

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of the Prosecutor v. William Samoei Ruto  
5 and Joshua Arap Sang - ICC-01/09-01/11  
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccia and Judge Robert Fremr  
7 Trial Hearing  
8 Monday, 31 March 2014  
9 (The hearing starts in open session at 9.35 a.m.)  
10 THE COURT USHER: All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
14 Court officer, please call the case.  
15 THE COURT OFFICER: Thank you, Mr President.  
16 Situation in the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto  
17 and Joshua Arap Sang, ICC-01/09-01/11.  
18 And we're in open session, your Honours.  
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
20 Appearances.  
21 MR STEYNBERG: Good morning, your Honours. Appearances for the Prosecution:  
22 Anton Steynberg; with me Alice Zago; Lara Renton; Ms Grace Goh, our case manager; and  
23 Mr Peter Schotsman, our interpretation assistant.  
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
25 MR NDERITU: May it please the President, your Honours, Wilfred Nderitu, counsel for

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Victims, assisted by my learned colleague, Mr Orchlon Narantsetseg, and my case manager,  
2 Mr James Mawira. I thank you.

3 MR KIGEN-KATWA: For Mr Sang, myself Katwa-Kigen, Caroline Buisman, Logan  
4 Hambrick, Honor Lanham and Xin Rong. And Mr Sang is present, your Honours. Thank  
5 you.

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

7 MR FAAL: Mr President, your Honours, Mr William Ruto is today represented by David  
8 Hooper QC, Leigh Lawrie, Shalini Jayaraj, Grace Sullivan and myself, Essa Faal. Thank you.

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

10 We will now go into closed session -- into private session.

11 (Private session at 9.38 a.m.) Reclassified as open session

12 THE COURT OFFICER: We are in private session, your Honours.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 We will take submissions on the witness protection measures.

15 MS ZAGO: Mr President, your Honours, good morning. In the matters of protective  
16 measures, the Prosecution rests upon its written submissions that were filed on 21 March 2014.  
17 For the record, the filing number is 1223.

18 The Prosecution has not received any information directly or indirectly through the  
19 VWU. That will require the Prosecution to amend or supplement its application;  
20 therefore, the measures requested in that application remain unaltered.

21 PRESIDING JUDGE EBOE-OSUJI: The VWU assessment indicates that the witness did not  
22 report any specific threat emanated from his co-operation with the Prosecution.

23 MS ZAGO: That is correct, your Honour. We have the same information with the  
24 exception of the information that was provided in our filing. I'm not sure we can say more  
25 than that in the presence of our learned friends from the other side, but there was an

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 additional element that was provided to your Honours' attention concerning some  
2 approaches in the past for this witness.

3 (Trial Chamber confers)

4 PRESIDING JUDGE EBOE-OSUJI: We will -- the Chamber will rise briefly and the  
5 Prosecution will join us in the Chambers meeting room back in the -- in the back of the  
6 courtroom just for a quick minute. It will be easier to do that than to go into -- reconvene  
7 into ex parte private session to deal with this in light of the 30 minutes logistical requirement  
8 to change tapes. The best thing to do, if you -- Mr Steynberg and your colleague can come in,  
9 let's -- just for a quick second. Thank you.

10 MS ZAGO: As the Court pleases.

11 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

12 THE COURT USHER: All rise.

13 (Recess taken at 9.41 a.m.)

14 (Upon resuming in open session at 9.48 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The meeting we had briefly in  
18 the back --

19 THE COURT OFFICER: I'm sorry. We're in open session, your Honours.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. So the meeting we had with the  
21 Prosecution team was the need to avoid an ex parte session in the courtroom, which would  
22 involve logistical extensions of time more or less to continue with the proceedings. And the  
23 subject matter discussed was the need for the Prosecution to reveal to the Defence certain  
24 incidents concerning this witness. And the Prosecution will now speak to that.

25 MS ZAGO: Thank you, your Honour. Might I seek your indulgence and clarification on

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 the way you intend to proceed? Would you -- would you like us to inform the Defence of  
2 the two incidents that were referred to in our filing?

3 PRESIDING JUDGE EBOE-OSUJI: Yes.

4 MS ZAGO: Very well.

5 PRESIDING JUDGE EBOE-OSUJI: We're in public session. So we'll go to private session.

6 (Private session at 9.49 a.m.) Reclassified as open session

7 THE COURT OFFICER: We're in private session, your Honours.

8 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, please proceed.

9 MS ZAGO: I refer to the Prosecution filing, application for in-court protective measures filed  
10 on 21 March 2014, paragraph 13. I will -- I will -- I will read the sentence that is currently  
11 redacted for the Defence, which is the second sentence, so third line from the top. He has  
12 not -- he, 508, has not been the subject of direct threats -- threat, sorry. But on (Redacted)  
13 2012, (Redacted)  
14 (Redacted)."

15 The paragraph then continues and the last sentence is known to the Defence. It has  
16 not been established whether this threat was in fact connected with his co-operation  
17 with the Prosecution.

18 Further on, paragraph 20 of the same filing, naturally, page 7, I will read the entire  
19 paragraph so that the Defence can follow:

20 "On 1 January 2014, (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted).

6 This is the information that your Honours instructed the Prosecution to communicate  
7 to the Defence and we are ready to answer additional questions or provide further  
8 informations if necessary. Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: Now, how does that information sit with the VWU's  
10 assessment that the witness did not report any specific threat emanated from his co-operation  
11 with the Prosecution?

12 MS ZAGO: To the Prosecution's knowledge, this information - the last  
13 information - (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted).

19 PRESIDING JUDGE EBOE-OSUJI: What about the (Redacted)?

20 MS ZAGO: Again, it would be a speculation on my side on whether the VWU would have  
21 inquired with the witness specifically about this incident. However, the confidential ex parte  
22 version of the filing containing the information that was in possession of the Prosecutor was  
23 notified to the Victims and Witnesses Unit. Whether they used that information to probe the  
24 witness or inquire with the witness during their assessment, I'm afraid I cannot assist the  
25 Chamber in that matter. Thank you.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 MR FAAL: Mr President, thanks for giving me the floor. We have been informed of a lot of  
2 these incidents that the Prosecution indicated in their filing, and we are happy to be given  
3 further information this morning as to the so-called incident that happened (Redacted).

4 (Redacted) We as the Defence would encourage --

5 PRESIDING JUDGE EBOE-OSUJI: So are you saying all this is no surprise to you?

6 MR FAAL: No, not at all, in the sense that we had been informed of this by the -- by the  
7 Prosecution --

8 PRESIDING JUDGE EBOE-OSUJI: I'm not sure I understand your answer to my question.

9 MR FAAL: Mr President, we are not surprised by this in broad terms simply because we  
10 have received disclosure from the Prosecution, and the Prosecution filing also indicates to  
11 some extent what events relate to this particular witness.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 I would and this Defence team would encourage the Prosecution to investigate these  
17 things thoroughly. We would wish them to investigate these things thoroughly.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 So -- but be that as it may, we want all witnesses to come before this Court and testify,  
24 we have always said that, and if it helps for this particular witness, we suggest that  
25 the measures recommended by VWU be implemented -- be granted by the Chamber.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 And we would -- in fact with regards to other witnesses this morning, we have made  
2 a filing proposing measures, suggesting measures that would help witnesses to come  
3 and testify, and this just shows that we want witnesses to come and testify.

4 Thank you, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Mr Kigen-Katwa?

7 MR KIGEN-KATWA: Mr President, I propose that my colleague, Caroline, does address the  
8 Court on that issue.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

10 MS BUISMAN: Good morning, Mr President, your Honours.

11 Thank you, Mr President, for making the scrutiny just now, because when I was  
12 looking at the report of the VWU and the filing of the Prosecution, which is 1233, we  
13 had the same reaction; a bit surprised to read in the report of the VWU not only that  
14 the witness did not report any specific threat that emanated from the co-operation  
15 with the Prosecution, but also for the first time we read this in the report from the  
16 VWU, it refers to the witness's subjective fears and they still ask for the protective  
17 measures as a precautionary measure. So this is the least -- the report at least  
18 demands, we submit, the protective measures sought.

19 And then looking at the filing, it is somewhat surprising that incidents of that nature  
20 would not be communicated to the VWU, or if the VWU has received information in  
21 sufficient detail that it still comes -- reaches that conclusion.

22 Mr President, this is a conclusion that was reached on 28 March and this is the VWU.  
23 So we suggest that this is what you should go with and, on the basis of this report, we  
24 suggest that this application should be denied.

25 We would make one further application looking at what we've just heard from the

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Prosecution about (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 So we are asking the same as -- we're joining the Ruto Defence request that the  
7 Prosecution investigate these allegations and, on the basis of what we have, we  
8 request that the application be denied.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu?

10 MR NDERITU: Thank you, Mr President, your Honours.

11 First and foremost, I would wish to say that I would associate myself with the  
12 submissions of the Prosecution.

13 I know it's no easy matter, particularly when there have been issues raised as to  
14 whether for example (Redacted) but the position that I  
15 would take in the circumstances is that if we are to err, we should err on the side of  
16 caution. And I think that the same would go for the issue relating to (Redacted)  
17 and the question as to whether this has been reported to VWU and why it does not  
18 feature today.

19 That is all I would say. Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, any response -- reply, rather, from you?

21 MS ZAGO: Very briefly, thank you, your Honour.

22 We just wanted to clarify again that all information that we receive that relates to  
23 witness protection is generally communicated to the VWU. What the VWU does  
24 with the information that the Prosecution provides them with is beyond my remit, but  
25 beyond the issue of (Redacted) we, the Prosecution, wishes to emphasise that we have

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 seen and the Defence through our different filings for in-court protective measures,  
2 this being the fifth, has been appraised and informed of a general campaign in Kenya  
3 to put pressure on witnesses not to appear, or to pressure them in one or the other  
4 direction.

5 So this information about the threat, while it dates back to 2012, we cannot completely  
6 exclude that might fall within the pattern of that pressure. However, I should be  
7 careful and refer to our application indicating that the Prosecution has not been -- in  
8 the specific instance of (Redacted) the Prosecution has not been in a position to  
9 confirm whether or not it was connected with the witness providing information to  
10 the Prosecution (Redacted).

11 These are my submissions. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: But that notwithstanding, (Redacted)  
13 (Redacted)

14 connection to the fact that this witness is a witness in an ICC case?

15 MS ZAGO: Well, chronologically (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: What would (Redacted), forgetting the chronology  
20 of it?

21 MS ZAGO: (Redacted)

22 (Redacted)

23 I would -- I would speculate again whether (Redacted) is related to his co-operation  
24 with us or any other incident in the region. Thank you.

25 (Trial Chamber confers)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: The Chamber will issue the decision now and we will  
2 issue the decision in private session.

3 The Chamber received a request on 21 March 2014, Prosecution filing 1223, requesting  
4 protective measures for this witness, 509, in the manner of image and voice distortion  
5 during testimony, assignment of pseudonym and testimonies in private session as  
6 necessary for purposes of avoidance of disclosure of identifying information or  
7 evidence.

8 On 28 March 2014, the VWU recommended that those measures be granted.

9 The Chamber has now received oral submissions of all the parties. In particular, the  
10 Chamber notes the position of the Ruto Defence indicating that much of what the  
11 Chamber directed the Prosecutor to disclose inter partes was already known to them.

12 The Ruto Defence proposes, without prejudice of course, to the merits that, perhaps out of  
13 avoidance of -- rather abundance, abundance of caution, the measures by the Prosecution be  
14 granted.

15 The Chamber has noted the variance, though we advisedly use the word "variance"  
16 and not "contradiction," the variance between the information provided by the  
17 Prosecutor and the VWU as regards the threats indicated to which Ms Zago spoke on  
18 the direction of the Chamber.

19 The Chamber has also heard the submissions of Mr Nderitu, counsel for victims, who  
20 again urged that, in spite of the possibility of the variances indicated, the  
21 circumstances here are such that it is wiser to err on the side of caution.

22 In light of all these submissions received and all the information received, including  
23 the filings and the recommendation of the VWU, the Chamber will and does grant the  
24 measures as requested in the manner of the use of image and voice distortion  
25 technology as normal, the use of the pseudonym already assigned, and there will be

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 sessions as necessary in private session, testimony as necessary in private session with  
2 a view to avoiding revelation of identifying information to the public.

3 That is the ruling of the Chamber.

4 MS ZAGO: As the Court pleases.

5 PRESIDING JUDGE EBOE-OSUJI: We will now bring down the blinds and bring in the  
6 witness.

7 (Closed session at 10.12 a.m.) Reclassified as open session

8 THE COURT OFFICER: We're in closed session, your Honours.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE EBOE-OSUJI: We will go to public session now.

11 (Open session at 10.13 a.m.)

12 THE COURT OFFICER: We're in open session now.

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

14 Court officer please administer the oath or solemn declaration to the witness.

15 WITNESS: KEN-OTP-P-0508

16 (The witness speaks Swahili)

17 THE WITNESS: (Interpretation) I solemnly declare that I shall tell the truth, the whole  
18 truth and nothing but the truth.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much and welcome to the courtroom. I  
20 always tell witnesses welcome, and I also tell them that telling them welcome is not intended  
21 to make them feel like strangers, because this is your courtroom and we want you to feel  
22 comfortable during your testimony. And we thank you again for joining us in our search for  
23 the truth in this matter.

24 The way we search for the truth is through asking witnesses questions, and most of  
25 the questions are asked by the lawyers. We have the Prosecution lawyers sitting

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 over there. They will begin asking you questions in their examination-in-chief.  
2 When they finish asking you questions, lawyers for Mr Ruto and Mr Sang, sitting on  
3 this side of the courtroom, will take their turns asking you questions in  
4 cross-examination.  
5 The lawyer for the Victims, Mr Nderitu, may also have to ask you questions if we  
6 grant him permission to ask you questions. If he does, he will do that after the  
7 Prosecution has finished asking you questions.  
8 So it's all about questions, and the questions that are asked of you sometimes can be  
9 irritating, even questions asked by the lawyer who called you to come and testify.  
10 You may get a sense that they are asking you repeatedly the same information you  
11 may have already given to them in the past before you came into the courtroom. We  
12 don't have that information on the record on this case. You gave them before. So  
13 they will ask you some questions again.  
14 Please listen carefully and understand the question anyone is asking you, be it the lawyer for  
15 the Prosecution or the lawyer for the Victims, or the lawyer for the defendants in this case.  
16 Please listen carefully to the question, understand it and then answer it as briefly as you can.  
17 When you feel a need to ask them to repeat the question because you've not understood it, it  
18 is entirely normal that maybe they didn't ask the question properly or maybe you had a flight  
19 of thought and you missed a word or two there, please feel comfortable asking them to repeat  
20 themselves so you can understand the question before you answer it.  
21 Also, if you have forgotten any -- something you already knew in the past, do not be  
22 afraid to say you do not remember. Again, that is part of being human. Listen  
23 carefully, understand the question before you answer.  
24 If in the course of your testimony you feel a need to correct information you already  
25 gave, again, feel free to do that. Say you gave an answer and maybe an hour later

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 something occurred to you, you feel a need to correct, please feel comfortable telling  
2 us that you need to correct some information you already gave.  
3 Do not worry too much when the lawyers for the Defence are cross-examining you  
4 and you feel that maybe the question being asked of you is unfair. It is not for you to  
5 refuse to answer questions because you believe the question is unfair to you. We are  
6 here as the Judges. It is part of our job to ensure that you are not being asked  
7 questions unfairly. So until we direct you, do not answer a question, please do your  
8 best to answer it briefly.  
9 Now, when you answer questions it's important again to make sure that the answer  
10 you are giving to the question is an answer that is directed to the question asked of  
11 you and not just what you want to talk about that may not have been asked of you.  
12 It's important for you to remember that rule. Always respond to the questions. It  
13 helps us to have a clean record of the proceedings and also to keep the proceedings  
14 short.  
15 But another important reason why it's important for you to only answer the question that has  
16 been asked of you is because of your own protection. We have granted the request that your  
17 real name not be used for your testimony, so you have pseudonym Witness 508.  
18 Your voice is distorted so that members of the public who are listening directly will  
19 not recognise your voice. Your image has also been distorted.  
20 Now, when you answer a question and then you start adding information that the lawyer has  
21 not asked of you, there is a risk that you may defeat all that purpose, all that protection  
22 measure by giving information that the lawyer didn't ask of you, that the lawyer knows not to  
23 ask of you, information that may identify who you are. That's why -- one of the reasons why  
24 it is important that you listen carefully and answer only the questions that the lawyer has  
25 asked of you.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 One more thing, logistics, that's how the courtroom works. In the courtroom we  
2 have people who are helping to make sure that what you say is recorded on the  
3 transcript. We have our interpreters who are up there. If you look up you will see  
4 them up there. Can you see where I'm looking, where I'm pointing? All right.  
5 Yes, interpreters are up there and on this side we have the court reporters and also  
6 some interpreters as well. They cannot hear you directly. They can only hear you  
7 through the microphone.  
8 So it's also important for us to help them do their work by making sure that only one  
9 person is speaking at one time. So if the lawyer is asking you a question, wait for the  
10 lawyer to finish the question before you start answering. Even if you already know  
11 the answer to the question, wait for her to finish her question and then give a little  
12 pause. You can count in your mind up to five seconds, count up to five in your  
13 mind, before you start answering, that makes sure that there is no one who is  
14 bumping into one another on the microphone to make it more difficult for the  
15 interpreters and court reporters to hear your testimony.  
16 If you'll observe all these rules, your testimony would have been very helpful to us in  
17 the end, but I will be reminding you from time to time. Now, before I hand over to  
18 Ms Zago, who will ask you questions, there is one more thing. I spoke earlier about  
19 your protective -- the need to protect your identity. If you look in front of you, there  
20 is a little device there, some contraption. Can you look towards your right, after the  
21 microphone, there's something that's lit up red. Can somebody point it out to him?  
22 Do you see the button that is now lit up red?  
23 All right. Thank you. It is now red. The reason why it is red is because we are in  
24 the public session. It means members of the public are hearing you. There may be  
25 times when we will need to discuss information where you need to give us your real

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 name or names of your family members. If we need that information, then we will  
2 go into private session, and that button will turn to green.  
3 So when it is green, it means it is safe for you to give the Court information that  
4 identifies who you are. So always keep an eye on the button and watch what  
5 information you give us.  
6 Now, when we are in the public session and the button is lit up red, we do not want  
7 you giving us information about your real name or the identities of people close to  
8 you, like your family members or very close friends. We also do not want you to tell  
9 us stories that are very unique that someone listening to you outside can easily know  
10 that it is you who is testifying, because there are not too many people who would  
11 have been in a position to know what you are now telling the Court at that time.  
12 That sort of information can identify you, not always, but it has the danger of doing  
13 that. It does not mean that we do not want such information. We do, but if we do  
14 want such information then we will go into private session and the button will be lit  
15 up green.  
16 Try and keep all this in mind if you can, but we will be, all of us here, myself, the lawyers, we  
17 will be reminding you from time to time. And I thank you again for coming.  
18 Ms Zago.  
19 MS ZAGO: Thank you, Mr President, your Honours. Might I address you in terms of how  
20 the Prosecution intends to proceed briefly. We can do that in public session, but we are  
21 seeking your guidance with respect to seeking certain clarifications on the witness's  
22 background. The way we intended to proceed is to have the witness review and confirm  
23 whether or not the information contained in the CV personal background that is part of the  
24 personal history sheet, page 3, should have been distributed to your Honours, the parties and  
25 participants. And I understand the witness might have a copy as well.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

- 1 The proposal would be for the witness to review the content of his CV and personal  
2 background. And I should ask that the Defence for Mr Ruto and also for Mr Sang have  
3 indicated they do not intend to object to the content of the CV as presented in this document.  
4 And then I will proceed with additional background questions.  
5 So we could separate the first part, having the witness confirm the information in the personal  
6 background information in the PIS in public session and then proceed, with your leave, to  
7 private session for an additional set of questions.  
8 It shouldn't take long, the private section -- session part shouldn't take more than five  
9 to ten minutes maximum. We could do both also in private session in case the  
10 witness may wish to amend or provide additional information that is not contained in  
11 the CV. And that information may indeed -- if provided in public session, may  
12 indeed reveal the identity of the witness.  
13 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't we begin with the earlier measure,  
14 which is how we've done it in the past. So if the witness reviews page 3 of the PIS and  
15 confirms that the information is accurate, then we'll know that for the record, and then go into  
16 private session for any additional information you may have, including the witness's own  
17 indication of correction. Can we do it that way?  
18 MS ZAGO: I'm guided. Thank you very much.  
19 QUESTIONED BY MS ZAGO:  
20 Q. Mr Witness, good morning.  
21 A. (Speaks English) Good morning.  
22 Q. We have met briefly last week during a witness preparation session with Ms Renton,  
23 myself and an OTP translator -- pardon, interpreter. Do you recall that?  
24 A. (Interpretation) Yes, I remember.  
25 Q. What I would like now you to do is to have a look at the document that is in front of you.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 I understand you have a document in front of you that is entitled personal -- personal  
2 information CV, and you can find it at page 3 of that document. Can you see it?

3 A. Yes, I've found it.

4 Q. Now, I'd like you to take a minute, review the content and tell the Court whether the  
5 information that is listed in the document is true and accurate. Please be mindful that we are  
6 in public session, so please do not provide any additional information that may identify you.  
7 Thank you.

8 A. Everything that is written here is correct.

9 Q. Thank you, Mr Witness.

10 MS ZAGO: Mr President, might I seek your indulgence and go into private session, please?

11 PRESIDING JUDGE EBOE-OSUJI: Private session then.

12 MR FAAL: Mr President, while we are shifting into private session, I just wish to indicate  
13 that it seems to us that the witness is sufficiently proficient in English. Could your Honour  
14 kindly inquire from the witness whether in fact he would be comfortable testifying in English,  
15 because that would save a lot of time. But of course, if he intends to speak in Kiswahili we  
16 have no objection. I just was -- wished to make this observation. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Private session.

18 (Private session at 10.32 a.m.) Reclassified as open session

19 THE COURT OFFICER: We're in private session, your Honours.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Zago, that is a very useful indication

21 that Mr Faal had given. If it is -- we see that on the PIS, the witness does indeed indicate

22 English as one of his languages. It might be more efficient if the witness can testify in

23 English if he is able to, notwithstanding that he may also prefer to speak Swahili, but it will be

24 more efficient for him to testify in English. The risk we run of course is when everyone is

25 speaking English, the interpreters are the ones who suffer in the end because of the risk of

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 overlapping speakers, but we will try and control that. But at least we will eliminate the  
2 questions about whether one word here in Swahili and one word there has been interpreted  
3 correctly or not.

4 MS ZAGO: Your Honour, the witness indeed has confirmed on several occasions that he  
5 commands the English language. However, the witness was asked again which language  
6 would he prefer to testify in during his testimony during the preparation session last week,  
7 and the witness indicated that he would prefer still, notwithstanding his knowledge and  
8 command of the witness -- of the English language, to testify in Swahili. He indicated that  
9 indeed he has received education in English, (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, the Chamber's preference would be  
11 that you testify in English. Let's give it a try. Let's proceed with that. And if there is any  
12 difficulty from time to time, if there is a need for you to -- if you wish to speak more clearly,  
13 express yourself more clearly in Swahili, we can accommodate that. The reason why -- we  
14 understand the anxiety of witnesses who come to court. They want to testify in the language  
15 that they're most comfortable in. That is a natural desire and we understand that, but we are  
16 also in a place where there is an interpretation that occurs. It takes more time to have  
17 interpretation done. There is also a risk of an interpreter may use a certain word, and then  
18 lawyers will start arguing whether that's what is meant and all that. So in order to avoid that  
19 sort of development and delay, it is better that we speak in English.

20 Let's give it a try. Do you understand? And see how it goes.

21 THE WITNESS: (Interpretation) I'm following.

22 (From this point onwards the witness speaks in English)

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Ms Zago, continue.

25 Please, again, all of us, we often forget, especially on my part when I'm concentrating on the

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 form of the question and the content of it and what it means, forget to tell parties and

2 witnesses to observe the pause. Let's try and do that.

3 Interpreters, do not feel shy reminding me. Not the lawyers, don't remind the

4 lawyers, but just remind me if the rules are being breached by anyone. Thank you.

5 MS ZAGO: Thank you, Mr President. I will be guided.

6 Q. Sir, good morning again.

7 A. Morning.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted).

12 (Redacted)

13 A. I was residing within Eldoret town (Redacted).

14 (Redacted)

15 (Redacted)

16 A.I lived in that place for a particular time, but in (Redacted) I moved from that place and I

17 went to stay in a place where up to now I'm staying.

18 Q. And what was the place where you moved in (Redacted)?

19 A. That place is called (Redacted) village. It's (Redacted)

20 (Redacted) as the names were used by those who were the first people to live in that area. But

21 these are (Redacted) village.

22 Q. And why did you move to (Redacted) village?

23 A. I moved to (Redacted) village because I bought a plot and I build houses. So I

24 moved there to live in my houses.

25 Q. Can I ask you to look again at the document that is in front of you, and please look at

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 page 2. Could you please tell me if you see (Redacted) listed in that document. It's

2 page 2.

3 A. Page 2. Yes, I can see.

4 Q. Now, the reason why I'm drawing you the attention to that page is that as soon as we  
5 resume public session, so we go into public session where people will be able to listen to your  
6 testimony, I'd like you whenever you need to refer to (Redacted) to use this document  
7 and refer to (Redacted) as "Location number 1." Is it fair?

8 A. Location number 1. Just a minute.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, if you look at the page where (Redacted)  
10 (Redacted) appears --

11 THE WITNESS: Yes, yes.

12 PRESIDING JUDGE EBOE-OSUJI: -- you see on the top of it --

13 THE WITNESS: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: -- "Locations"?

15 THE WITNESS: Yeah.

16 PRESIDING JUDGE EBOE-OSUJI: All right. And beneath you see "Persons"?

17 THE WITNESS: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: The other segment?

19 THE WITNESS: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: All right. The reason why lawyers do it this way is  
21 when we go into public session --

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: -- we do not want you mentioning the actual names like  
24 (Redacted) in certain contexts. It would be preferable for you to then say "Location  
25 number 1," so that members of the public don't know.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 THE WITNESS: Yes, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Yes. Or "Person number 1," or "Person number 8" as the  
3 case may be. Again, in certain contexts the lawyers and the Chamber would not want you to  
4 identify these sorts of information in public as they may easily identify who you are, all right?

5 THE WITNESS: Yes, your Honour. Yes, your Honour. Thank you.

6 MS ZAGO:

7 Q. Witness, we are advised that the French interpretation is struggling to follow up with  
8 you when you answer the questions without observing the pause that Mr President, your  
9 Honour, advised you to do. So please keep that in mind so that we have an accurate record  
10 also in French. Thank you.

11 Witness, my next question is could you please tell us within the geography of Kenya  
12 which province is (Redacted) located?

13 A. It's in Rift Valley Province.

14 PRESIDING JUDGE EBOE-OSUJI: All right. You have to -- when she finishes asking the  
15 question, Witness, try and observe a pause.

16 THE WITNESS: Okay.

17 PRESIDING JUDGE EBOE-OSUJI: Five seconds we say.

18 THE WITNESS: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Something like one, two, three, four, five in your mind  
20 before you start.

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MS ZAGO:

24 Q. And (Redacted), in which district or county in the Rift Valley is located?

25 A. (Redacted) village is located in (Redacted) District of Uasin Gishu County.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Q. And how far is (Redacted) from Eldoret in kilometres?

2 A. (Redacted) village is about (Redacted) kilometres from Eldoret town centre, (Redacted)  
3 (Redacted).

4 Q. How big was the farm that you bought in (Redacted)?

5 A. I bought a farm measuring half an acre.

6 Q. And the farm was it used for agricultural purposes only, or did it have built in  
7 structures as well?

8 A. The farm is meant for residential housing and kitchen farming.

9 PRESIDING JUDGE EBOE-OSUJI: What was the last use you indicated? Kitchen farming,  
10 was that it?

11 THE WITNESS: Yes. Kitchen farming means having a small shamba where you can plant  
12 vegetables. You can plant flowers, plants, of -- not of a larger scale, but only for domestic  
13 use.

14 MS ZAGO:

15 Q. You said that the farm was also meant for residential housing. How many  
16 buildings -- if there were more than one, how many buildings were in the land; in the farm?

17 A. I had my personal living house, (Redacted)  
18 (Redacted).

19 Q. You said some (Redacted)?

20 A. Yes.

21 Q. Can you specify how many (Redacted) were there?

22 A. I had one -- one land -- (Redacted)  
23 (Redacted)  
24 (Redacted)  
25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MS ZAGO: Mr President, I've concluded a set of questions that I wanted to elicit from the  
6 witness in private session. We might go into public session now. Thank you.

7 PRESIDING JUDGE EBOE-OSUJI: Witness, we will now be going to public session and the  
8 light you see is now green.

9 THE WITNESS: Yes, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: It will turn red.

11 Public session, please.

12 (Open session at 10.49 a.m.)

13 THE COURT OFFICER: We're in open session, your Honours.

14 MS ZAGO:

15 Q. Witness, I'd like you to remind once again that we are now in public session and so  
16 people will be able to listen to your testimony. So whenever you need to answer a question  
17 that implicates yourself, or any other identifying information, please refer to the document  
18 that was shown to you and that is in front of you right now. Do you understand?

19 A. Yes, I understand.

20 PRESIDING JUDGE EBOE-OSUJI: And also always remember to observe the pause. You  
21 were doing very well in private session. Continue in public.

22 THE WITNESS: I will do my best to do that, your Honour.

23 MS ZAGO:

24 Q. How many people lived in location number 1 in 2007?

25 A. About 3,000 people lived in that village during that time.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. And in 2007, what was the ethnic make-up of location number 1?

2 A. Then the ethnic make-up for location number 1 was three-quarters were -- three quarters  
3 were Kikuyus. The other quarter comprised different tribes.

4 Q. Can you specify these other ethnic groups that made up the one quarter, please?

5 A. The one quarter of the residents of this location number 1 were Luhyas -- Luhyas,  
6 Turkanas and Luos, plus a few Kalenjins.

7 Q. Based on your experience of having lived in location number 1 from 1994, in what terms  
8 did these ethnic groups co-exist? How would you describe their living side by side during  
9 this period?

10 A. During that period the existence between the different tribes was good. There was no  
11 hatred. Everybody lived together like a neighbour, helping one another.

12 Q. There is no dispute that in 2007 there was a presidential race and general elections in  
13 Kenya. When that electoral campaign started, how was the general atmosphere amongst the  
14 ethnic communities that you referred to? Was it still in good terms as you mentioned, or did  
15 it change at the beginning of the campaign?

16 A. It changed when the campaigns started. There were divisions. This one large ethnic  
17 community appeared to be put aside by the other communities.

18 Q. You said there were divisions.

19 A. Yes.

20 Q. Could you tell us what those divisions were about?

21 A. The divisions were about the political parties, these people we're supporting.

22 PRESIDING JUDGE EBOE-OSUJI: Witness, in your answer before the last, you said, "This  
23 one large ethnic community appeared to be put aside by the other communities." Can you  
24 briefly explain which was the one large ethnic community that appeared to have been put  
25 aside and who were the other communities that were putting it aside?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 THE WITNESS: The community being put aside is the -- was the Kikuyu community. It  
2 was being put aside by the other tribes because they were supporting a different political  
3 party from what the large community was supporting, the Kikuyu community was  
4 supporting, that is.

5 MS ZAGO:

6 Q. Please tell us which political parties, the communities, the two communities, or the  
7 different communities supported during this electoral campaign.

8 A. The Kikuyus supported the political party called PNU. The other tribes supported  
9 ODM.

10 Q. And can you explain to us what those divisions consisted of?

11 A. The divisions consisted of the fear and the belief that if the Kikuyu community voted for  
12 PNU the government would remain the same. There would be no changes. Who was  
13 elected would remain the very ones in power. And if people voted for ODM, there would be  
14 change in offices.

15 Q. Were you generally interested in politics in 2007?

16 A. I was not.

17 Q. Did you participate actively in the elections in 2007, sorry?

18 A. I did not participate in the undertakings. I only went and voted as an individual and  
19 went back home.

20 PRESIDING JUDGE EBOE-OSUJI: Please remember the pauses.

21 THE WITNESS: Sorry, your Honour. I will remember.

22 MS ZAGO:

23 Q. You referred to fear among the communities. In your experience during that period of  
24 the electoral campaign, have you seen or heard anything yourself that made you believe that  
25 people were indeed in fear or worried about the elections?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. People were worried about the elections because during the previous election, which  
2 was in 1997, the tribes clashed, some houses were burned, so people were fearing a recurrence  
3 of the same happening.

4 MS ZAGO: Your Honours, I see it is 11 o'clock and I still have a few questions on this topic,  
5 but we can break now for the morning break.

6 PRESIDING JUDGE EBOE-OSUJI: Yes, we will take our morning break now. Witness, we  
7 will be adjourning briefly for 30 minutes to take our morning break. And you will rejoin us  
8 at 11.30. The court officers will usher you out of the courtroom now and bring you back at  
9 11.30.

10 THE WITNESS: Okay, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Private -- public -- closed session, please, so the witness  
12 can be taken out.

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

14 THE COURT OFFICER: We're in closed session, your Honours.

15 (The witness stands down)

16 MR FAAL: Mr President, could I kindly ask -- get an indication from the Prosecution how  
17 long they think they will take with this witness? It's important for our disclosure. Thank  
18 you.

19 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

20 MS ZAGO: Yes. Previous indication that we have provided, including the last one on  
21 Friday, is that this examination, depending on the pace of the witness, will take  
22 approximately one-day-and-a-half. I see that now we -- that the witness is testifying in  
23 English and so we might go a little bit faster, but I think that it would be prudent to say that it  
24 will take one day and a half.

25 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it there for now. The Chamber

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

- 1 will rise.
- 2 THE COURT USHER: All rise.
- 3 (Recess taken at 11.02 a.m.)
- 4 (Upon resuming in open session at 11.37 a.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 THE COURT OFFICER: We're in open session, your Honours.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Ms Zago, please.
- 10 MS ZAGO: Thank you, Mr President.
- 11 Q. Witness, you said before that the Kikuyu -- the Kikuyus were put aside in 2007 during
- 12 the electoral campaign. Who and/or what was putting the Kikuyus aside?
- 13 A. The residents living around (Redacted).
- 14 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, proceed.
- 15 MS ZAGO:
- 16 Q. Which residents specifically living in that location?
- 17 PRESIDING JUDGE EBOE-OSUJI: Now, before we proceed, one second. Private session,
- 18 please.
- 19 (Private session at 11.38 a.m.) Reclassified as open session
- 20 THE COURT OFFICER: We're in private session, your Honours.
- 21 PRESIDING JUDGE EBOE-OSUJI: The direction to the -- court officer, the reference to
- 22 (Redacted) is to be redacted from the public session, from the public broadcast, delayed
- 23 public broadcast.
- 24 And, Witness, remember not to mention (Redacted). You will say "Location
- 25 number 1."

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 THE WITNESS: Yes, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Use locations for all the -- there are seven locations  
3 indicated. You see location 1 is (Redacted), location 2 (Redacted), 3 (Redacted)  
4 and so on. We will use them when we are -- we'll say location number 1, location number 2,  
5 3, and so on --

6 THE WITNESS: Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: -- when we're in the public session. Thanks.

8 We will now go back into public session

9 (Open session at 11.40 a.m.)

10 THE COURT OFFICER: We're in open session, your Honours.

11 MS ZAGO:

12 Q. Witness, I asked you a question before we went briefly in private session. Could you  
13 please specify which residents of location number 1 were putting aside the Kikuyus in that  
14 location?

15 A. These were Kalenjins, the Luhyas, the Turkanas and the Luos.

16 Q. And how were the Kikuyus put aside specifically? What does it mean that the Kikuyu  
17 were put aside? How did it translated into or in what?

18 A. These translated into these tribes I've mentioned considering the Kikuyus as their  
19 enemies, because they're not doing or they're not following the political parties the others are  
20 following.

21 Q. You also mentioned before that there were clashes between the ethnic communities in  
22 1997. Could you please specify which ethnic communities were clashing in 1997?

23 A. The Kalenjin and the Kikuyu tribes clashed in 1997.

24 Q. And going back to the 2007 electoral campaign, during that period, have you ever heard  
25 people expressing the fear of a recurrence of those clashes?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. During the year 2007-2008, during the political campaigns for the elections, people were  
2 fearing the recurrence of what had happened the previous election period of 1997.

3 Q. My question was: Have you ever witnessed instances in which people were expressing  
4 those fears during this period of the 2007 electoral campaign?

5 A. The fears the people could be noticed in the fact -- in the view that most other tribes,  
6 when it comes to the election periods, they pack their belongings and go back to their  
7 motherlands. The Kikuyus do not go anywhere. They remained there. But some Luhyas  
8 and some Luos packed their belongings and went back to their motherlands until the elections  
9 were over.

10 PRESIDING JUDGE EBOE-OSUJI: To what extent did you personally observe that manner  
11 of indicating the fear? Did you yourself observe that?

12 THE WITNESS: I observed that in that I saw people packing and going to -- back to their  
13 home, motherlands.

14 MS ZAGO:

15 Q. Where is the motherlands for the Kikuyus?

16 A. The motherland for Kikuyus is in Central Province. Central Province is a province  
17 within Kenya situated near Mount Kenya.

18 Q. What about the Luhyas and the Luos?

19 A. The Luhyas' motherlands are situated in Kakamega in Western Province, that is, and the  
20 Luos, their motherlands are situated in Nyanza Province.

21 Q. I'm just waiting for the transcripts to catch  
22 up in case we need spelling clarifications from the witness on the locations he just mentioned.

23 PRESIDING JUDGE EBOE-OSUJI: It's better to proceed and keep an eye on the transcript  
24 instead of waiting for the transcript. Sometimes these things happen. Okay.

25 MS ZAGO: I'm guided.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. Witness, there is no dispute that in the 2007 general elections Kenyans voted on 27  
2 December 2007. Where were you the day Kenyans casted their vote? And please use the  
3 PIS if necessary to answer.

4 A. I was in location number 1, and I was there during 1997 voting, and I also voted.

5 Q. Am I correct in understanding your answer that you voted at location number 1?

6 A. I live in location number 1. The voting centres are situated not far from location 1.

7 Q. What time of the day did you vote?

8 A. I can't remember the exact time, but it was before noon; that is before afternoon. That  
9 is before --

10 Q. And how was the atmosphere at your polling station, the atmosphere amongst the  
11 people generally in the air?

12 PRESIDING JUDGE EBOE-OSUJI: Can you hold that question, counsel, and return to it  
13 later.

14 Witness, you said "before noon" and then you indicated a specific time. Did you say  
15 before --

16 THE WITNESS: Two. Before 2 p.m.

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

18 MS ZAGO:

19 Q. Witness, I asked you how was the atmosphere, the general atmosphere amongst the  
20 people and generally at the location where you voted?

21 A. The situation was tense. People looked like they were fearing some undesirable  
22 outcomes.

23 Q. What do you mean by "undesirable outcomes"?

24 A. I mean recurrence of tribal clashes.

25 Q. How many people were at the polling station when you were there?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. I can't know the exact number, but the voting centre had registered voters who were  
2 required to vote. There around 2000. Yes, around 2000. I don't know how many turned  
3 up for voting, but when I went there for voting I could see many people queuing so that they  
4 could vote.

5 Q. And what made you believe that people looked like they were fearing some undesirable  
6 outcomes? What gave you that impression?

7 A. The impression came about because some were saying I want to vote, go and pack my  
8 belongings, go to my mother land. As we are fearing, we have voted, we don't know the  
9 outcome. Some people would even claim when we were queuing for voting that they, they  
10 had heard that something would happen.

11 These things that happen are the clashing.

12 Q. And who told them to pack their belongings?

13 A. They packed their belongings on fear because previously properties were destroyed.  
14 So it was a preventive measure to pack their goods and go to their homes safely.

15 Q. And who is being told and who tells these people to pack their belongings?

16 A. They do it on their own. Nobody tells them.

17 Q. And after having casted your vote, what did you do?

18 A. After casting my vote, I went back to location 1 and had to stay there.

19 Q. And how was the general atmosphere back at location number 1 when you returned?

20 A. The situation was calm during the 27th when I -- when we came from the voting.

21 Q. There is no dispute that the -- in electoral results in 2007 were announced on 30  
22 December. How was the atmosphere between the day you voted and the day the results  
23 were announced at your location?

24 A. The situation was very tense from 27 to 30 December. That is -- or, that was made to be  
25 so because many people were listening from their radios, as we were watching from their TVs.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 When the provincial vote -- there are many reports were being made on the votes garnered.

2 Q. Where were you the day the results were announced?

3 A. I was in location number 1.

4 Q. And what were you doing when the results were announced?

5 A. I was watching my TV with my family. And a few members of the public had come to  
6 my house to just watch the TV to know the results.

7 Q. So am I correct in understanding that you heard the announcement on TV?

8 A. Yes. I heard it from the TV.

9 Q. Do you recall what time of the day was it?

10 A. I can't remember.

11 MS ZAGO: Your Honours, I have concluded this set of questions and I would like to  
12 address a discrete number of questions, follow-up questions, that might prompt some  
13 identifying answers. So with your leave I would like to go to private session, please.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, we will do that. But before you do, Witness, in  
15 relation to the last question and answer you were asked and you gave are you able to indicate  
16 in terms of morning, noon, or evening, or night the time of day?

17 THE WITNESS: Evening.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will go to private session then.

19 (Private session at 11.56 a.m.) Reclassified as open session

20 THE COURT OFFICER: We're in private session, your Honours.

21 MS ZAGO:

22 Q. Witness, what did you do after having heard the announcement on TV? Did you stay  
23 home? Did you go somewhere else? What did you do?

24 (Redacted)

25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 PRESIDING JUDGE EBOE-OSUJI: Remember the pause.
- 6 THE WITNESS: Oh, yeah.
- 7 MS ZAGO:
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 A. (Redacted) then he started talking about the
- 12 outcome of the elections and he told me that he -- the former president, Kibaki, had stolen
- 13 votes.
- 14 Q. And what did you respond, if anything?
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Q. And did (Redacted) say anything else in response?
- 19 A. He said that the results are not correct because the votes had already been stolen in
- 20 favour of the president.
- 21 Q. Was this the end of your conversation with (Redacted), or did you say anything
- 22 else?
- 23 A. I didn't say anything else. (Redacted)
- 24 (Redacted)
- 25 MS ZAGO: Mr President, with your leave, we can go back to public session.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Back to public session.

2 (Open session at 12.00 p.m.)

3 THE COURT OFFICER: We're in open session, your Honours.

4 MS ZAGO:

5 Q. Witness, what did you do after having returned home from the shop?

6 A. On that day of the 30th, I stayed home with my family until at around 10 -- no, around 9  
7 or 8, when some (Redacted) neighbours from location number 2 came to my house.

8 Q. Without naming these (Redacted) persons, did you know them from before?

9 A. Yes, I knew them.

10 Q. And why did they come to your house that night?

11 A. They said the situation in location 2 was very tense. They felt unsafe and would like to  
12 spend the night in my house. These were (Redacted). So that the following day they go to  
13 their -- to their relatives who live in town centre.

14 Q. What ethnicity were these (Redacted)

15 A. These (Redacted) were Kikuyus.

16 Q. Did they describe how the situation was tense in location number 2?

17 A. They did not describe. They only said they were fearing clashes might erupt where  
18 they live.

19 Q. Clashes between whom?

20 A. Between them and their neighbours, who are the majority people in that location,  
21 location 2.

22 PRESIDING JUDGE EBOE-OSUJI: One moment. Private session.

23 (Private session at 12.03 p.m.) Reclassified as open session

24 THE COURT OFFICER: We're in private session, your Honours.

25 PRESIDING JUDGE EBOE-OSUJI: We will redact from the public broadcast the reference to

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 (Redacted) when describing the neighbours who came. It gets a little too specific, so  
2 we will in the public version of the broadcast delete or redact (Redacted).

3 Now, we know -- we have heard information about those (Redacted) neighbours who  
4 came, and we know they were (Redacted). From now going on, let's just refer to them  
5 as "the neighbours," okay, going forward.

6 THE WITNESS: Thank you, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: And we will go back to public session.

8 (Open session at 12.04 p.m.)

9 THE COURT OFFICER: We're in open session, your Honours.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MS ZAGO: Thank you, Mr President.

12 Q. Witness, you said that those neighbours told you that they were fearing clashes from the  
13 majority of the inhabitants of their location. Who -- who were they?

14 A. The majority are Nandes.

15 Q. And why would the Nandes be a threat to these neighbours?

16 A. The Nandes would be a threat to the neighbours because they believe the neighbours  
17 did not vote for their party. They voted for PNU instead of voting for the Nandes' party,  
18 ODM.

19 Q. Did they tell you -- the neighbours, did they tell you what specifically they were fearing  
20 from the Nandes?

21 A. They were fearing their houses being -- getting burnt down or being raped.

22 Q. What happened next after these neighbours came to your house? What happened next  
23 or what did you do next?

24 PRESIDING JUDGE EBOE-OSUJI: Before we answer that question, Witness, the question the  
25 lawyer had asked you before the last one that I suspended was whether the neighbours had

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 told you, had told you what specifically they were fearing from the Nandes, and your answer  
2 was they were fearing their houses being -- getting burnt down or even being raped.

3 THE WITNESS: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: How did you know that?

5 THE WITNESS: I knew it because they came and said they had come to my house for safety  
6 so that therefore -- for safety so that what I have said does not happen to them. So they had  
7 to sleep in my house, move their --

8 PRESIDING JUDGE EBOE-OSUJI: Did they tell you that those were their fears?

9 THE WITNESS: Yes, they told me that these -- those were their fears.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Ms Zago, revert back to your question.

12 MS ZAGO: Thank you, your Honour.

13 Q. (Redacted)

14 After the neighbours shared with you their fears, what did you do next?

15 A. I stayed with them in my home until up to around 9 or 9.30, when I heard some  
16 screams.

17 Q. Where were the screams coming from?

18 A. The screams were coming from location 2.

19 Q. How far is location number 2 from location number 1?

20 A. It is about 1 kilometre.

21 Q. Can you describe the screams that you heard that night?

22 A. The screams we heard that night were coming from the sound of a woman. Normally  
23 women scream when they need help. The scream coming from a woman, and we had to go  
24 outside my house to listen carefully. We listened. Some neighbours also came to my house.  
25 We all listened. When we found -- when I found that we were in a bigger number that could

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 be able to go up to location 2, we decided we go to location 2 and see where the screams were  
2 coming from and what was happening.

3 Q. Is there a specific term you use in Swahili to refer to screams of that nature?

4 A. Yes, in Swahili screams of distress or screams for help, we call it nduru, nduru.

5 Q. You said that you -- after hearing the screams, you gathered with your neighbours.

6 A. Yes, I gathered with my neighbours and we decided to go and see where the scream  
7 was originating.

8 Q. You said that you waited before going up to location number 2 until you were in a  
9 bigger number. How many gathered together with you before going to location number 2?

10 A. I estimate -- I estimated that number to be between ten and 15. All men.

11 Q. Without mentioning names for the time being, please, what ethnicity were your  
12 neighbours?

13 A. My neighbours are the majority occupants of location 1, the majority occupants.

14 Q. Which ethnicity are they?

15 A. They are Kikuyus.

16 Q. How did you go from location number 1 to location number 2? Did you go on foot,  
17 vehicle, motorbike?

18 A. We went on foot.

19 Q. How long did it take you?

20 A. Between 20 and 30 minutes.

21 Q. And when you got to location number 2, was the location empty or did you meet  
22 anybody there?

23 A. It was during the night. It was dark, but we went towards a section where we found  
24 some images burning. So we could not meet with the people. People were in their houses.  
25 We went particularly to where the scream was coming and some two houses were burning.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. Can you tell us what you mean by "images"? Images were burning, you said. Can  
2 you tell us what those images were?

3 A. When they're afar they may look like images, but when you got near they were houses.

4 Q. Am I understanding you correctly that you saw a house burning in location number 2?

5 A. I saw two houses burning in location number 2.

6 Q. And did you see how the houses were burning?

7 A. I even met the owners of the house, who said that the houses were torched. That is  
8 how they were burning.

9 Q. Again without mentioning name, please, what ethnicity were the owners of the houses  
10 that you saw and you spoke to?

11 A. They were Kikuyus.

12 Q. And how were the houses torched? How did they happen to be burning?

13 A. We could see flames coming from inside. We could also see that some of them were  
14 about to collapse after burning for -- for a longer time.

15 Q. According to the owners, who torched their houses?

16 A. The owners said that Kalenjin youths had burnt their houses.

17 Q. Did you see the Kalenjin youth yourself at location number 2?

18 A. We moved around the area where the houses are situated and a little bit far we could  
19 see some people. We tried to chase those two people, but we could not get them. They  
20 disappeared in the darkness.

21 Q. Did you recognise them?

22 A. We could not recognise them because it was dark. We tried to chase them. They sped  
23 off. We could not even get the features of how they may look like.

24 Q. Was the screaming, the nduru that you referred to before, still audible when you arrived  
25 at location number 2?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 A. It was not audible when we got there. We asked the owners of these two houses.

2 They said screaming stopped immediately the houses started getting burnt.

3 Q. Did you -- might I go into private session with your leave, your Honour, for two or  
4 three questions maximum? Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Private session.

6 (Private session at 12.21 p.m.) Reclassified as open session

7 THE COURT OFFICER: We're in private session, your Honours.

8 MS ZAGO:

9 Q. Witness, did you eventually learn who was making that nduru sound at some point?

10 A. Yes, I came to know afterwards who was screaming.

11 Q. Who was that? Remember we're in private. You're free to answer.

12 A. This was (Redacted).

13 Q. Can you please look at the PIS - the document that is in front of you - under the section  
14 "Persons" and tell us if you see these two individuals that you just named?

15 A. (Redacted) is person number 2. (Redacted) is person number 1.

16 MS ZAGO: Your Honour, we can go back to public session. Thank you.

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

18 And, Witness, if you have any further need to refer to the two individuals, you will  
19 say "Number 1" or "Number 2," "Person number 1" or "Person number 2."

20 We will go to public session.

21 (Open session at 12.23 p.m.)

22 THE COURT OFFICER: We're in open session, your Honours.

23 MS ZAGO:

24 Q. Witness, what ethnicity person number 1 was?

25 A. A Kalenjin.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. What about the ethnicity of person number 2?

2 A. The same, Kalenjin.

3 Q. Did you eventually learn why person number 2 was screaming?

4 A. I later came to know that person number 2 screamed to alert the arsonists to start the  
5 burning of houses.

6 PRESIDING JUDGE EBOE-OSUJI: The indiscernible was "arsonists."

7 Proceed.

8 MS ZAGO:

9 Q. Witness, did you know who the arsonists were?

10 A. No, I did not know.

11 Q. And how did you learn that the screaming by person number 2 was for the purpose to  
12 alert the arsonists to burn the houses?

13 A. This I was told by the owners of the two houses that were first burned down, and later  
14 on the resident parties, the minority who live there, also told the same thing.

15 Q. Apart from the two houses that you saw burning, did you see anything else in location  
16 number 2 that night?

17 A. There was nothing more in location 2 during that night of the 30th.

18 Q. Please help the Court understanding about this nduru. Can you explain to us what  
19 significance, what meanings if more than one, these nduru screams have?

20 A. Nduru is a Swahili word. I'm not very, very good in Swahili, but the way I understand  
21 it ndurus are made as signs to tell people that there is danger somewhere and the person in  
22 that danger requires help. For example, if somebody is attacked by thieves in his house, you  
23 scream and people come for your help. If your house gets to fire and starts burning, you  
24 scream and people come to help you. That is the way I understand it, nduru.

25 Q. Is that the only meaning that these screams have, or to your knowledge there are other

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 meanings attached to the screams?

2 A. To my knowledge that is what it means.

3 Q. What did you do after? After having spoken to the owners of the houses and having  
4 chased or tried to chase the Kalenjin youth, what did you do after?

5 A. Afterwards I and the people with whom I was tried to patrol a few of the houses  
6 situated within our area. We saw nothing and we decided to go back to location 1 and we  
7 went back to location 1. Nothing happened that night.

8 Q. What time was it, if you remember, when you returned home that night?

9 A. It would be -- it could be between 11.30 and 12.30.

10 Q. Where did you sleep that night?

11 A. That night I slept in my house at location 1.

12 Q. Did anything else happen that night after you had returned to location number 1?

13 A. Nothing more happened during that day.

14 Q. The morning after, what did you do?

15 A. The morning after, that is 31 December, my wife -- that should have been 30th. Yes, 31  
16 December I did not go anywhere. I was just within location that 1, I mean location 1, but  
17 those (Redacted) who were -- who slept in my house left that morning and went into town.

18 Q. I'm sorry, Witness, are you finished with your answer?

19 A. Yes, I've finished.

20 Q. And what did you do after that? Did you join them going to town?

21 A. My wife joined them, carried some of our belongings and went into town. But me, I  
22 remained. I did not to go to town. By town, I mean they went to police station to seek  
23 security for their lives.

24 Q. Why would they go to the police station to seek security for their lives?

25 A. The situation was very tense. People are fearing because their houses had started

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 being burned. People from other areas around Eldoret town had also moved to the station  
2 for their safety. So also those living -- those who slept in my house, plus my wife went to  
3 police station for -- to stay where there is security.

4 Q. Just a clarification before we return to that, which police station did they go?

5 A. They went to Eldoret divisional police headquarters situated in town.

6 Q. You said the situation was very tense and that people were fearing because their houses  
7 had started being burned?

8 A. Yes, yes.

9 Q. What people expressed those fears?

10 A. These are other Kikuyus living in locations 1 and 2.

11 Q. Do you speak to these people that day?

12 A. I spoke to them before they left my house. I also met others following them to the  
13 station. They said they were going to divisional headquarters of police for their safety.

14 Q. Where were these other people, other people that you met coming from? Where were  
15 they coming from?

16 A. They were coming from location 2. Others from location 1.

17 Q. Did they tell you what precisely was happening at location number 2 that made them  
18 leave?

19 A. They told me that houses had started being torched, and they feared for their safety.

20 Q. Did they specify torched by whom?

21 A. They said the Kalenjins were torching the houses.

22 Q. What about the other people that you met from location number 1, what did they tell  
23 you?

24 A. They told me for fear that location 2 -- in location 2 houses were getting burnt, the next  
25 would be location 2 for the houses to be burnt.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

- 1 Q. Just to clarify, you said that people at location number 1 told you that for fear that  
2 location number 2 houses were getting burnt, the next would be which location specifically?  
3 Is it 1 or 2?
- 4 A. It might be 1.
- 5 Q. Thank you. And after you've spoken to these persons from location 1 and 2, what did  
6 you do?
- 7 A. I remained in my house in location 1.
- 8 Q. And what happened that day?
- 9 A. This is now 31st, is it? Now, on this day of 31 December, houses in location 2  
10 belonging to Kikuyus were all burned.
- 11 Q. How do you know that all the houses in location number 2 belonging to Kikuyus were  
12 burned?
- 13 A. I met people from there who told me they no longer have houses. They were all burnt  
14 down.
- 15 Q. Did you stay in location number 1 or did you move to another location that day?
- 16 A. I stayed in location number 1 that day, and also burning of houses started that very day  
17 in location 1.
- 18 Q. Do you recall what time of the day houses in location number 1 started burning?
- 19 A. It was around 11 a.m.
- 20 Q. And how did you know that houses location number 1 were burning?
- 21 A. I was in location number 1, so I could see them burning.
- 22 Q. And what did you do when you saw them burning?
- 23 PRESIDING JUDGE EBOE-OSUJI: Counsel, is there a difference between burning and  
24 getting burned? I know it's awkward to say "getting burned, " but this is the witness's  
25 testimony.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 MS ZAGO: Thank you, your Honour. I'll be mindful.

2 PRESIDING JUDGE EBOE-OSUJI: I say that especially mindful of the witness's last answer.

3 So you might want to clarify that, the last answer particularly. What I mean is when the  
4 witness said he saw the houses burning, is there more for him to say than just that?

5 MS ZAGO:

6 Q. Witness, did you see how the houses were -- came to being burning?

7 A. I came to learn that the houses were torched. That is why they were burning. They  
8 were torched, if that word is correct in English. I'm not very good in English. The houses  
9 were torched.

10 PRESIDING JUDGE EBOE-OSUJI: All right. So you're not confused, Witness, it's not about  
11 the terminology more than the event, the whole transaction. Did you say you came to learn  
12 as opposed to did you actually see the houses being torched?

13 THE WITNESS: I saw some houses being torched. Others I was told how they were  
14 torched. So I had to believe, because I saw some houses being torched.

15 MS ZAGO:

16 Q. What exactly did you see?

17 A. In one event they were trying to burn a house. I was there. Me and others, we tried  
18 to stop them from burning the houses. You cannot stop them by telling them not to burn.  
19 You had to fight. We were throwing stones while they were having their arrows. And we  
20 were throwing stones, but we overwhelmed them. They did not burn that house that day,  
21 but they burned it the following day when we were not there.

22 Q. Witness, who is "they"?

23 A. The Kalenjins.

24 Q. How many did you see?

25 A. There were between ten and 15.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. How were they dressed?

2 A. Some were wearing red T-shirts. The others they had some red as well. There were  
3 others wearing shukas. Shukas are -- I don't know whether it is (indiscernible), but others  
4 were wearing shukas, the kitenge type, which were also red.

5 PRESIDING JUDGE EBOE-OSUJI: How do you spell the word?

6 THE WITNESS: Shuka, S-H-U-K-A.

7 PRESIDING JUDGE EBOE-OSUJI: And what is that? Can you tell us?

8 THE WITNESS: It is a piece of cloth all around the shoulders going downwards. It's red in  
9 colour just like the Maasai shukas. I don't know whether --

10 PRESIDING JUDGE EBOE-OSUJI: The reference to the Maasai might do it, just like the  
11 Maasai --

12 THE WITNESS: Yes.

13 PRESIDING JUDGE EBOE-OSUJI: -- mode of dressing.

14 THE WITNESS: Yes.

15 MS ZAGO:

16 Q. You mentioned that some were carrying arrows. Were they carrying anything else?

17 A. They were carrying arrows, rungas and pangas.

18 Q. Without mentioning names, if necessary, did you recognise any of these people?

19 A. No, I did not recognise any.

20 Q. And how were they trying to burn the houses?

21 A. These Kalenjins who were coming to burn the houses used to sit at location 3. Location  
22 3 has fields facing location 1. So they used -- they used to be in location 3 to observe how  
23 they would come down to location 1 and burn the houses. So they're moving from the hills  
24 downwards to where the houses were. They were stationed at locations 5 and location 6.

25 Q. We'll return to that, but my question was how were these Kalenjin youth trying to burn

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 the houses at location number 1?

2 A. They were coming from location 3 down to location 1 and burn the -- torch the houses.

3 Q. What did they use to burn the houses?

4 A. They used petrol or paraffin. Because we were not near what we could see is just the  
5 house burning, but the house cannot burn without using either paraffin, petrol or anything to  
6 make it burn quicker.

7 Q. How far is location number 3 from location number 1?

8 A. It is very near. Could be between 150 metres, or 200 something metres. Between 100  
9 and 300 metres, something like that. That is the distance.

10 Q. You say that the Kalenjin youth could observe from location number 3 down to location  
11 number 1. Can you describe to us perhaps the view from one place to the other? Is it an  
12 obstructed view, unobstructed view? Does it have vegetation, buildings, construction?  
13 How is it?

14 A. Location number 3, as the name indicates at the end Hills, is above. Just like where we  
15 are seated, we're above this position. Location 3 and down here is location 1. So people  
16 there can see clearly. Understood?

17 MS ZAGO: For the record, the witness is referring to the upper side of the gallery to give an  
18 example of how location number 3 and location number 1 appear.

19 PRESIDING JUDGE EBOE-OSUJI: So the indication would be that location number 3  
20 occupied the higher grounds?

21 MS ZAGO: That is correct, your Honour. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MS ZAGO:

24 Q. What did you do again when you saw the houses at location number 1 being burned?

25 A. We used to observe the Kalenjin youths coming from location 3 downwards to location

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 1 when they come to burn the houses. As I had said earlier, they were using the arrows,  
2 rungun and whatever they had. We used to chase them using stones, throwing stones at  
3 them. If they overpower us, we ran back and they burned some houses and we come back  
4 and we stone them. If we overpower them -- we overpower them, they go back. They don't  
5 burn another house.

6 Q. For how long did this clash went on that day?

7 A. The clashes went on that day from morning, the time I've told you, to the evenings.  
8 When the night falls, they don't come. They go home and sleep. They come again in the  
9 morning and start the fight again.

10 Q. That day how many houses were burned in location number 1?

11 A. I don't know how many houses were burnt in location number 1 on that day. There  
12 were very many. And not only in location 1 that the houses were burnt. Also location 5, 6  
13 were also burned that same day.

14 Q. The houses that were burned in location number 1, to whom did they belong to?

15 A. Houses burned in location number 1 belonged to Kikuyus.

16 Q. Were there injured people during that day from one side or the other?

17 A. On that day of 31st, during the clashes one person was killed in location 1.

18 Q. Without naming the person if you know the identity, what --

19 A. I don't know the name.

20 Q. Which ethnicity did he belong to?

21 A. I don't know, but I think he belonged to the Kalenjin community.

22 Q. You also mentioned that location number 5 and 6 --

23 A. Yes.

24 Q. -- houses were burned in location 5 and 6 that same day. How do you know that  
25 houses were burned at location number 5?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. In view of the fact that the arsonists were coming from location 3, which is on the upper  
2 side, you could see them move when they moved down to location 1 to burn houses. There  
3 is another group that is seated at location 5, waiting also to go down and burn houses, and  
4 also location 6. They would not all go at the same time. If they come -- if they're going to  
5 burn location 5, those at location 1 and 6 would remain at the top of the hill. Then they  
6 would be instructed that maybe those stationed at 6 come down and burn (Redacted).

7 Q. Let's focus for a moment on location number 5. Were you able to see location number  
8 5 from where you were standing?

9 A. I could not see, but we used to go to the place. When we see them move down, we go  
10 towards the direction they are going downwards to.

11 Q. So am I correct in understanding that you could see the Kalenjin youth going down to  
12 location number 5?

13 A. Yes.

14 Q. Where could you see the Kalenjin youth coming down to location number 5? Where  
15 could you see them from your location?

16 A. You could -- when you are in my location, you could see them at location 3.

17 Q. Did you eventually go at some point to location number 5?

18 A. Yes, I went there afterwards, after the burning came to an end.

19 Q. But on that day that you just described, did you go eventually to location number 5?

20 A. Yes, that evening I went to location number 5 and the burning had ended because by  
21 evening they go.

22 Q. What time, if you recall, did you get to location number 5?

23 A. Between 6 and 7.

24 Q. Is that in the evening?

25 A. In the evening, yes.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. And what did you observe in location number 5 when you arrived there?

2 A. I found that so many houses were burnt down.

3 Q. Did you know who the owners of those houses were?

4 A. Yes, I came to know that the owners of the houses were Kikuyus.

5 Q. Without naming individuals, did you speak to anybody when you arrived at location  
6 number 5?

7 A. Yes, I spoke to many people who were running away from that place.

8 Q. And what did they tell you?

9 A. They told me that their houses have been burnt down and that they were going to stay  
10 at divisional police headquarter Eldoret.

11 Q. And about the group that attacked location number 5, can you describe the size or  
12 number of that group?

13 A. These groups were three: One on location 1, the other one on location 5 and the other  
14 one on location number 6. They all -- they were all the same number, almost the same  
15 number. Between 20 and 50, or more than 50. For correction, could be between 50 and 100.  
16 Correction, please.

17 Q. Thank you for the correction. How far is location number 5 from location number 1?

18 A. It could be around 500 kilometres, or more.

19 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, time.

20 MS ZAGO: I might just clarify the last question or rather answer from the witness and then  
21 we can break for lunch.

22 Q. Witness, you just said that the distance between location number 1 and location number  
23 5 was around 500 kilometres?

24 A. Yes.

25 Q. How long did it take you to go from location number 1 to location number

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 2 -- correction, location number 1, pardon me. How long did it take you to go from  
2 location number 1 to location number 5?

3 A. About ten minutes.

4 Q. Do you still maintain that it was 500 kilometres from location number 1 and location  
5 number 5 if it took you about ten minutes?

6 PRESIDING JUDGE EBOE-OSUJI: Well, let's --

7 THE WITNESS: I have said it may be more than that. It is more than 500 kilometres.

8 MS ZAGO: Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: We will take a break now and come back at 2.30. Closed  
10 session.

11 (Closed session at 1.01 p.m.) Reclassified as open session

12 THE COURT OFFICER: We're in closed session, your Honours.

13 (The witness stands down)

14 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

15 THE COURT OFFICER: All rise.

16 (Recess taken at 1.02 p.m.)

17 (Upon resuming in open session at 2.39 a.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

20 THE COURT OFFICER: We're in open session, your Honours.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Witness, welcome back.

22 Ms Zago we're in open session.

23 MS ZAGO: Thank you, your Honour.

24 Q. Witness, I'd like to clarify something that we discussed at the end of the previous  
25 session. You told the Court that the distance between location number 1 and location

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 number 5 was 500 kilometres and that it took you ten minutes to get from one location to the  
2 other. I just want to clarify something. There appears to be some discrepancy between the  
3 distance and the dimension and the time that it took you to go through that distance. I just  
4 wanted to be sure that you meant 500 kilometres.

5 A. I did not mean 500 kilometres. But I said that distance could be from 500 metres  
6 onwards to any distance up to nearly a mile or a kilometre.

7 PRESIDING JUDGE EBOE-OSUJI: Is it about metres versus kilometres?

8 THE WITNESS: It must be. It is not one kilometre from where -- from location 1 to location  
9 5. I think it is less than a kilometre but not 500 metres.

10 PRESIDING JUDGE EBOE-OSUJI: So not 500 kilometres? Kilometres.

11 THE WITNESS: Not.

12 MS ZAGO:

13 Q. Thank you for the clarification. Before the break again, at page 59 of your transcripts,  
14 you said that at location number 5 you saw so many houses being burned. Can you give us  
15 an estimate of that, if you can?

16 A. Could be between ten and 20. Between ten and 20, because I did not go throughout the  
17 village. I only went to some places.

18 PRESIDING JUDGE EBOE-OSUJI: Witness, remember we are back in public session and  
19 also remember to use location numbers --

20 THE WITNESS: Okay.

21 PRESIDING JUDGE EBOE-OSUJI: -- or person numbers, okay?

22 THE WITNESS: Thank you. Yes.

23 MS ZAGO:

24 Q. Witness, you also said before the break that you saw Kalenjin attacking -- or, sorry,  
25 pardon me. You saw Kalenjin descending to location number 6?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. Yes, I saw them descending from location number 6. Sorry. Yes, I saw them move  
2 from location 3 to location 6. From location 2, yes. There's a confusion. Sorry? Can you  
3 repeat --

4 Q. Where --

5 A. -- the question?

6 Q. Sure. Where did you see the Kalenjin coming from and descending to location number  
7 6?

8 A. They were coming from location 3.

9 Q. And what time of the day was it that you saw them coming down from location number  
10 3?

11 A. It was after 11 a.m. I don't remember the exact time, but it was after 11 a.m.

12 Q. And where were you when you saw them coming down to location number 6. Please,  
13 again, be careful and if necessary resort to the use of the PIS.

14 A. I was in location 1 when I saw them descend from location 3 to location 6.

15 Q. And did you know what happened at location number 6 after the Kalenjin had  
16 descended upon that location?

17 A. After descending from location 2 to location 6, the houses were burned at location 6.  
18 Houses were started torching -- they started torching houses.

19 Q. And how do you know the houses at location number 6 started being torched?

20 A. You could see smoke -- when you were at location 1, you could see smoke at location 6.

21 Q. How far is location number 1 from location number 6?

22 A. It is about -- it is between 500 and 800 metres from location number 1.

23 Q. And apart from seeing the houses being burned from your location, did you learn  
24 anything else about the attack at location number 6?

25 A. Yes, I learnt that a person was killed during the burning of the houses.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Q. How did you learn about the killing of this person? And again, if necessary, resort to  
2 the use of the PIS.

3 A. I was told by person number 5.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 (Private session at 2.48 p.m.) Reclassified as open session

6 THE COURT OFFICER: We're in private session, your Honours.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, why the need for that reference at number 5,  
8 person number 5?

9 MS ZAGO: The Prosecution deemed that the reference in public session to (Redacted)  
10 and eventually additional follow-up questions might reveal the identity of the witness  
11 himself.

12 PRESIDING JUDGE EBOE-OSUJI: How many people would you put in that category of  
13 number 5?

14 MS ZAGO: I can ask the question to the witness or I can answer myself.

15 Q. Witness, when you said that you were told about the events at location number 6, you  
16 mentioned that you were informed by (Redacted). Can you tell us how many (Redacted) you  
17 were referring to?

18 A. I was referring to (Redacted).

19 Q. For the record, since we are in private session, could you give us their names, please.

20 A. The names of (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Can you please spell?

23 THE WITNESS: (Redacted)

24 PRESIDING JUDGE EBOE-OSUJI: And (Redacted)

25 THE WITNESS: Yes, (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

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

2 MS ZAGO: Since we are in private session, can I ask a follow-up question? Thank you.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 Q. And where were they living at the time of the events?

8 A. They were living (Redacted) in location number 1.

9 MS ZAGO: We can go into public session, unless your Honours have more questions on this  
10 topic.

11 PRESIDING JUDGE EBOE-OSUJI: No, I do not. Perhaps -- I do not, but if you want to find  
12 out which of them in particular gave information.

13 MS ZAGO:

14 Q. Who informed you about the events that took place at location number 6?

15 A. (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: Why don't we do this then: (Redacted) can we  
17 designate him as person number 5A and (Redacted) as person number 5B.

18 Witness, can you write that into the person number 5. So (Redacted) would be person  
19 number 5A and (Redacted) would be person number 5B.

20 THE WITNESS: Yes.

21 MS ZAGO: One last question in private session.

22 Q. How did (Redacted) how did he know about the events at location number 6?

23 A. He was there at location 6 trying to repel the warriors from burning the houses.

24 Q. What about (Redacted)?

25 A. He was also there.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

- 1 MS ZAGO: We can go to public session. Thank you.
- 2 PRESIDING JUDGE EBOE-OSUJI: We go to public session.
- 3 (Open session at 2.55 p.m.)
- 4 THE COURT OFFICER: We're in open session, your Honours.
- 5 PRESIDING JUDGE EBOE-OSUJI: Proceed.
- 6 MS ZAGO:
- 7 Q. What time of the day persons number 5A and B arrive at location number 6?
- 8 A. It was in the morning around 11 a.m.
- 9 Q. And when they returned, what did they tell you?
- 10 A. When they returned home at around 2 is when they told me about this, 2 p.m.
- 11 Q. And what did they specifically tell you about the events at location number 6?
- 12 A. They told me that many houses were burned in that location number 6 and that one
- 13 by -- and one person, number 4, was killed.
- 14 Q. And what ethnicity was person number 4?
- 15 A. He's a Kikuyu.
- 16 Q. And how was he killed?
- 17 A. He was slashed with a panga.
- 18 Q. Did they tell you how many houses were burned at location number 6?
- 19 A. They didn't tell me the number of the houses, but they said many houses were burned.
- 20 Q. And do you know what happened to the body of person number 4?
- 21 A. The body of person number 4 was discovered three days after the fighting, and it had no
- 22 hands. It had no ribs, the hands.
- 23 Q. Do you know what they did with the body after discovering it?
- 24 A. After discovering the body, it was taken to Moi Referral Hospital mortuary.
- 25 Q. Do you know why they took the body there?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. The body was taken there for post-mortem awaiting burial.

2 Q. Was a post-mortem eventually conducted?

3 A. The family told me the post-mortem could not be performed because there were so  
4 many bodies and that they were told there was no time for that.

5 Q. Did it specify to whom those bodies belonged to at the hospital?

6 A. They did not specify which ethnicity the bodies belonged to, but there were many dead  
7 bodies at the hospital mortuary.

8 Q. I'd like now to go back to something that you mentioned before the break this morning,  
9 more specifically to page number 55 of the transcripts where you mention that the Kalenjin  
10 that you saw at location number 2 -- pardon -- at location number 3 were used to sit at  
11 location number 3. What did you mean by "used to sit"?

12 A. I mean they used to be at location 3, ready to go down to either section, location 6 or  
13 location 5 or even location 1 for attacks.

14 Q. And were they sitting in a particular place at that location that you could see?

15 A. These were in three positions. Some were sitting at location number 1, a group of  
16 between 50 and 100. The other group would sit at location 5, a group of almost the same  
17 number of people. And the other one would sit at location number 6 on top of the hill. This  
18 is why we are referring to now location 3, the hills.

19 Q. So were they sitting on an open space?

20 A. All the three spaces are open spaces.

21 Q. Did you observe the groups doing anything before descending upon the three locations?

22 A. I could not see them doing anything. They were just seated there. It was far. You  
23 could not hear if they were singing or whatever they were doing. You could see them there  
24 already to go down to either of the locations and attack.

25 Q. Again, before the break you mention --

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: One second, please. Is there any significance to the verb  
2 "sit"? We need to clarify that for the record.

3 MS ZAGO:

4 Q. Witness, could you please clarify for the Court what you mean by the verb "sitting", that  
5 the Kalenjin were sitting?

6 A. By sitting I mean they were either seated down or they were standing waiting to be  
7 given orders where to go and attack.

8 PRESIDING JUDGE EBOE-OSUJI: More or less positioned there? Is that what you mean?

9 THE WITNESS: Sorry?

10 PRESIDING JUDGE EBOE-OSUJI: When you say "sit", does not necessarily mean they were  
11 physically sitting down on the ground or something?

12 THE WITNESS: Exactly. I don't mean they were sitting down or something. Yeah.

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

14 MS ZAGO: Thank you.

15 Q. Before the break you also said that the Kalenjin would be instructed to go down to the  
16 different locations. And I'm referring at page 58. I don't have the line with me, but it's at  
17 the middle of the page for my learned friend if he has to check the reference.

18 My question to you is: Instructed by whom?

19 A. The whom -- their movements would show that there was somebody in control, either  
20 through a phone or a signal that we could not understand because no group would move  
21 from location 1 to any other place while the other groups move. There's only one group  
22 which would move, the other two waiting. When is -- one is done with, another group  
23 would go down. That system would mean somebody was either in control or a phone was  
24 being used.

25 Q. Is that your conclusion or were you told about this by someone?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 A. I'm not told by anybody. This is what I think.

2 Q. Do you know why the groups would come down and then return back to the locations  
3 that they had come from?

4 A. After completing their mission, that is burning the houses, they would go back. Or if  
5 they are -- let me say, if they are overpowered from downwards, they don't continue burning,  
6 they run back to the position where -- where they had come from. If they are overpowered  
7 by those down in the village, by throwing stones at them, they -- if they are overpowered they  
8 go back to location number 3 or number 1 and then the other group would move with -- if  
9 that one is back, another one would be organised to go down. That system.

10 Q. And did you observe these movements yourself from your position?

11 A. Yes, I observed the movement very well.

12 Q. When they would return to their original location, would they go to a specific place?  
13 Would they congregate in a specific place?

14 A. After accomplishing their mission, they would go for their meals. They would take  
15 their meals in the house of person number 3.

16 MS ZAGO: Mr President, can I ask to go in private session to elicit follow-up questions on  
17 this individual. Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 (Private session at 3.09 p.m.) Reclassified as open session

20 THE COURT OFFICER: We're in private session, your Honours.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MS ZAGO:

23 Q. Witness, we are in private session. Just for the record, can you spell the name of  
24 person number 3?

25 A. It's (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Q. And who is he?

2 A. He's a resident who stays together with those who live at (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MS ZAGO: Just for the transcript, they did not capture where (Redacted) was located. Could  
7 you please repeat it.

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Q. Sorry, did you say (Redacted)? Is that what you said?

14 A. Yes, I said (Redacted)

15 (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: You said (Redacted).

17 THE WITNESS: Yes, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Now, would you spell (Redacted).

19 THE WITNESS: (Redacted) another one like that one.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 MS ZAGO:

22 Q. What ethnicity was (Redacted)?

23 A. He's a Kalenjin.

24 Q. How old is he?

25 A. He's between -- he's about (Redacted) there between.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Q. You said (Redacted) is a resident of location number 5?

2 A. Yes, your Honour. No, (Redacted) He's a resident of (Redacted)

3 Q. Thank you for the clarification. And where does he live exactly in (Redacted)?

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, the tense of the residents of (Redacted) you  
13 indicate in the present. Does he still live there, or are we talking about the material time?

14 You ask a question where does he live, where he is, words like that. Are we talking about  
15 now or then? And when are we interested in his residents?

16 MS ZAGO: Certainly, your Honour. I can clarify with the witness.

17 Q. Witness, at the time of the events that you just evoked, was (Redacted) a resident of the  
18 location number 6?

19 A. Yes, he was.

20 Q. And was he (Redacted) in 2007?

21 A. Yes, he was.

22 Q. Can you please describe for us if you know (Redacted)

23 (Redacted)

24 A. Whoever wants -- whoever wanted (Redacted)

25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

- 1 That was the duty.
- 2 Q. Did he know (Redacted)?
- 3 A. Repeat the question, please.
- 4 Q. Did (Redacted)?
- 5 A. Yes, he know.
- 6 Q. Did he know (Redacted)?
- 7 A. Yes, as (Redacted)
- 8 Q. What position, if any, did (Redacted)?
- 9 A. He's considered by the community as a community leader. There is even a time he
- 10 (Redacted). He
- 11 had a big following as a Kalenjin leader.
- 12 Q. As a Kalenjin leader in that location, would he meet other Kalenjin leaders?
- 13 A. As far as I can remember, most of the meetings held (Redacted) even if it
- 14 were an harambee in aid of a school, all these functions (Redacted). And as a leader
- 15 he's supposed to be everywhere there for a meeting.
- 16 Q. Can you clarify what an harambee is?
- 17 A. An harambee is a fundraising in aid of either a school, medical bills and things like that.
- 18 Q. And this harambee that you referred to, when did it take place?
- 19 A. There is a harambee that took place around (Redacted)
- 20 (Redacted). He was there. The area member of parliament, Mr Ruto,
- 21 was there, and (Redacted).
- 22 (Redacted)
- 23 (Redacted)
- 24 Q. And when you say Mr Ruto was there, are you referring to Mr William Ruto?
- 25 A. Yes, I'm referring to Mr William Ruto, who was by then the area member of parliament.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 Q. And just to be certain that the record is clear, was (Redacted) there as well?

2 A. Yes, he was there.

3 Q. And on the day of the attacks that you just described, did you know if (Redacted) had  
4 any role?

5 A. The role I know and the role he played was (Redacted) the warriors when they were  
6 attacking us.

7 Q. How do you know that?

8 A. Because after all the fightings, they would all -- every group would go there, get their  
9 (Redacted) and then go back to their position. From there on it will be just go there, get their  
10 (Redacted) and then return to their positions. That is what was happening.

11 Q. I'm sorry, Witness, I need to clarify for the record. At page 75 and 76, you said that  
12 "The role he played was (Redacted) the ..." and then there is a missing word. Can you please  
13 repeat your answer?

14 A. (Redacted) the Kalenjin warriors.

15 Q. Thank you, Witness. Did you see the Kalenjin warriors going to (Redacted)?

16 A. Yes, I saw them for two days.

17 Q. And during these two days, was the police or any other law enforcement representative  
18 present at location number 1?

19 A. The only time I remember seeing the police was when a person died at this location.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing  
Witness: KEN-OTP-P-0508

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MS ZAGO: Your Honour, we can go back to public session now, unless you have additional  
6 questions.

7 PRESIDING JUDGE EBOE-OSUJI: Public session.

8 (Open session at 3.26 p.m.)

9 THE COURT OFFICER: We're in open session, your Honours.

10 MS ZAGO:

11 Q. At the end of that day, the day you just described for us, where did you sleep?

12 A. That day is 31 December 2007. I slept in my house at location 1.

13 Q. And what did you do the morning after?

14 A. The morning after, my wife had come from town, and I escorted her up to Huruma.

15 Q. So am I understanding you correctly that your wife had come back to location number 1  
16 from town --

17 A. That is divisional police.

18 Q. And what time of the day was it when she arrived at location number 1?

19 A. It was very early in the morning, between 8.30 and say -- between 7 and 8.30.

20 Q. At that time, can you describe the state of your property and your house?

21 A. That day, 31 December 2007, my property were secure, they were safe. Nothing had  
22 happened. She came home, collected some of the things she required from the house and  
23 took them with her to Eldoret divisional headquarters. I escorted her up to Huruma. We  
24 could only walk because there was no -- there was no transport. We footed up to Huruma.  
25 And when she got transport, I started going back.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Before I escorted her to Huruma, we passed by the Huruma village. Huruma village is on  
2 our right as we moved towards town. There is a field which has not been built. On the  
3 side of that field there is a Catholic church. And after the Catholic church, there is a field,  
4 an open field. In that open field we could see human bodies being eaten by pigs and dogs.  
5 Me and my wife wondered, but we could not go there. We saw about three bodies. Very  
6 fearful.  
7 And after escorting her to where I have said, on coming back, I found that many people had  
8 gathered around that area. Kikuyu youths had put a roadblock at Huruma, so the police  
9 were trying to remove the obstacles on the road. And we had a chance to go into that field  
10 and see these three dead bodies and seeing how the pigs and dogs were feeding on them.  
11 We moved further and saw another three bodies.  
12 After seeing these three bodies, this is when we came back and we met police trying to  
13 remove the obstacles. I asked the police, "Why are you removing the obstacles instead of  
14 transporting these dead bodies to the mortuary?"  
15 They said they were tired of collecting the bodies. I didn't know what that meant, and we  
16 left it that way. I went back to my village, location 1.  
17 Before I reached there, there is another centre called -- it's called roadblock. There I also met  
18 youths who had barricaded the road by putting logs and drums and many other things on the  
19 road. And on the road it was written "ODM zone only."  
20 After leaving the zone, ODM zone, there ahead I found a dead body of a person. I don't  
21 know when he was killed. I could not wait. I was being very fearsome.  
22 There ahead I remember meeting people, these youths on the roads who belonged to the  
23 ODM. I was aware they were going to tell me to identify -- to identify myself. So I hid my  
24 identifications in my socks together with my phone. I got to them. They told me to identify  
25 myself. I told them my identification were stolen together with my phones and everything.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 What was left is this 100 shillings which did not come out with those things. When I showed  
2 them the money, they took the money and told me go ahead. That is what happened after  
3 escorting my wife.

4 Q. Thank you, Witness. I'd like to take you back to the beginning of your narrative for  
5 some clarifications. So what time of the day you and your wife left location number 1 to  
6 return -- or to escort your wife to town?

7 A. It was very early in the morning between 7 and 8. These were the times when the  
8 warriors are not there. So one has to come early. She came early, she finished what she was  
9 doing, I had to escort her before -- before the warriors come.

10 Q. Just to be clear, which warriors are you referring to now?

11 A. The Kalenjin warriors.

12 Q. And you said that you went with your wife to Huruma. What is Huruma?

13 A. Huruma is adjacent to location 7, adjacent. The dividing factor there is the main road.  
14 Huruma is a sub-location and the other one, location 7, is a sub-location. So the main road to  
15 Uganda, this Great North Road, is the only boundary between location 7 and Huruma.

16 PRESIDING JUDGE EBOE-OSUJI: What did you -- what was the other name you called the  
17 main road to Uganda?

18 THE WITNESS: This is the road which leaves Eldoret town, travels on to Uganda --

19 PRESIDING JUDGE EBOE-OSUJI: For the record you had used a specific terminology and  
20 we want to make sure it's recorded on the transcript. Did you say Great North?

21 THE WITNESS: Yeah, Great North Road. From Cape Town to Cairo.

22 PRESIDING JUDGE EBOE-OSUJI: Was it really from Cape Town to Cairo?

23 THE WITNESS: I'm made to understand that. I'm not sure.

24 MS ZAGO:

25 Q. How long did it take you to get to Huruma from location number 1?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

- 1 A. It took about half-an-hour.
- 2 Q. And the bodies that you mention, dead bodies that you mention having seen on the  
3 road, did you recognise them?
- 4 A. No, I did not recognise them. They were strangers, bodies of strangers.
- 5 Q. You also mention a first roadblock.
- 6 A. Yes.
- 7 Q. What was the purpose of that roadblock?
- 8 A. All vehicles could not move through that road. There were no vehicles moving. The  
9 roadblocks were so many erected by youths.
- 10 Q. Which youths are you referring to now?
- 11 A. I'm referring to Huruma, they were Kikuyus who had erected those. Roadblocks were  
12 Kalenjin, Luhyas and Luos.
- 13 Q. Let's take the Huruma roadblock.
- 14 A. Yes.
- 15 Q. Who erected the Huruma roadblock?
- 16 A. These were Kikuyu youths.
- 17 Q. Why did they do that? What was the purpose of having that roadblock there?
- 18 A. The purpose was stopping movement of vehicle and people who were -- who were  
19 viewed to be of Kalenjin warriors or they -- the Luhya and the Luos.
- 20 Q. Why did they want to stop their movements?
- 21 A. The movements were meant to prevent the warriors from getting into Huruma and  
22 destroy the property.
- 23 Q. Just to clarify, did you stop at that Huruma roadblock?
- 24 A. Yes, I was stopped, questioned where I was going. I was told I should not go -- I  
25 should remain where I stay and fight when I'm there. I told them I was only escorting my

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 wife and then going back where I stay. I was allowed to pass.

2 Q. And then in which direction did you -- did you go?

3 A. I went back towards home.

4 Q. What happened to your wife?

5 A. She got means of transport and she went to Eldoret divisional police station.

6 Q. And on your way back to location number 1, what happened?

7 A. That is when I was going back, I saw many people and I was encouraged to join them  
8 and we went to the field where I had seen three bodies and we went beyond that and found  
9 other three bodies.

10 Q. Who were these people that you met and encouraged you to go with them to the field?

11 A. I did not know them, but there were many people who were eager to know how many  
12 people are there in that field or how many people have been killed in that field.

13 Q. Did you know to whom the three dead bodies you found belonged to?

14 A. No, I did not know.

15 Q. Did you know how they died?

16 A. Some had panga cuts. The others no sign, which would mean that they were beaten by  
17 a blunt object, but the bodies were already destroyed by the dogs and the pigs.

18 Q. Did you know which ethnicity they were?

19 A. No, I did not know.

20 Q. And after having seen these bodies, what did you do?

21 A. It was when we went to the tarmac, that is the main road, where we met the police  
22 removing the roadblock placed by the Kikuyu youths.

23 Q. You've explained your meeting with the police here.

24 A. Yes.

25 Q. What did you do after having passed a roadblock?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. After leaving the police and they told us that they cannot go on picking the bodies, that  
2 is when I went to roadblock. Roadblock is between Huruma and location 1, between  
3 Huruma and location 1.

4 Q. Did you pass that location?

5 A. Yes, I passed through roadblock. And as I said, I was told to identify myself by the  
6 youths who had erected the roadblock at roadblock. Okay?

7 Q. Just clarify for my better understanding. Who was manning the roadblock -- that  
8 roadblock?

9 A. That roadblock at roadblock was manned by Kalenjin warriors, Luhyas and Luos.

10 Q. How many were there?

11 A. There were many. I didn't count, but there were many. Not 10. It's more than that.  
12 There were very many.

13 Q. Would you say 20, 30, 60, more?

14 A. Could be 15. 15, or 20.

15 Q. And how were they dressed?

16 A. Some were dressed ordinarily. Others had the red T-shirt. Yes, some with red T-shirt.  
17 Others were dressing ordinarily. They were in their civilian clothes.

18 Q. Were they carrying anything with them?

19 A. Yes. They had pangas, rungas and of course stones.

20 Q. Could you understand which language they were speaking, if they were speaking at all?

21 A. They were speaking in Swahili.

22 Q. Did they address you in Swahili?

23 A. Yes, they addressed me in Swahili.

24 Q. Please tell us what they told you.

25 A. I was stopped. I was told to identify myself, not by saying, but by producing my

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 identity card. That would show I'm the one on the picture and these are my names. From  
2 the names they are able to know whether I belong to the Kalenjin or I belong to the Kikuyu  
3 tribe. So I knew if I produced my -- my identity card, they would automatically know that  
4 I'm a Kikuyu. So I hid my identification card and the telephone, because they would steal  
5 the telephone. And I told them everything has been taken away from me. I was told to do  
6 the same somewhere. And then I told them what was left with me is just this hundred  
7 shillings which was in the pocket. I showed them and they told me, "Bring that money." I  
8 gave them the money and I was told to go ahead and go where I was going.

9 Q. And what did you expect to happen if they knew that you were Kikuyu?

10 A. Probably I would have been killed because I saw a body which was killed by them.  
11 Maybe they would kill me.

12 Q. Were you alone at this roadblock or there were other people present as well?

13 A. There were other people moving from the positions listed here, either location 1, 2 or up  
14 to even 6. But then I was the only person moving from town towards this other location.  
15 The other people were moving from those locations towards town, but I was moving from  
16 town towards those locations, locations 1, 2, 4, 5 and 6.

17 Q. And who were these other people who were moving in the opposite direction?

18 A. These were people of different tribes. Some were Luhyas. Others were Kikuyus, all  
19 carrying their belongings, leaving their residential areas going to stay where there was  
20 security at divisional police headquarters.

21 Q. And what did you do next after having passed this roadblock?

22 A. I went to location 1.

23 Q. Where specifically in location 1?

24 A. I went to my house.

25 Q. And what was the state of your house when you got there?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. The state of the house was all right. The houses were there. Everything was all right.

2 But after some times, then the burning started again, after 11 a.m.

3 Q. Where did the burning start again?

4 A. All the times it has been starting either from location 1, location 5 or 6.

5 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, page 86, line 3 the word there "already"  
6 should be "all right", isn't it?

7 MS ZAGO: Yes, your Honour. That's correct.

8 PRESIDING JUDGE EBOE-OSUJI: Proceed, please.

9 MS ZAGO:

10 Q. Let's focus on location number 1 for a moment. What happened after you saw the  
11 burning starting at location number 1? What did you do?

12 A. We continued doing what we were doing the other day, just trying to prevent them  
13 from burning the houses by pelting them with stones.

14 Q. Who is "we"? With whom were you at that time?

15 A. I was with residents of location 1.

16 Q. And were those residents the same residents that you mentioned before the previous  
17 day?

18 A. Yes, these are the same residents.

19 Q. And how did you prevent the burning of the houses?

20 A. We were trying to confront the warriors. They had arrows and bows. With us we  
21 used stones. And in some location we used to overpower them until they ran back.

22 Q. Which warriors are we talking about here?

23 A. We're talking about Kalenjin warriors.

24 Q. How many were there that day?

25 A. The same number as the previous day.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. How were they dressed?

2 A. The same. That is some wore T-shirts, others had shuka and others were wearing  
3 ordinary clothes.

4 Q. Were they carrying anything with them?

5 A. They were carrying runigus, bows and arrows and pangas.

6 Q. And what happened that day exactly?

7 A. That was a day of fighting. We fought throughout the day until we were overpowered,  
8 and I came back in the afternoon the following day now.

9 Q. What do you mean that you were overpowered? What happened?

10 A. This day we fought the whole day. The youths became more than the -- than the  
11 residents, and we found that we could not continue fighting them. That is what I mean we  
12 were almost overpowered. That is on 1st. Before 1st?

13 Q. After you realise that you were being overpowered, what did you do, you personally?

14 A. Personally I decided I should -- that day of 31st I slept in my house. Following  
15 morning I did what I did. This is on 1st when we fought, and I found that we were  
16 overpowered when my houses were burnt down, so we decided to go all to divisional police  
17 headquarters. But there were events which took place before we went there within that area.

18 Q. Do I understand you correctly that your house was burned down?

19 A. Yes, on 1 January 2008.

20 Q. And when did you discover that your house had been burned?

21 A. I went -- after going to assist other people in location 6, when I went back, I found that  
22 my house was already burnt. But before the house was burnt we had to go -- I had to go to  
23 other locations and see what had happened. That is why when I went back, I found that the  
24 house was gone.

25 Q. What time of the day was it when you arrived at your house and you find it burned?

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 A. It was around noon. That is after 1.

2 Q. Can you tell us what exactly was burned in your property?

3 A. Everything that I owned was burnt down. My living houses, (Redacted)

4 (Redacted) they were all burnt down. Plus every house that

5 existed on that plot and all the belongings, household goods and everything else.

6 Q. You mentioned that you had a shamba.

7 A. Yes. I own a shamba there. One of a half an acre of land in location 1.

8 Q. Was that destroyed too?

9 A. All the fences were destroyed, but the shamba was left there. The soil was still left  
10 alone, but anything was -- everything else was destroyed, was burnt down.

11 Q. And what did you do after realising that your property had been destroyed?

12 A. I went to Eldoret divisional police headquarters where my wife was. I started staying  
13 there and I reported there that my house was burnt and everything was burnt down.

14 Q. Did you leave location number 1 that very day to go to Eldoret police station?

15 A. Yes, I left location 1 on 1 January 2008 and went to live at Eldoret divisional  
16 headquarters.

17 Q. And did you get to Eldoret straight or something happened along the way?

18 A. Something happened along the way. I decided not to follow the route which I  
19 followed, that is the tarmac route following the main road. There is an earth road which  
20 passes through a depot for petrol and there is also a university campus. I decided to pass  
21 through that route which I thought was safe. So going to town I used that earth road, and  
22 before I could go far, when I reached the Moi Eldoret West Campus, I found a dead body at  
23 the gate of the university. Somebody was killed there. I saw the body having so many  
24 panga cuts on the head. I followed that route and went straight to Eldoret police divisional  
25 headquarters.

Trial Hearing  
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 Q. Thank you.

2 MS ZAGO: Mr President, I see that it's 4 o'clock. We can return with clarifications  
3 tomorrow, if you allow?

4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And how much longer?

5 MS ZAGO: Not much, your Honour. I think we will be completed by tea time, which I am  
6 advised is the first section of the hearing tomorrow.

7 PRESIDING JUDGE EBOE-OSUJI: So by 11 tomorrow you should be done?

8 MS ZAGO: We should be done, yes, your Honour.

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

10 Witness, we have come to the end of our sitting for today.

11 THE WITNESS: Yes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: But you will rejoin us tomorrow at 9.30. Overnight  
13 please do not discuss your testimony with anybody because you're still a witness in the  
14 process of testimony.

15 THE WITNESS: Yes, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Blinds will come down.

18 (Closed session at 4.01 p.m.) Reclassified as open session

19 THE COURT OFFICER: We're in closed session, your Honours.

20 (The witness stands down)

21 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

22 THE COURT OFFICER: All rise.

23 (The hearing ends in closed session at 4.02 p.m.) Reclassified as open session

24 RECLASSIFICATION REPORT

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

Trial Hearing

(Open Session)

ICC-01/09-01/11

Witness: KEN-OTP-P-0508

- 1 2013, and the email's instructions dated 24<sup>th</sup> April 2014, the version of the
- 2 transcript with its redactions becomes Public.