22 private sessions.

23 The Chamber has also considered the matter of Mr Faal's concerns
24 on the PIS containing the locations as it currently does, and the Chamber
25 rules that the locations indicated in the PIS shall remain as such in the

1 PIS. Of course, in the context of questions asked, we will see whether
2 there is a need for certain specific questions to mask the locations as
3 we go along. So that would be the Chamber's ruling. So the PIS remains
4 as it is.

5 Private session briefly, please.

6 (Private session at 10.10 a.m.)

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

9 PRESIDING JUDGE EBOE-OSUJI: Ms Renton?

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. So we'll leave it at
18 that, then, and proceed.

19 Let's bring down the blinds and lead the witness into the
20 courtroom.

21 (Closed session at 10.12 a.m.)

22 THE COURT OFFICER: (Interpretation) We are in closed session,
23 Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The witness
25 may now be brought in. While the witness is coming in, Ms Renton, have
26

1 you, for the record, administered the Rules 66(3) and 74(1) cautions?

2 MS RENTON: Yes, your Honour, that's just what I was about to
3 say, yes.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE EBOE-OSUJI: We can go back to the public
7 session.

8 (Open session at 10.16 a.m.)

9 THE COURT OFFICER: (Interpretation) We are in public session,
10 Mr President.

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

12 Witness, welcome to the court. The court officer will now
13 administer the solemn declaration to you. I understand that the victims
14 and witnesses unit have already familiarised you with the text of the
15 declaration. Is that the case? Is there interpretation?

16 THE WITNESS: (Interpretation) Yes.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much. I
18 will be giving you certain advice in a minute, but before I do that I
19 will have the court officer take you through the solemn declaration for
20 the record of the Court, and please, sir, you will need to always speak
21 closer to the microphone so that you can be heard clearly. Thank you.

22 Court officer, please.

23 THE COURT OFFICER: (Interpretation) Mr Witness, do you swear to
24 tell the truth, the whole truth and nothing but the truth?

25 THE WITNESS: (Interpretation) Yes, I do.

1 WITNESS: KEN-OTP-P-0423

2 (The witness speaks Swahili)

3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. As I said
4 earlier to you, welcome to you, welcome to the courtroom, and when I say
5 welcome, I don't want you to feel like a stranger to the courtroom. This
6 courtroom belongs to you as well, so we want you to feel very comfortable
7 in it, sitting where you are.

8 The court officer has taken you through your oath or your
9 declaration and you have declared to tell the truth, the whole truth, and
10 nothing but the truth. That is all that we require of you. That's all
11 we want from you while you're sitting there. Just concentrate on doing
12 nothing but simply the truth and nothing but the truth.

13 In order to assist us, and in order for you to do that, it is
14 very important that you listen carefully to the questions that the
15 lawyers would ask you. That is how the court works. It's by lawyers
16 asking you questions and you giving answers to those questions that you
17 help us know what happened. So when they ask you those questions, please
18 listen very carefully to what they are asking you, understand it first
19 before beginning to answer. It's important that you understand the
20 questions that are being asked of you. If you do not understand the
21 questions, do not hesitate to let the lawyer who is asking you the
22 question know.

23 Court officer, can you please.

24 Know that you do not understand the question. So if you don't
25 understand the question, let them know you do not. They will repeat it.

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1 In answering the question, please try not to guess at an answer.
2 Only answer what you know. Only answer what you saw. Only answer what
3 you heard, what you found, so as a witness, we want you to give us
4 information that you yourself received firsthand, that is the most
5 important information for us. So try to limit yourself to that sort of
6 information. But if the answer or the question, rather, if the question
7 requires that you feel that you must guess at an answer, let us know that
8 so we are warned, so we are able to make a difference between what you
9 yourself know or what you are guessing at, but it's more important are
10 that you tell us what you know.

11 Now, there is also the process that we follow in the court that
12 helps us to record what you are saying so that your testimony remains on
13 the record of the court, for us to consult later. The court is assisted
14 by interpreters, who are sitting up there, and also court reporters, who
15 are sitting up there. The interpreters will translate or interpret what
16 I'm saying or what the lawyers are saying in English into Kiswahili so
17 you can understand what we are saying and they will also interpret your
18 answer in Kiswahili back into English so we can understand. For that to
19 happen, it requires that you speak at a moderate pace, not very fast, not
20 too slow, but just in the middle somewhere there so the discussion can
21 flow, but at a pace that they can follow in their work. So speak slowly
22 but not too slowly.

23 Also, observe what we call a gap. The gap is the space that you
24 must observe between the question that you have been asked and you
25 beginning to answer the question. That also makes it easier for the

Witness: KEN-OTP-P-0423 (Open Session)
Questioned by Ms Renton

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1 court reporters and interpreters to do their work properly. But I will
2 remind you on that as we go along.

3 Do you understand all that I've said?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. So the lawyers will now
6 begin asking you questions. The first will be the lawyer for the
7 Prosecutor, who is sitting over there. She will begin asking you
8 questions first. When she is done asking you her questions, then the
9 lawyers for the Defence, first Ruto's lawyer would ask you questions, or
10 Mr Sang's lawyer would also ask you questions depending on how they agree
11 among themselves who will ask you questions first. But first the
12 Prosecutor finishes and then the Defence lawyers will take over in asking
13 you questions. Do you understand?

14 THE WITNESS: (Interpretation) Yes.

15 PRESIDING JUDGE EBOE-OSUJI: What's important is that you relax,
16 you are in a public space that belongs to you as well. Relax and answer
17 your questions as they come to you. Thank you very much.

18 Ms Renton.

19 QUESTIONED BY MS RENTON:

20 Q. Good morning, Mr Witness. My name is Lara Renton. We've met
21 before. And as his Honour explained, I'll be asking you some questions
22 on behalf of the Prosecution.

23 MS RENTON: Your Honours, may I ask that we go into private
24 session, please.

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

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Witness: KEN-OTP-P-0423 (Open Session)
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1 Just, again, Witness, to explain to you what is happening. Before you
2 came in, the Prosecutor had asked that we do not reveal your identity to
3 the public, and for that reason, certain sections of your testimony will
4 be conducted in what we call private session. That means members of the
5 public will not hear that part of your testimony. But when we are in
6 public session, at that time, they can hear your voice but they will not
7 see your face, but the voice they will hear will not be directly your own
8 voice. It will be your own voice but it will be distorted in a way that
9 people in the public will not know it is your voice. That is the
10 exercise what we call voice distortion, so that measure has been granted
11 to you in order to protect who you are, your identity.

12 When we are also in public and -- when we are in public, you will
13 see that button, you see there is a button in front of you, there is a
14 little thing in front there -- no, beyond the microphone. Do you see a
15 red light?

16 Can you please point out that to him, court officer?

17 All right. That red light that the court officer is pointing out
18 to you, it's red. You see the other one is green but it's not lit up
19 now. When we are in public session, as we are now, the button will light
20 up red but when we go into private session, it will light up green. In
21 the green mode, it means you can relax and speak anything at all,
22 including your name and names of people around you, even information that
23 would identify who you are because we are in private session. It will
24 not be broadcast to the public. But when we are in open session and the
25 light is red, it means you have to be careful about giving answers

Witness: KEN-OTP-P-0423 (Private Session)
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1 because we do not want you then to give answers that reveal who you are,
2 such as answers that involve your name or your specific address or names
3 of your family members or close friends. We do not want you to give that
4 sort of evidence in the public session.

5 Also, there may be something that happened which only you and a
6 few other people were around to observe it happen, maybe you and two or
7 three other people were around to observe that event. We do not want you
8 to describe that sort of event in the public session because those who
9 were with you at the time may know that only the three or two of you knew
10 this so it's probably you that is testifying about it. So that sort of
11 information we don't want you to give when we are in the public session.
12 We will receive such information including names of people, and yours,
13 when we are in the private session. So all these measures have been
14 taken to make you feel comfortable in the testimony you would give, that
15 the Court has done what the Court feels is right to do to protect your
16 identity. So we will now go into private session for Ms Renton to start
17 her questions of you.

18 (Private session at 10.29 a.m.)

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Renton, please
22 proceed.

23 MS RENTON:

24 Q. Mr Witness, could I ask you to confirm the accuracy of the
25 following personal information: (Redacted)

Witness: KEN-OTP-P-0423 (Private Session)
Questioned by Ms Renton

Page 18

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18 (Redacted)

19 (Redacted)

20 Ms Renton, you're going to go through the personal data?

21 MS RENTON: Yes.

22 Q. Mr Witness, I will ask you some questions about your personal
23 information, and if you could confirm whether or not it's accurate. Is
24 that okay? Mr Witness, can you hear me clearly? Are you able to answer
25 my question?

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Witness: KEN-OTP-P-0423 (Private Session)
Questioned by Ms Renton

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5 Q. And are you of the Kikuyu ethnic group?

6 A. Yes.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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14 (Redacted)

15 (Redacted)

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Witness: KEN-OTP-P-0423 (Private Session)
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Witness: KEN-OTP-P-0423 (Private Session)
Questioned by Ms Renton

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9 Q. Witness, you've told us that you were not a member of any
10 political party. Did you support any particular candidate or party in
11 the 2007 elections?

12 A. Yes. Well, you know that Kenya is made up of many ethnic groups,
13 and the truth of the matter is that one votes for the person of one's
14 ethnic group. I was not a politician, and those who ran for office and
15 who came from my tribe were likely to get my vote.

16 PRESIDING JUDGE EBOE-OSUJI: Counsel, you will need to clarify
17 whether that is the extent of the -- what you meant in your question by
18 "support." Merely voting.

19 MS RENTON:

20 Q. Witness, who was the politician or the party that you supported
21 in 2007?

22 A. It is Kibaki.

23 Q. And which party was Kibaki a member of?

24 A. Kibaki belonged to the PNU.

25 Q. And PNU stands for Party of National Unity; is that correct?

26

Witness: KEN-OTP-P-0423 (Private Session)
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1 A. Yes, indeed.

2 MS RENTON: Your Honours, I think I can move into public session
3 now.

4 PRESIDING JUDGE EBOE-OSUJI: Okay. Before you do.

5 Sir, this is a question from me up here. When -- when the lawyer
6 asked you the question who did you support in the 2007 election, you
7 answered and said you voted for someone from your own ethnic group. It
8 ended up Mr Kibaki. My question to you is this: Apart from voting,
9 apart from merely voting for him, did you support him in any other way
10 during that election?

11 THE WITNESS: (Interpretation) No.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will now go
13 into open session. And Ms Renton, you have five minutes to break time.
14 (Open session at 10.56 a.m.)

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

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Witness, we are now in public session, and you see that light is
19 back to red, so in the public session, the members of the public will
20 hear a voice that belongs to you but that voice has been distorted in a
21 way that people will not recognise it's your voice. In this public
22 session, remember what I advised you earlier. It's important that you do
23 not give out identifying information in your answers. In particular,
24 I want your answers to be brief. You listen to the question the lawyer
25 is asking you and answer it as briefly as you can. If the answer is one

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1 you can do by saying "yes" or "no," then you can say that, say yes, or if
2 it's no that's appropriate, then say no. If the lawyer has another
3 question to ask to follow-up to that answer you gave -- that brief answer
4 you gave, then she would ask you the further question, which you again
5 would answer briefly.

6 The reason why this is important is because she knows we are in
7 public session and she would ask you questions which she thinks will not
8 reveal your identity because she probably has an idea of the answer you
9 may give. But if you now start giving longer answers that she did not
10 anticipate, then you may, in the longer answer, reveal some identifying
11 information. So it's important for you to let her control the questions
12 and answers.

13 There is something that happens when people who are not familiar
14 with the court come to court. When you're sitting there and she asks a
15 question and you give a certain answer, and she doesn't ask you another
16 question immediately, you may think that she is waiting for you to say
17 more. No, that's not what is happening. She is keeping quiet because
18 interpreters are interpreting in the meantime, so that creates a certain
19 gap that if you're not careful you think maybe you've not answered enough
20 and then you keep going. No. She is keeping quiet because she is
21 waiting for the interpretation to finish. Keep this in mind.

22 Now, proceed, Ms Renton.

23 MS RENTON:

24 Q. Witness, is it correct that the main party opposing the PNU in
25 the 2007 elections was the ODM?

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1 A. Yes.

2 Q. And is it correct that Raila Odinga was the leader of the ODM?

3 A. Yes.

4 PRESIDING JUDGE EBOE-OSUJI: Counsel, one minute. Those two
5 questions you've asked now, we -- I'm not sure that those are in issue.

6 MR FAAL: They are not, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: The point being let's limit this
8 witness's testimony to only what it is necessary for him to testify to
9 that are in contention. They need not be in contention but what is
10 necessary that is beyond what people can reasonably agree to without
11 debate. Thanks.

12 MS RENTON: Thank you, your Honours.

13 Q. Witness, you've told us that in Kenya a person tends to vote for
14 someone of their own ethnic group. Can you tell us who voted for the ODM
15 in the 2007 elections, which ethnic groups?

16 A. Yes.

17 Q. And which groups were those?

18 A. In the location where I was residing, most inhabitants of that
19 area are Nandi.

20 Q. Am I correct that Nandi is a subgroup of the Kalenjin ethnic
21 group?

22 A. Yes.

23 MS RENTON: Your Honour, I note the time. Perhaps we may take a
24 break now.

25 PRESIDING JUDGE EBOE-OSUJI: We will then take a break.

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1 Witness, we will now take a break for a short period, for 30
2 minutes, to enable you get a break and also the Court as well. So we
3 will bring down the blinds and let out the witness.

4 (Closed session at 11.03 a.m.)

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

7 (The witness stands down)

8 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa, yes?

9 MR KIGEN-KATWA: As the witness is being escorted out, I was
10 requesting for your leave to have my colleague, Mr Philemon Koech, to
11 conduct the testimony of this witness.

12 PRESIDING JUDGE EBOE-OSUJI: That's fine. The Court will rise.

13 (Recess taken at 11.05 a.m.)

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

15 THE COURT USHER: Please be seated.

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

17 Prosecutor, I understand you want to give another go at the PIS.
18 Is this something we can discuss in public? Or do we go into private
19 session? I think we should go into private session. Let's go into
20 private session for about two minutes.

21 (Private session at 11.40 a.m.)

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

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

25 MS RENTON: (Redacted)

26

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: All right. Okay. Then let's bring
10 down the blinds and let the witness in and see how it goes.

11 (Closed session at 11.41 a.m.)

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

14 PRESIDING JUDGE EBOE-OSUJI: Do we have the revised PIS for
15 everyone so we're all using the same document?

16 MS RENTON: We'll hand up copies, your Honour.

17 (The witness enters the courtroom)

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

19 We can go first back to private session before we go to public.

20 (Private session at 11.43 a.m.)

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, welcome back.

24 I understand that the document has been given to you, a revised version

25 of it, the document we call PIS. Have you had a chance to look at it?

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1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE EBOE-OSUJI: And is this easier? Is this better
3 than the last one?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Right. So when we go back -- when
6 we are in public session, the Prosecutor will, from time to time, be
7 referring you to names on that document. What you will do is to refer to
8 the numbers when we are in public session. If you need to mention
9 anybody who appears on the list of names there, you can just use the
10 number, as in number 1 or person number 2 and so on and so forth, and not
11 to mention their real names. Do you understand?

12 THE WITNESS: (Interpretation) Yes, I do.

13 PRESIDING JUDGE EBOE-OSUJI: So --

14 MS RENTON: Sorry, Your Honour, I actually just have two or three
15 questions in private session and then we can move back to public session.

16 PRESIDING JUDGE EBOE-OSUJI: Okay. The Prosecutor will ask you
17 some questions and then we will go into public.

18 MS RENTON:

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

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1 A. The Nandi group supported ODM.

2 MS RENTON: Thank you, your Honour. We may move into public
3 session.

4 PRESIDING JUDGE EBOE-OSUJI: We go to public session now.
5 (Open session at 11.47 a.m.)

6 THE COURT OFFICER: (Interpretation) We are in public session,
7 Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please proceed,
9 Ms Renton.

10 MS RENTON:

11 Q. Witness, apart from the Nandi, did any other ethnic group support
12 ODM?

13 A. Yes.

14 Q. And which group or groups was that?

15 A. There were Luhya, there were Luos, and other tribes also.

16 Q. Witness, I'd now like to ask you some general questions about
17 Yamumbi. Could you describe how large an area it is, for the Court?

18 A. Yes. Yamumbi is quite an extensive locality.

19 Q. Are you able to estimate the size for us, in terms of number of
20 acres, for example?

21 A. Yes. The Yamumbi region has a surface area of approximately
22 3.000 hectares.

23 THE INTERPRETER: 3.000 acres, correction from the Swahili booth.

24 MS RENTON:

25 Q. And what is the -- sorry, excuse me. Witness, in 2007, do you

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1 know what the population was in Yamumbi?

2 A. Yes. There was a population of approximately 5.000 individuals
3 in Yamumbi.

4 Q. Can you describe the geography for the Court? What does the land
5 look like?

6 A. Could you please repeat your question? I did not quite grasp it.

7 Q. My question, Mr Witness, was can you describe the geography? For
8 example, is it flat, is it hilly? Are their forests, trees, or is it
9 plain land?

10 A. It is a mountainous region, and a large surface area is given
11 over to arable land. It is a fertile region.

12 Q. Mr Witness, how long would it take, for example, travelling by
13 vehicle, to go from one side to the other side?

14 A. From the centre of Yamumbi, in fact, I mean, from the centre of
15 Eldoret --

16 THE INTERPRETER: Says the witness.

17 THE WITNESS: (Interpretation) -- you need approximately 50
18 shillings in order to travel to Yamumbi, Yamumbi farm, and this locality
19 is located close to the town itself.

20 MS RENTON:

21 Q. And how long would it take to drive that distance?

22 A. Well, if you're going there on foot, if you're going into town,
23 it will take you approximately an hour and a half to two hours.

24 Q. And that's from Yamumbi to Eldoret town; is that correct?

25 A. Yes, indeed.

26

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1 Q. Witness, you've told us that it was mainly Kikuyu that lived in
2 Yamumbi in 2007. How long have the Kikuyu lived there?

3 A. Well, Yamumbi used to belong to the whites. The Kikuyu gathered
4 together in order to buy this farm from the whites. I believe that they
5 had been there since 1969.

6 THE INTERPRETER: Correction from the Swahili booth: Since 1968.

7 THE WITNESS: (Interpretation) And at that moment in time, the
8 Kikuyu had already bought the land, and they divided it up, allocating
9 four hectares to each individual. I believe that the former president,
10 Mr Daniel Moi, gave the people of Yamumbi the title deeds to this land.

11 MS RENTON:

12 Q. Witness, I'd now like to turn your attention to the period
13 preceding the 2007 election, so the months leading up to the election.
14 Can you tell us what was the atmosphere like in particularly the
15 Rift Valley region?

16 A. Yes. Prior to the elections, there were issues, problems, in the
17 Rift Valley area. And why was that? Well, because rumours -- because
18 rumours were being circulated. People were saying that the Kikuyus were
19 going to be driven out.

20 MS RENTON: Your Honour, just to err on the side of caution
21 I think we may have to move into private session for the next question.

22 PRESIDING JUDGE EBOE-OSUJI: For how long?

23 MS RENTON: I hope only a few minutes.

24 PRESIDING JUDGE EBOE-OSUJI: It's only one question, and let's go
25 in and see how long we stay there.

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1 (Private session at 11.57 a.m.)

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

4 MS RENTON:

5 Q. Witness, you've told us that people were saying that the Kikuyus
6 were going to be driven out. Who was saying this?

7 A. It was the Nandi community.

8 Q. Anyone in particular?

9 A. Many people were saying that.

10 Q. Witness, you've told us that the people that lived in Kapteldon
11 were predominantly Nandi. What kind of relationship did you have with
12 those people in 2007?

13 A. In the year 2007, we did not entertain a good relationship. And
14 why do I say that? Well, for example, if a businessman was to undertake
15 an activity, he could not move around easily, and there were rumours
16 being mongered that there were issues at hand.

17 MS RENTON: Excuse me, your Honours one second.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 MS RENTON: Your Honour, I believe we can move back into public
5 session. I would just like to tell the witness a word of caution before
6 we do that.

7 Q. Mr Witness, I'm now going to ask that we move back into public
8 session. I'll ask you some questions about what you were told, and if
9 you could please be very careful not to mention the relationship that you
10 had with the people who told you these things. And, if necessary, you
11 can refer to the names on the sheet in front of you -- sorry, not the
12 names, the numbers.

13 PRESIDING JUDGE EBOE-OSUJI: Are we talking about the warning, in
14 terms of his friends having warned him that Kikuyus -- there was trouble
15 and that sort of thing? Is that what we are going to discuss and who
16 told him -- who gave him the warning?

17 MS RENTON: More the nature of the warning, what exactly he was
18 told, and if I have to ask any more specific questions about the people,
19 I'll be very careful with that.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into public
21 session, then.

22 (Open session at 12.03 p.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Witness, we are now in public

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1 session. If you see, that red light is on again. Counsel will ask you
2 her questions.

3 MS RENTON:

4 Q. Witness, you've mentioned that you were told that the situation
5 was not good. What did you understand that to mean?

6 A. When they told me that things were not good, I wanted the issue
7 to be clarified. You see, in 1992 I had experience of a similar nature,
8 and when you're told that things are not good, you want to find out what
9 was likely to happen. At that time, I felt that maybe war was going to
10 break out.

11 Q. What was the experience that you had in 1992?

12 A. In 1992, similar events occurred after the elections at that
13 time, and then I was not yet in charge of anything. Now, I was told that
14 things were going to worsen and what happened is that war actually broke
15 out. I was personally attacked. I was shot at with an arrow, and I was
16 taken to the hospital. That was my experience. And therefore, when
17 I heard or when I was told that the situation was not good, I drew on
18 that previous experience to come to my understanding of that expression.

19 Q. In 1992, who shot at you with the arrow?

20 A. In 1992, the same conflict occurred as did in 2007. You see, in
21 addition to being shot at with an arrow, houses were torched, and I was
22 an eyewitness to the burning of other people's houses as well as of my
23 own house.

24 Q. In 1992, who were the people responsible for torching the houses?

25 A. As usual, it was the Kalenjins, a group of Kalenjin people.
26

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1 I say so because I was born in Eldoret and (Redacted), and I am not
2 fabricating or inventing anything. I'm talking to you about things which
3 I saw with my own eyes and I heard with my own ears.

4 Q. Witness, what was the ethnicity of the people whose houses were
5 burnt in 1992?

6 A. The houses that were burnt down belonged to Kikuyus.

7 THE INTERPRETER: (Redacted)
8 (Redacted).

9 Thank you.

10 MS RENTON:

11 Q. Witness, moving back to 2007 --

12 PRESIDING JUDGE EBOE-OSUJI: Before you go to 2007, Ms Renton.

13 Witness, the lawyer had asked you earlier on, when you said you
14 were shot at with an arrow in 1992, she had asked you whether you knew
15 the people who were responsible for shooting at you with an arrow in
16 1992. What is your answer to that question?

17 THE WITNESS: (Interpretation) I will attempt to explain the
18 situation to you. When the Nandi --

19 PRESIDING JUDGE EBOE-OSUJI: Try -- if you can answer it briefly,
20 that would be fine. But if you feel -- if you feel you need an
21 explanation, you can do so briefly. Remember, the question is whether
22 you know the people who were responsible for shooting at you with an
23 arrow in 1992. Remember that you had answered the question about who
24 burnt houses in 1992 and your answer was, it was Kalenjins as usual.

25 Are you saying it was the Kalenjins or that it was not Kalenjins
26

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1 who were responsible in 1992 for shooting at you with an arrow?

2 THE WITNESS: (Interpretation) Yes. It was a large group of
3 Kalenjins.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will leave it at
5 that.

6 Counsel, you may ask follow-up questions from that, if you need
7 to.

8 MS RENTON:

9 Q. Witness I'd now like to move back to 2007. You said that you
10 heard that the situation was not good and you felt that maybe war was
11 going to break out. Was there anything other -- anything else that
12 happened that made you fear that war would break out?

13 A. Yes.

14 Q. Please tell us, and if necessary, refer to the numbers on the
15 page in front of you.

16 A. There is a young lady who was married, whose father is at number
17 5. She was married to a Kalenjin. That young lady came to tell her
18 father about the situation, and told him that war was going to break out
19 and that they needed to flee. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted) That is it.

24 Q. Witness, when did person number 5 tell you this?

25 PRESIDING JUDGE EBOE-OSUJI: Before we do that, there is

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1 something I want to raise and I want to do it in private session. Can we
2 go into private session now?

3 (Private session at 12.16 p.m.)

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

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)

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1 Counsel, we can proceed but with care. So we go back to public
2 session. Is that it?

3 MS RENTON: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: We will go back to public session
5 now.

6 (Open session at 12.18 p.m.)

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

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MS RENTON:

11 Q. Witness, just to repeat the question before we went into private,
12 when did person number 5 tell you what he told you?

13 A. It was just before the election results were released.

14 Q. And if I could take you back to something we were talking about
15 earlier, when did the Nandi people tell you that the situation was going
16 to be bad?

17 A. It was before the elections, as the elections were about to take
18 place.

19 Q. At that time, did you observe anything else that made you
20 concerned about a possible war?

21 A. Yes.

22 Q. Please go on, and if necessary, refer to the numbers on the sheet
23 in front of you.

24 A. The person -- the persons at number 1 and number 2 gave me some
25 information.

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1 Q. If we start with person number 1, what did person number 1 tell
2 you?

3 A. Person number 1, in fact, showed me some objects that were to be
4 used during the war or during the conflict.

5 Q. What objects did he show you?

6 A. He showed me some arrows.

7 Q. Witness, you've told us he showed you some --

8 THE INTERPRETER: And the witness mentions another item,
9 uta (* phon).

10 MS RENTON:

11 Q. Witness, are you able to explain what uta is?

12 A. Yes, I can.

13 Q. Please explain?

14 PRESIDING JUDGE EBOE-OSUJI: One second. Let's go into private
15 session.

16 (Private session at 12.24 p.m.)

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

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please proceed. What is
20 uta?

21 THE WITNESS: (Interpretation) An uta is a bow, a bow which you
22 use to shoot the arrows. It is the -- the bow which you use to fire an
23 arrow, just like you use a gun to fire a bullet. You can't fire a bullet
24 without a gun.

25 PRESIDING JUDGE EBOE-OSUJI: All right. So this is just a bow.

26

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1 We can go back to public session. Or is there something about this bow
2 that is peculiar and unique?

3 MS RENTON: Not something about the bow but something about the
4 person, so since we are in private session I'll ask those questions now.

5 PRESIDING JUDGE EBOE-OSUJI: All right. You can do that but when
6 we go to public, you can indicate "uta" means a "bow."

7 MS RENTON:

8 Q. Witness, what ethnicity is person number 1?

9 PRESIDING JUDGE EBOE-OSUJI: No, no, no. We have to remain in
10 private session, sorry. Yes.

11 MS RENTON:

12 Q. I will repeat my question, Mr Witness. What ethnicity is person
13 number 1?

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MS RENTON: Your Honour, I believe we can move back into public
21 session.

22 PRESIDING JUDGE EBOE-OSUJI: All right. We will go back to
23 public session.

24 (Open session at 12.28 p.m.)

25 THE COURT OFFICER: (Interpretation) Mr President, we are in
26

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1 public session.

2 MS RENTON: Just for the record.

3 Q. Mr Witness, you explained to us that "uta" means a "bow," a bow
4 that shoots arrows. Can I ask you where did person number 1 get the bows
5 and arrows that he showed you?

6 A. Yes.

7 Q. Where did person number 1 get these bows and arrows?

8 A. This material was being prepared or assembled somewhere.

9 Q. Who was preparing or assembling them?

10 A. I was told that a number of Kalenjin youths were the ones
11 assembling them.

12 Q. And where were they assembling them?

13 A. They were assembling them at a location called Kapseret.

14 Q. When did person number 1 show you the bows and arrows?

15 A. It was on the eve of the elections.

16 MS RENTON: Your Honours, I'd just like to ask one question in
17 private session.

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 (Private session at 12.31 p.m.)

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MS RENTON:

24 Q. Witness, where is Kapseret?

25 A. Kapseret is located in a forest in the area or region of
26

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1 Kapteldon. It is an extensive forest.

2 MS RENTON: We can move back into public session, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Why did that answer have to come in
4 the private session?

5 MS RENTON: I was just a little bit worried that he may refer to
6 where he lived in relation to where the forest was, but it was fine.

7 PRESIDING JUDGE EBOE-OSUJI: I see. All right. We will go back
8 to public session, then.

9 (Open session at 12.32 p.m.)

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

12 PRESIDING JUDGE EBOE-OSUJI: Thank you. Counsel, proceed. So we
13 now know Kapseret is a forest.

14 MS RENTON: Indeed, your Honour.

15 Q. Witness, you referred to the eve of the election as the time when
16 person number 1 showed you the bows and arrows. What do you mean by
17 "eve"? How far ahead before the election was this?

18 A. It was three days before the election.

19 Q. Witness, you also told us that you received some information from
20 person number 2. What was that information that you received?

21 A. The individual at number 2 did not tell me anything at all, but
22 I saw what happened at his house. I saw what had been prepared before
23 the conflict.

24 Q. What did you see? What had been prepared?

25 A. At that location, there were large stones or rocks, and these

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1 large stones were being transported to his residence. Young people were
2 breaking them up into smaller pieces. There were many young people in
3 that area. I saw that going on because I was up the hill, I was just
4 above his residence, further up the hill. I moved closer and I saw what
5 was going on.

6 Q. When was this, Witness? Are you able to give us a date as to
7 when you saw it?

8 A. I no longer recall the precise date, but I can say that it was
9 prior to the elections.

10 Q. How many people did you observe?

11 A. There were many individuals there.

12 PRESIDING JUDGE EBOE-OSUJI: Witness, still trying to understand
13 when you saw the stones being broken up at number 2's home. Was this --
14 did you observe this thing going on before or after you had been told
15 that there would be trouble and then you formed the impression that war
16 might break out?

17 THE WITNESS: (Interpretation) Prior to the elections, I saw these
18 stones being transported, and the persons against numbers 2 and 3 on the
19 list, are neighbours. The people doing this job were eating at the
20 residence of number 2 on the list, and the others were working at the
21 residence of number 3 on the list. These are things that I was an
22 eyewitness to. So there was a feast or party being planned and then
23 there were individuals who were undertaking the work.

24 PRESIDING JUDGE EBOE-OSUJI: I understand that now, but what I'm
25 trying to understand also is the time that you observed the stones being
26

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1 broken up at number 2's home. Was it before or was it after you had been
2 told by Nandis that there would be trouble in 2007?

3 THE WITNESS: (Interpretation) It was before that.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MS RENTON:

6 Q. Witness, are you able to give us any idea in terms of weeks or
7 months before the election when you saw this?

8 A. Yes. I believe that all of this was prepared rapidly, that is to
9 say in a week.

10 Q. Just to be clear, are you saying that this took place over a
11 week, for a week's length of time, or a week before the election?

12 A. This was done a week before the elections. They had prepared
13 themselves before the elections.

14 Q. Witness, what is the ethnicity of person number 2?

15 A. Person number 2 on the list is of Nandi ethnic origin.

16 Q. What is the ethnicity of person number 3?

17 A. This individual is also Nandi.

18 Q. What is the ethnicity of the young people that were breaking up
19 the stones?

20 A. They were Nandis.

21 Q. When you describe them as young people, what were their ages?

22 A. They were young people, aged between 18 and 30 years.

23 MS RENTON: Your Honours, I would just like to ask the next
24 series of questions in private session, with your leave.

25 PRESIDING JUDGE EBOE-OSUJI: Private session, then.

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1 (Private session at 12.43 p.m.)

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

4 MS RENTON:

5 Q. (Redacted)

6 A. (Redacted)

7 Q. What is the location of person number 3's residence?

8 A. Both individuals live in the same area.

9 Q. How far away were you when you saw this happening?

10 A. Could you please repeat your question?

11 Q. Of course. You've told us that you were up the hill when you saw
12 this happening. How far away were you from -- from where they were
13 breaking up the stones?

14 A. It is rather an extensive distance, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Witness, how were the stones being transported?

20 A. (Redacted)

21 (Redacted)

22 Q. What did you think when you saw the stones being broken up?

23 A. When I saw people breaking stones, I immediately thought back to
24 what had occurred in the year 1992.

25 Q. What was that, Witness?

26

Witness: KEN-OTP-P-0423 (Private Session)
Questioned by Ms Renton

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1 A. In 1992, it was the same situation. It was a carbon copy of what
2 was going on in 2007.

3 Q. Witness, what is the significance of the stones, from your
4 experience in 1992?

5 A. The stones were used, and were thrown at individuals.

6 Q. Witness, can you tell the Court a little bit about person number
7 2?

8 A. Yes, I can.

9 Q. Please go on.

10 A. Person number 2 --

11 MR FAAL: Are we still in private session? I just -- okay.

12 Thank you. Sorry about that.

13 PRESIDING JUDGE EBOE-OSUJI: Please, Witness, you were about to
14 tell us about person number 2. Can you continue?

15 THE WITNESS: (Interpretation) (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Counsel, let me -- permit me to
21 interject here. We had a number of -- two questions, I think.

22 Sir, you say that in 1992, stones were used to throw at people
23 and I take it you mean the same happened in 2007, is that it?

24 THE WITNESS: (Interpretation) Yes, indeed. The situation was one
25 and the same.

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1 PRESIDING JUDGE EBOE-OSUJI: This may be a very simple question
2 but I ask it for a reason: Can you tell us how those stones were thrown
3 at people? How so?

4 THE WITNESS: (Interpretation) Those individuals were transporting
5 the stones in small quantities. They were carrying them in little bags.
6 There are two methods used. They would either throw them with their bare
7 hands, and the second way would be to use a sling or catapult, and in so
8 doing they could throw those stones over a great distance, and I remember
9 in 1992 that a young Kikuyu man was hit by one of these stones and he
10 died immediately.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And the other
12 question I have for you related to person number 1, (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)

Witness: KEN-OTP-P-0423 (Private Session)
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1 (Redacted)

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9 (Redacted)

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11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: Let's go back to public session.

13 (Open session at 12.56 p.m.)

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

15 Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, we are back in open session

17 now. So you know, it means be careful not to put in, in your answers,

18 information that will identify who you are.

19 MS RENTON:

20 Q. Witness, you've told us that in 1992, stones were thrown at

21 individuals. Who threw the stones and who were they thrown at?

22 A. The stones were thrown at the Kikuyus.

23 Q. And who threw them?

24 A. It was the Kalenjin.

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1 Q. I'd now like to ask you about some political rallies and meetings
2 in the 2007 campaign period. Did you attend any political rallies during
3 this time?

4 A. No.

5 Q. Did you hear about any political rallies during this time?

6 A. Yes.

7 Q. What did you hear?

8 A. During the rallies, the Kikuyus were mentioned, and they were
9 described in a number of manners. Also, it was said that the Kikuyus
10 should disappear, leave. And at that moment in time, the Kikuyus had
11 been described using a Kalenjin word which means "white," "mzungu." And
12 in Kalenjin the word is chumbeg (* phon). So on the occasion of those
13 rallies, they would say that the chumbeg should leave, the whites should
14 leave. And that was the different ways in which they described the
15 Kikuyus. They also used another term. They talked of "madoadoa." This,
16 or these, were the same words used by the politicians. The Kikuyus were
17 described in a number of ways, and you, yourself, madam, if you were a
18 family member, you would also receive a label, and that is why they were
19 called "chipwatnandi" (* phon), the Kikuyus were called chipwatnandi in
20 the Nandi language. This means somebody who has learned your language
21 but who is not one of yours. So, during the elections, there could be no
22 familiar relations, if you like. I would say that the Kikuyus were the
23 enemy so there could be no relations between families.

24 PRESIDING JUDGE EBOE-OSUJI: It's lunchtime, and we will take our
25 break, but when we come, you might want to consider the -- where there's

Witness: KEN-OTP-P-0423 (Closed Session)
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1 a matter of context, the word "mzungu," I believe, is what the witness
2 said, whether in context it relates to the colour of a skin or to alien
3 status of people. It will be good to know what is being said.

4 MS RENTON: Yes, your Honour, I'll ask a number of clarifications
5 when we get back.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will bring
7 down the blinds and then take the lunch break.

8 (Closed session at 1.03 p.m.)

9 THE COURT OFFICER: (Interpretation) We are in closed session,
10 Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: Yes. The witness will be escorted,
12 then.

13 (The witness stands down)

14 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

15 (Recess taken at 1.03 p.m.)

16 (The witness enters the courtroom)

17 (Upon resuming in open session at 2.16 p.m.)

18 THE COURT USHER: Please be seated.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Steynberg,
20 we -- you've now sent the e-mail, is that it?

21 MR STEYNBERG: That's correct, Your Honour. I do apologise for
22 the delay but we had some difficulties with the e-mail system.

23 PRESIDING JUDGE EBOE-OSUJI: We too experienced that difficulty
24 of -- technical problem with the e-mail system. We will get back to it,
25 not now but -- thank you.

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1 Ms Renton, please proceed.

2 MS RENTON:

3 Q. Witness, before lunch you were telling us about some of the names
4 that were used to describe the Kikuyus at rallies. Why did the Kalenjin
5 refer to Kikuyus as white or mzungu?

6 A. Yes. They would use the word "chumbeg" in Nandi which meant
7 mzungu, well the Kikuyu -- this meant that the Kikuyu were not welcome
8 and that the region did not among to them, so as a result the Kikuyus had
9 to leave.

10 Q. Are you able to help us with the spelling of the Kalenjin word
11 chumbeg?

12 PRESIDING JUDGE EBOE-OSUJI: I think we can do phonetic. Let's
13 not do the spelling. Did you say the word is chumbeg?

14 THE WITNESS: (Interpretation) Yes, chumbeg.

15 PRESIDING JUDGE EBOE-OSUJI: Phonetically that would be
16 C-H-U-M-B-E-G, phonetically. We can verify that later unless you really
17 want him to spell it himself.

18 MS RENTON: That's fine, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: What I wanted to know, Counsel, is
20 whether mzungu necessarily refers to Europeans or whether it means
21 stranger.

22 MS RENTON: Sorry, your Honour. Would you like me to clarify
23 that with the witness?

24 PRESIDING JUDGE EBOE-OSUJI: I think I can ask him.

25 Sir, you said that the reference -- you say that chumbeg

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1 translated to mzungu and mzungu is a Kiswahili word. My question is does
2 the word "mzungu" or even "chumbeg" refer to the colour of somebody's
3 skin as being European, for example, or does it mean a stranger so that
4 even though the person may not have European skin, they may be perceived
5 as a stranger?

6 THE WITNESS: (Interpretation) Yes, indeed. It wasn't with regard
7 to the white colour of a person's skin, but it meant that the person was
8 a foreigner and that the person did not hail from that region.

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

10 Please proceed, Ms Renton.

11 MS RENTON:

12 Q. Witness, you've also said that they were described as "madoadoa."
13 First of all, what language is madoadoa?

14 A. Madoadoa is a Swahili term.

15 Q. And what does it mean?

16 A. It means that the Kikuyu were not welcome there, and that they
17 should go home.

18 Q. Where is home for the Kikuyu? Where did they mean when they said
19 they should go home?

20 A. They said that the region belonging to the Kikuyu was the Central
21 Province.

22 MS RENTON: One second, your Honour.

23 Q. Witness, did you attend any political meetings or do you know
24 about any political meetings that took place before the 2007 elections?

25 MR FAAL: Objection, Mr President. The witness did say earlier

Witness: KEN-OTP-P-0423 (Open Session)
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1 that he did not attend any political rallies. So we are going back to a
2 question that was already asked and answered. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: Ms Renton?

4 MS RENTON: I can ask a clarification question. I'm actually
5 referring to something different in my question.

6 PRESIDING JUDGE EBOE-OSUJI: Yes, I noticed that the word -- the
7 operative word in your question this time is "meetings." The last time
8 it was "rally."

9 MS RENTON: That's correct, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: So they don't necessarily mean the
11 same thing. So go ahead.

12 MS RENTON:

13 Q. Witness, I'll repeat my question. You said you did not attend
14 any rallies. You've told us some information that you heard about
15 rallies. Did you attend or did you hear about any political meetings
16 that took place during this time?

17 A. Yes. Yes.

18 Q. Please tell us.

19 A. That when people talk about political meetings, about having
20 attended such political meetings, they come back and report what was said
21 during those meetings, so, if you like, it's a way of talking about those
22 individuals who took the floor during said meetings.

23 Q. Mr Witness, did anyone come back and report about meetings to
24 you? And if so, please refer to the list, if necessary.

25 A. Yes. The person, number 1 on the list, notably, was close to me.

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1 Q. What did person number 1 tell you?

2 MR FAAL: Mr President, the witness did not say that person
3 number 1 said anything to him. The witness said person number 1 was
4 close to him.

5 PRESIDING JUDGE EBOE-OSUJI: It's a matter of --

6 MR FAAL: I withdraw the objection. Let the witness answer.

7 PRESIDING JUDGE EBOE-OSUJI: Well, it's a matter of
8 clarification, of course. I mean you were not necessarily objecting
9 because it would have required counsel to ask that question too.

10 MR FAAL: Yes, but I just withdraw the objection.

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MR FAAL: Let the witness answer.

13 PRESIDING JUDGE EBOE-OSUJI: All right. You can ask the question
14 again. If you also want to take a hint from what happened to clarify
15 whether person number 1 had indeed links to a rally so it's clear on the
16 record. That's for the witness to say.

17 MS RENTON:

18 Q. Witness, I asked you whether anyone came back and reported about
19 meetings to you. You said: "Yes, the person, number 1 on the list,
20 notably, was close to me." Did person number 1 tell you anything about
21 meetings?

22 A. Yes.

23 PRESIDING JUDGE EBOE-OSUJI: One second. We will take the answer
24 to this question in private session and then we'll come back out.

25 (Private session at 2.28 p.m.)

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. So, Witness, you can now
4 tell the lawyer what person number 1 told you.

5 THE WITNESS: (Interpretation) I shall reply far more extensively
6 to your question. (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 PRESIDING JUDGE EBOE-OSUJI: Counsel, do you want to keep
22 exploring what person number 1 said to him? If you're done with that
23 question, then we can go back to public session.

24 MS RENTON: I'd still like to explore but I believe that we may
25 be able to do that in public session.

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1 (Redacted)

2 (Redacted)

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4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MS RENTON: I'm guided your, your Honour. Perhaps it's better to

9 stay in private session for the moment.

10 PRESIDING JUDGE EBOE-OSUJI: Right. Let's explore -- get out all

11 that person number 1 told him, then we can go in public to discuss his

12 own reactions and things like that.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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21 (Redacted)

22 (Redacted)

23 (Redacted)

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Page 58 redacted

Witness: KEN-OTP-P-0423 (Private Session)
Questioned by Ms Renton

Page 59

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15 (Redacted)

16 (Redacted)

17 A. You -- do you want the names of people who organised the meeting?

18 Q. The names of people who organised the meeting, yes, that's fine.

19 A. I remember a meeting that was in Kapseret. That was a

20 large-scale meeting. It was for Mr Ruto. There were a lot of people at

21 the rally who took part. And during this rally, there was also a rich

22 man who was there called Jackson Kibor. He was also among those who had

23 participated in the event. There was another man, another rich man,

24 called Maiyo, Wana (* phon) Maiyo.

25 Q. You've said the meeting was for Mr Ruto. Was Mr Ruto there at

Witness: KEN-OTP-P-0423 (Private Session)
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1 the meeting?

2 PRESIDING JUDGE EBOE-OSUJI: Counsel, can you hold that question?

3 Witness, don't answer yet. We will return to it.

4 Counsel, let's first of all --

5 THE WITNESS: (Interpretation) Yes. He did participate.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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24 (Redacted)

25 (Redacted)

Witness: KEN-OTP-P-0423 (Private Session)
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Page 61 redacted

Witness: KEN-OTP-P-0423 (Private Session)
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1 (Redacted)

2 PRESIDING JUDGE EBOE-OSUJI: Thank you. Counsel, now, if you can
3 then settle one meeting at a time. I do not know how many meetings in
4 Kapseret forest you want to discuss, but if it's only one that you have
5 in mind, let us settle the time and its particulars so that when we move
6 out we know we are talking about the one meeting. We don't want to go
7 out and then talking about different meetings or alluding to any other
8 meetings apart from with one.

9 MS RENTON:

10 (Redacted)

11 large-scale meeting in Kapseret. Mr Ruto was there, Jackson Kibor was
12 there, and another rich man called Maiyo was there. I'd like to ask you
13 some questions about that meeting in particular. Are there any other
14 meetings where all of those people were in attendance?

15 A. Yes.

16 Q. How many meetings were there?

17 A. I couldn't give you the number of meetings that were held, but if
18 we speak about the campaign, we know very well that it doesn't just take
19 one day. It takes several days.

20 Q. What was the purpose of these meetings?

21 A. The meetings that were held in Kenya during the campaign, well,
22 in my opinion, everyone had the possibility to fight the campaign and to
23 ask the supporters for support, to vote for them. That was the aim, that
24 was the objective of the meeting.

25 (Redacted)

Witness: KEN-OTP-P-0423 (Private Session)
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1 (Redacted)

2 (Redacted). What was the purpose of those meetings?

3 A. If I take into account what was said, there was news in the air.

4 That's the reason why they organised these meetings in the forest. There
5 was no other tribe that was authorised to participate.

6 Q. What tribe are you referring to?

7 A. I'm speaking about the meeting that was held in the forest of
8 Kapseret. Only the Nandi could participate in it. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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12 (Redacted)
13 (Redacted)
14 (Redacted)

15 Q. What was happening at the meeting?

16 A. As I just said, all those who went to these meetings received
17 something, and that's the reason why the people had to participate in
18 these meetings, and everything that was said in these meetings was kept
19 secret.

20 Q. What did the people receive?

21 A. They distributed money, like paper, during the campaign. (Redacted)
22 (Redacted), nobody could participate in these meetings and go with
23 nothing.

24 PRESIDING JUDGE EBOE-OSUJI: Counsel, are we done with
25 particularising any meeting or meetings in Kapseret forest?

Witness: KEN-OTP-P-0423 (Private Session)
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1 MS RENTON: If your Honour will excuse me for just one moment.

2 (Prosecution counsel confer)

3 MS RENTON: Just a few more questions, with your Honour's leave.

4 PRESIDING JUDGE EBOE-OSUJI: What I'm trying to do is get out of
5 private session, and that's what I had hoped is if we could identify any
6 meeting in particular in Kapseret forest, once we identify that meeting,
7 then we can go outside and talk about that meeting.

8 MS RENTON: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: Things like -- things like receiving
10 things, money in particular, at meetings, certainly evidence that could
11 be led in -- in the public session. So if we can put a fix, as it were,
12 on any particular meeting in Kapseret forest, then go out and discuss
13 what was done there (Redacted)
14 (Redacted)

15 MS RENTON: Yes, your Honour, we can do that. I'll just ask one
16 leading question -- not leading, one question to the witness before we
17 move so he's aware of what I'll be focusing on.

18 Q. Witness, we are going to move into public session, and I'll be
19 asking you a few more questions about the specific meeting in Kapseret
20 forest that we've been talking about, so if you could focus your
21 attention (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Sir, this meeting -- Witness? The
23 meeting in Kapseret forest, I take it there is one meeting on your mind.
24 Is there one meeting on your mind that happened in Kapseret forest, not
25 many, I do not want you to think about several meetings but think about

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1 one meeting you consider important, important enough to talk to the Court
2 about it. Can you think any, can you think of any one meeting in
3 Kapseret forest that you want to discuss with us?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE EBOE-OSUJI: When did that meeting occur?

6 THE WITNESS: (Interpretation) There was a meeting at the Kapseret
7 forest, just prior to the elections. It was a big meeting. Cows had
8 been killed. There was a huge feast during that meeting. (Redacted)
9 (Redacted) and I found out that no woman was allowed to
10 attend that meeting. Some dignitaries attended that meeting and it was
11 the most important meeting.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 THE WITNESS: (Interpretation) That is how I found out that things
14 were getting worse.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: Right. We will go outside in the
20 public session and we will discuss this meeting, and we will refer to
21 this meeting as the big meeting in Kapseret forest. Do you understand?

22 THE WITNESS: (Interpretation) Yes.

23 PRESIDING JUDGE EBOE-OSUJI: All right. (Redacted)

24 (Redacted). You have already told us

25 that. So we now know it. Now, let's go back to public session.

Witness: KEN-OTP-P-0423 (Open Session)
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1 (Open session at 3.05 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. Prosecutor, please
5 proceed.

6 MS RENTON:

7 Q. Witness, still referring to the big meeting in Kapseret, how many
8 people were at this meeting?

9 A. I cannot tell you how many people attended but there were many
10 people in attendance.

11 Q. You mentioned that some dignitaries attended. Which dignitaries
12 attended this meeting?

13 A. Those dignitaries did not belong to a tribe other than the
14 Kalenjin tribe.

15 Q. Who were they? Can you give us their names, please?

16 A. As I said a short while ago, the names -- well, all the meetings
17 that took place were often called or convened by Mr Ruto, and Ruto was a
18 well-respected man in the Rift Valley. Whenever he convened a meeting,
19 people would attend from all over. Rich people would join him at the
20 meetings. So I cannot tell you that there was one group of persons or
21 another. There were many, many people in attendance.

22 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, remember we are
23 now still talking about the big meeting in Kapseret forest. What has
24 Mr Ruto got to do with it? Can you tell us? You mentioned his name.

25 THE WITNESS: (Interpretation) Yes. Mr Ruto was looking for

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1 power. He wanted to come to power. In other words, he was like the
2 leader or the chief of the Kalenjins. I say so because there was one
3 Koitalel Arap Samoei who -- who -- and I do recall that -- in fact, this
4 name was given to Mr Ruto as the chief of the Nandi, because Arap Samoei
5 had actually died.

6 PRESIDING JUDGE EBOE-OSUJI: The question I'm asking is still
7 about the big meeting in Kapseret forest. Was it your understanding that
8 Mr Ruto was not there or was it your understanding that Mr Ruto was there
9 at the meeting, big meeting, in Kapseret forest?

10 THE WITNESS: (Interpretation) He was there.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, proceed.

12 MS RENTON:

13 Q. Mr Witness, speaking about the big meeting in Kapseret forest,
14 can you tell the Court the names of any other dignitaries that were there
15 at that meeting?

16 A. Yes.

17 Q. Tell us their names.

18 A. Jackson Kibor was present. One Eldet Kirui (* phon) was also
19 there.

20 Q. Do you know any other names, Witness?

21 A. And another one is known as Paul or Paulo. Then there was also
22 (Redacted).

23 Q. Just for the purposes of the record, you mentioned --

24 PRESIDING JUDGE EBOE-OSUJI: One second. Private session,
25 please, quickly.

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1 (Private session at 3.12 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Your next question, is it about there or something else?

16 MS RENTON: It's about something else. It's confirming another
17 name.

18 PRESIDING JUDGE EBOE-OSUJI: So we can do that outside?

19 MS RENTON: Yes, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go to public
21 session, please.

22 (Open session at 3.14 p.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Ms Renton.

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1 MS RENTON:

2 Q. Witness, one of the names you mentioned was Eldet Kirui; is that
3 correct?

4 A. Yes.

5 Q. Witness, you've told us that money was distributed during the
6 campaign. Was money distributed during this meeting?

7 A. Yes.

8 Q. How much money?

9 A. I do not know the amount of money that was given out. In any
10 event, money was distributed at all the meetings.

11 Q. Talking specifically about this meeting again, I understand you
12 don't know how much money was given out. Do you know who provided the
13 money?

14 A. My answer is as follows: These meetings were organised by some
15 persons.

16 Q. Talking specifically about this meeting, who organised this big
17 meeting in Kapseret?

18 A. The big meeting was organised by Mr Ruto.

19 MR KOECH: Mr President, if I could be of some assistance.

20 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

21 MR KOECH: There -- the Kiswahili translation is not quite
22 correct, because the witness said the meeting was organised for Mr Ruto,
23 not by Mr Ruto, in Kiswahili.

24 PRESIDING JUDGE EBOE-OSUJI: Counsel, I'll ask the question.

25 Witness, can you tell us what your evidence was? Did you say the

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1 meeting was organised -- organised by Mr Ruto or did you say it was
2 organised for Mr Ruto?

3 THE WITNESS: Please ask your question again, but this is what
4 I meant, this is what I wanted to say. Ruto was like the spokesperson of
5 the Kalenjins, and whenever he attended a meeting, the Nandis would come
6 in their numbers. That is why I couldn't distinguish who had organised
7 the meeting, but as far as I knew there was no one else who could have
8 organised the meeting because each meeting was prepared and organised,
9 and this was done by the person who was supposed to speak at the meeting.

10 PRESIDING JUDGE EBOE-OSUJI: Counsel, proceed.

11 MS RENTON:

12 Q. Witness, did anyone speak at the big Kapseret meeting?

13 A. Could you please explain your question further?

14 Q. Talking about the big meeting in Kapseret, were there any
15 speeches? Did anyone speak to the people that were there?

16 A. Yes.

17 Q. Who spoke, who made speeches?

18 A. I was told that some people spoke at that meeting. They had come
19 in a group. You see, in Kenya, when a president is to be selected,
20 Members of Parliament are also selected as well as councillors. So, you
21 see, when a meeting is organised by a dignitary, you would have the
22 councillors and the parliamentarians attending and each of them would
23 speak. So several persons spoke at the rally, but I don't know their
24 names specifically.

25 Q. Do you have any details about what specifically was said at any

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1 point during this meeting?

2 A. As I have already stated, they talked about the elections
3 campaign. However, the most important thing is that they wanted the
4 Kikuyu to leave. That was the aim or the purpose of those meetings, and
5 I also said that I have had a previous experience in this matter, so
6 that's why I said a short while ago that they were cooking something.

7 Q. Again focusing on the big meeting in Kapseret specifically, how
8 were the Kikuyu meant to leave?

9 A. Well, for further information, I can say that they wanted the
10 Kikuyu to go to Nyiri where Kibaki comes from. You see, the Kikuyu vote
11 for Kibaki.

12 PRESIDING JUDGE EBOE-OSUJI: Counsel, one second.

13 Witness, we are still talking about the big meeting in Kapseret
14 forest. Do you know of anything in particular that was said at that
15 meeting that led you to believe that the purpose of the meeting also
16 entailed the idea that Kikuyus must leave? I'm interested whether you
17 know if any words in particular were said at the meeting that led you to
18 believe that the idea was to have Kikuyus out of the area.

19 THE WITNESS: (Interpretation) Yes.

20 PRESIDING JUDGE EBOE-OSUJI: What were those words that were said
21 that led you to that belief?

22 THE WITNESS: (Interpretation) Some things were said, for example,
23 like they do not want any sangara at the meeting. They also said that
24 they did not want any madoadoa at the meeting. And that was not new in
25 any event because these are things that had been said over and over

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1 again, and that is how I got to know that something was going to happen.

2 PRESIDING JUDGE EBOE-OSUJI: When they said they did not want any
3 sangara or that they did not want any madoadoa, did they mean they did
4 not want any sangara or madoadoa at the meeting, the big meeting in
5 Kapseret forest, or did they mean something else by that?

6 THE WITNESS: (Interpretation) When they said that they did not
7 want any sangara, it did not mean that they did not want sangara at the
8 meeting. They were saying to those who were at that meeting that they
9 should know that the sangara were not to be found again in the
10 Rift Valley region, that they did not want the madoadoa to remain in that
11 Rift Valley region. So the idea behind the war was to drive out the
12 sangara.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Renton?

14 MS RENTON:

15 Q. Witness, what does "sangara" mean? Can you explain that word to
16 us?

17 A. "Sangara" means a bad weed, bad weed which grows deep roots and
18 invades the whole area. So to weed out sangara, you need to work very
19 hard. And if you want further information, I can tell you that when a
20 Kikuyu buys a piece of land, that piece of land becomes very important
21 for the Kikuyu. So they were saying that if Kikuyus bought land in their
22 area, the Kikuyus would not leave the area easily because they will dig
23 in their roots and remain on their land forever. That is why reference
24 was made to sangara. Sangara, a bad weed which once planted is very
25 difficult to uproot. So anyone who sold land would get money for it but

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1 would lose their land. So if anybody took my money and called me sangara
2 and wanted to take back my land and burn my house and take my cows,
3 leaving me with nothing, that would be exactly the situation because that
4 is how the word was used.

5 MR FAAL: Mr President, just a question for guidance, and the
6 reason I ask is to what extent should it be allowed for the witness to go
7 way extensively out of what is contained in the statement, because none
8 of this that is being testified about is in the statement. We had no
9 notice of this. Of course, we can raise it in cross-examination, but the
10 question is to what extent would the Chamber allow a witness to go way
11 out of what is contained in the statements, especially on issues that are
12 at the heart of this case and are disputed. Your guidance would be quite
13 useful in this regard. Thank you.

14 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, any response?

15 MS RENTON: Your Honours, I'm certainly intending to elicit
16 information on the basis of the statement with my questions. Obviously,
17 I can't help if the witness offers more information, and I certainly
18 don't think it's necessarily unexpected, given the subject matter.

19 PRESIDING JUDGE EBOE-OSUJI: Indeed, Mr Faal, I think that if
20 there is a basis, a sufficient springboard in the statement, it's a
21 little too unnatural to expect that the witness must be cut off from
22 following a certain line of information, giving it. Your concern will,
23 of course, be if a completely new subject area is opened up by the
24 questioner or by the Prosecutor, subject matter that is not within
25 reasonable contemplation of the statement. Is that your argument?

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1 MR FAAL: That is indeed my argument, Mr President. But more
2 fundamentally also is that we are even at a loss now as to whether the
3 witness is testifying about his own views or is testifying about a
4 meeting to which he was not present but was told about it. And from the
5 information that is available, what was told to him was so limited that
6 all these things that is being testified about is so completely new, but
7 this is something we can clear up in cross-examination. I was just
8 wondering whether your Honours would permit -- I mean -- the testimony to
9 be extended way out of what is reasonably to be expected in view of the
10 statement, but we leave it in your capable hands, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't we leave it at
12 that? You've indicated your concern. It's basically your -- I see this
13 as a warning, or rather a word of caution for the Prosecutor as well. We
14 can proceed.

15 MS RENTON:

16 Q. Witness, you've talked about the reference to sangara at the big
17 Kapseret meeting, and you said so the idea behind the war was to drive
18 out the sangara. How were the sangara going to be driven out?

19 A. To sum up, the sangara were driven out because I also lost my
20 property. I lost my cows, and my house was burned down. So how could
21 I stay in a location where I no longer owned a thing?

22 Q. I understand, witness, that you're talking about what happened to
23 you. At the meeting, was it discussed how the sangara would be driven
24 out?

25 MR FAAL: That is obviously a leading question. She can ask what

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1 was discussed at the meeting but to suggest to him that the sangara may
2 or may not have been discussed is definitely leading question.

3 PRESIDING JUDGE EBOE-OSUJI: Any response, Ms Renton?

4 MS RENTON: Your Honours, I understand from the witness's
5 testimony that he's already talked about the sangara having to leave at
6 that meeting, so my question is directly on the basis of that how were
7 they to be driven out.

8 MR FAAL: Could we be guided as -- on the section of the
9 transcript which says that the sangara was discussed at the meeting?

10 MS RENTON: I believe it's page 71.

11 PRESIDING JUDGE EBOE-OSUJI: The witness did testify to that.

12 MR FAAL: All right, Mr President.

13 PRESIDING JUDGE EBOE-OSUJI: So the objection is overruled.

14 Ms Renton, proceed.

15 MS RENTON:

16 Q. Mr Witness, I'll repeat my question. At the big meeting in
17 Kapseret, was it discussed how the sangara would be driven out?

18 A. Yes.

19 Q. How was that to happen?

20 A. As I just said previously, they described us as sangara, and I
21 shall repeat my testimony. I lost all my possessions. My house was
22 burned down. I was not the only one in that position. When I talk of
23 sangaras that were due to be driven out, well, in my personal experience
24 I knew that the sangara were due to be driven out because at that moment
25 in time there was no help coming from the outside. I'm talking about

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1 what I personally saw. My house was burned down, and there were police
2 officers present. They were observing. And no Kikuyu could arm
3 themselves, and were they to dare to do so, they would be killed. The
4 Nandis were armed with machetes, bows, arrows, and even if the police
5 were present, they couldn't request anything. Well, if I saw people who
6 were killed and cut into pieces in the presence of the police, that is
7 why I'm saying this to the Bench. So why would the sangara not have been
8 driven out? What else can I say to you? And were the sangara not to be
9 driven out, well, how would -- how would they then have had -- have been
10 uprooted from the area?

11 Q. Mr Witness, if I can ask you to listen to my question very
12 carefully. I understand that your experience is that the sangara were
13 ultimately uprooted from the area. My question is whether at the meeting
14 it was discussed how to do this.

15 A. I believe that I told the Bench that -- well, I gave an example
16 with reference to the sangara saying that they were the Kikuyu. I do not
17 know quite what I'm supposed to say in this regard, you know, with
18 reference to the sangara.

19 PRESIDING JUDGE EBOE-OSUJI: The information that the lawyer is
20 after, what she wants to find out from you, is whether, from the
21 information that came to you, whether any words were said at the big
22 meeting in Kapseret forest, words about methods that would be used in
23 uprooting the sangara from the Rift Valley. Were there any particular
24 words that were said that would suggest the method of removing the
25 sangara? Do you know? If you don't know, you can also tell us that. Do

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1 you remember my advice to you in the beginning, only tell us what you
2 know. Thank you.

3 THE WITNESS: (Interpretation) Yes.

4 PRESIDING JUDGE EBOE-OSUJI: Do you know if any words were said
5 in the big meeting that suggested the method of driving out the sangara?

6 THE WITNESS: (Interpretation) Yes. The strategy used to drive
7 the sangara out of the Rift Valley area was quite obvious. At that
8 moment in time, people were saying that the whites had to leave, and
9 before the conflict itself, there were people making arms, such as bows
10 and arrows, they were making weapons, and from 1992 until 2007, the only
11 way to drive the sangara out was to bring on a war. I believe that that
12 is what I meant to say to the Bench. That is what I intended to tell
13 them so that they could understand the situation.

14 PRESIDING JUDGE EBOE-OSUJI: I think we've already established
15 that mzungu, that is what the witness was saying, is something different
16 from, it need not be "white," it could also be "stranger."

17 But, witness, is it the -- let me tell you where the difficulty
18 is so maybe that will give you an idea. You told us that from your
19 experience in 1992, during the 1992 elections, there were -- there was
20 violence, and you were a victim of that violence. And here we are also
21 discussing events in 2007. At the end of the day, we have to think, the
22 Judges here, will have to think whether what happened in 2007 was
23 something that happened without somebody saying, "Go and do this." In
24 other words, whether people who knew what happened in 1992 had
25 automatically started doing the same thing in 2007 without being told to

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1 do that. Or whether, in 2007, somebody had gone about saying to people,
2 "Yes, go ahead and uproot the sangara."

3 Now, we want you to tell us the truth and only the truth. If it
4 is something you know, you can tell us that. If it is something that you
5 do not know, you do not have firsthand information about, you can tell us
6 you do not know. But you are speaking only from your own experience. It
7 is for that reason that we want to know, and the lawyer is asking you in
8 particular, whether any words had been said at the big meeting in
9 Kapseret about methods that would be used in driving out the sangara. If
10 you have no information on that, you can tell us, too. Do you
11 understand?

12 THE WITNESS: (Interpretation) I have nothing further to add,
13 apart from what I've already said.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you. And that helps us.

15 Ms Renton, please proceed.

16 MS RENTON: Thank you, your Honour.

17 Q. Witness, I'll now like to ask you some questions about the time
18 of the announcement of the election results. It's undisputed that the
19 result of the presidential election was announced on 30 December 2007.
20 When did you hear the results of the presidential election?

21 A. It was in the evening.

22 Q. And Kibaki was declared the winner; is that correct?

23 A. Yes, indeed.

24 Q. What was the reaction to these announcements in your area?

25 A. When people heard that Kibaki had won the elections, I'm talking

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1 here about the Kikuyu, well, they started to celebrate. Some beat drums
2 and there were great festivities all over, everywhere. The Kikuyu farms
3 and farms in Oweti (* phon), et cetera, and people living on those farms
4 started to celebrate. But with regard to what I saw, where I was, well,
5 after the celebrations, a little while later, the Nandi fought back.
6 They did not celebrate.

7 I would like to make a distinction between the cries that they
8 made and celebrations as such. The shouts or cries were very loud, and
9 men came out. There were approximately (Redacted). And we went together
10 to a hill. I left the children behind at home and I closed the gate. We
11 heard people shouting. There was fire and they started to burn the
12 houses down. We understood that the situation had worsened and each and
13 every one of us took the decision to go home, and we opened our doors.
14 It was at night time. And then the situation worsened again. There were
15 fires burning everywhere, and that is how it unfolded throughout the
16 night. From approximately 7.00 until 1400 hours, the situation remained
17 the same.

18 MS RENTON: Your Honours if I could just ask one or two questions
19 in private session, please.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We will go briefly into
21 private session.

22 (Private session at 3.49 p.m.)

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

25 MS RENTON:

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1 Q. Witness, if I could just ask you a specific question about what
2 you've just told us, can you confirm where exactly you were at this point
3 in time?

4 A. Yes.

5 Q. Where were you?

6 (Redacted)

7 Q. And where were you when the Nandi fought back?

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Witness, can I ask you -- you said that when the shouts or cries
20 were very loud, men came out, there were approximately (Redacted). Who
21 were the other people with you at that time?

22 (Redacted)

23 MS RENTON: Your Honours, I think we can move back into public
24 session.

25 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.

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1 (Open session at 3.53 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Ms Renton, proceed please.

6 MS RENTON:

7 Q. Witness, who was making the shouts or cries that you heard on
8 that evening?

9 A. It was the Nandi.

10 Q. Can you describe the shout or the cry, for the people inside the
11 Court? Thank you.

12 A. Yes.

13 Q. What did it sound like?

14 A. Would you like me to imitate the shouts or would you like me to
15 give you the meaning behind those shouts?

16 Q. Both. Could you start by imitating the shout?

17 A. Yes.

18 Q. Please go ahead.

19 A. "Whoooo, whoooo."

20 MS RENTON: I don't know if it's necessary to describe that for
21 the record, is it?

22 PRESIDING JUDGE EBOE-OSUJI: Yes, you have to, Counsel.

23 MS RENTON: I guess it's whooping sound.

24 PRESIDING JUDGE EBOE-OSUJI: We heard him say "whoooo," something
25 like that, and that's -- it can be represented on the record by a series

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1 of Os, I imagine. If we do four or five of them, that would do.

2 MS RENTON: I think that's sufficient, your Honour. Thank you.

3 Q. And, Witness, what was the meaning of this sound?

4 A. For an African, such shouts -- well, whenever an African has a
5 problem, he will make such sounds, and if an individual nearby realises
6 this, then he can come to his assistance. I said that they had taken the
7 decision to shout in such a manner because they were ready, and they
8 started shouting whilst they came towards our area, and when they started
9 to burn our houses down, and if anybody else could help them or come to
10 their assistance, then they would go to those people, but then they would
11 be -- they would run the risk of being killed.

12 MS RENTON: Your Honour, I would just like to ask one question in
13 private session, with your leave.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

15 But, Witness, what you're saying is that the sound or the cry you
16 made was not just a random noise but it was meant to communicate, it was
17 meant to -- it was a call, a cry for help, is that it?

18 THE WITNESS: (Interpretation) I said that the shouts that they
19 uttered -- well, they were shouting with a view to calling their brothers
20 to come and help them. So if a Kikuyu would then go out in order to
21 assist them, they would come up against the enemy. So they were
22 shouting out in a way such as to say, "Come, come out, and then we'll
23 kill you." This is the enemy.

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

25 We will go into private session, Ms Renton.

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1 (Private session at 3.58 p.m.)

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

4 MS RENTON:

5 Q. Witness, where was the sound coming from, from what direction, or
6 from what area?

7 A. The cries or shouts were coming from Kapteldon. From Kapteldon,
8 located at the frontier between Yamumbi and Kapteldon farm, and that is
9 where a river is to be found that serves as a frontier between those two
10 farms. They arrived there, they arrived on the banks of the river, that
11 is close to Yamumbi, close to where we were, and that's when they started
12 to shout. They were divided into a number of groups. And as I said
13 previously, Yamumbi is a large locality, and they were speaking in their
14 language subsequent to which the group subdivided into a number of
15 subgroups. As I said earlier, Yamumbi is a large extensive locality, and
16 were a fire -- if a fire started on one side, then you see a fire also
17 starting on the other side. It was a plan. So one group was in charge
18 of burning one location whilst another group was in charge of burning a
19 location on the other side. Fire broke out very rapidly, and they
20 arrived at a specific time according to their plan, as if to say, "It's
21 time now," as if to say -- well, yes, Yamumbi does bear a number of
22 different names. And these names were given to the area by the
23 inhabitants. Yamumbi bears approximately ten different names.

24 MS RENTON: I notice the time. I'll be asking questions about
25 there issue for quite a while tomorrow. So perhaps we might break now.

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

2 (Open session at 4.02 p.m.)

3 MR FAAL: Mr President, whilst that is being done -- ah, sorry.

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

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

7 Mr Faal.

8 MR FAAL: Mr President, while that's being done can we kindly get
9 an indication from counsel opposite as to how much longer they intend to
10 take?

11 PRESIDING JUDGE EBOE-OSUJI: Yes, indeed, Counsel, I was going to
12 ask that question. We know we have to complete this testimony, including
13 cross-examination, by the end of the week.

14 MS RENTON: I will do my very, very best to finish by lunchtime
15 tomorrow. Unfortunately, it's gone a little slower than we had hoped and
16 we lost a little bit of time this morning, but I'll do my very best to
17 finish by lunchtime.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. If you kept the hearsays
19 to a minimum, that might assist.

20 We have come to the end of our proceedings for the day. We will
21 bring the blinds down and escort the witness from the stand and then the
22 court would adjourn.

23 (Closed session at 4.03 p.m.)

24 PRESIDING JUDGE EBOE-OSUJI: Not yet, not yet. Witness, we
25 will -- we are breaking for the day and then you will come back tomorrow

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1 at 9.30 in the morning so we can continue your – your
2 examination-in-chief. In the meantime, please do not discuss your
3 testimony with anybody overnight, right?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. You will now be escorted
6 from the courtroom. Court officer, please escort him.

7 (The witness stands down)

8 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

9 (The hearing ends in closed session at 4.05 p.m.)

10 RECLASSIFICATION REPORT

11 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
12 2013, and the email's instructions dated 16th January 2014, the version of the
13 transcript with its redactions becomes Public.

14