

Trial Hearing
Witness: KEN-OTP-P-0442

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and Judge Robert
7 Fremr
8 Trial Hearing
9 Wednesday, 5 March 2014
10 (The hearing starts in open session at 9.37 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please announce the case.
16 THE COURT OFFICER: Thank you, Mr President. Situation in the Republic of
17 Kenya, in the case of The Prosecutor versus William Samoei Ruto and Joshua Arap
18 Sang, ICC-01/09-01/11, and we're in open session, your Honours.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Appearances, please.
21 MS RENTON: For the Prosecution, the appearances remain the same.
22 MR NARANTSETSEG: Good morning, your Honours. For the victims,
23 appearances remain the same. Thank you.
24 MR KIGEN-KATWA: For Mr Sang, your Honours, there is myself, Katwa-Kigen,
25 Caroline Buisman, Logan Hambrick and Rongxin Choy, who is an intern. The

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1 spelling of her name is R-O-N-G-X-I-N and C-H-O-Y. Thank you, your Honours.

2 MR HOOPER: For Mr Ruto this morning, there's myself, David Hooper, Ms

3 Jayaraj, Ms Sullivan sits at the back and Ms Leigh Lawrie sits in-between us.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Witness, welcome back. The Prosecution will continue asking you questions this
6 morning.

7 Ms Renton.

8 MS RENTON: Thank you, your Honours.

9 WITNESS: KEN-OTP-P-442 (On former oath)

10 (The witness speaks Swahili)

11 QUESTIONED BY MS RENTON: (Continuing)

12 Q. Good morning, Witness. Before I start, I'd like to repeat some of his
13 Honour's guidance from yesterday afternoon. Because we only have a limited
14 amount of time I'd like to focus on what is most relevant for this case, so please listen
15 to my questions very carefully and answer them to the best of your ability. If you
16 continue giving more information, I may have to interrupt and ask you to pause so
17 that we can concentrate on the most relevant information. This is also important so
18 you don't accidentally reveal identifying information about yourself in your answers
19 when we're in public session. If at the end of my questions you have something
20 else that you would like to add, then please mention this to the Judges. Is that
21 okay? Do you understand?

22 A. Yes, I have understood you.

23 Q. Thank you. Yesterday afternoon you were telling us about what Mr Sang
24 said on the radio during the counting of the votes. This morning I'd like to start by
25 asking you some questions about what Mr Sang said after the announcement of the

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1 results. The results of the presidential election were announced on the evening of
2 30 December. On the next morning, that is 31 December, did you listen to Mr Sang
3 on the radio?

4 A. Yes, I did follow. I followed it.

5 Q. So on the morning of 31 December, what did Mr Sang say, if anything, about
6 the result of the presidential election?

7 A. Like I said yesterday, I told the Court that when the results were being
8 announced, the results of the elections, Mr Sang was talking about the developments
9 in the announcement of the results, and he went on to say that votes were being
10 stolen.

11 Q. I'm talking now about 31 December, so the day after the results were
12 announced. Did he say anything in particular on the 31st?

13 A. Yes. Mr Sang called on the people to come out of their houses and to fight
14 for their rights. He said that people should not be stopped from demanding that
15 their rights be upheld. On that very day he called on people to ensure that their
16 votes were not stolen. He then went on to say that the votes had been stolen in
17 Chemilel and that those who had stolen the vote should be punished, and for that
18 reason no one should allow their votes to be stolen.

19 Q. Staying with 31 December, did you see any people come out of their houses
20 and fight for their rights?

21 A. On 31 December a huge rally of people gathered screaming and shouting that
22 the votes had been stolen. The people had gathered after listening to what was
23 being said over radio. Then they went on to discuss among themselves about how
24 the elections had been rigged, how the ballot boxes had been stuffed.

25 Q. Did you see these people yourself?

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1 A. Yes, I saw them.

2 Q. How many people were there? Can you give us an estimate of the number?

3 A. No. I am not able to give you an exact number. A lot of people were
4 gathered, and I was not able to count all of them. The youth had also gathered in
5 some ten to 15 groups. So there were about ten to 15 groups that continued to
6 clamour for their rights.

7 Q. At what location did you see these people?

8 A. I saw them downtown, I saw them on the road on the way to town and I also
9 saw some of them in the trading centres or commercial centres.

10 Q. When you say "town", is this Kapsabet town?

11 A. Yes, I'm referring to Kapsabet town.

12 Q. What was the ethnicity of these people that you saw at Kapsabet town?

13 A. They were of the Kalenjin ethnic group.

14 Q. Did you recognise any of these people?

15 A. At that time it was not possible for me to recognise all of them. However, I
16 was able to recognise some of them.

17 MS RENTON: Your Honour, I'd ask that we move into private session just for the
18 next one or two questions please.

19 PRESIDING JUDGE EBOE-OSUJI: For how long?

20 MS RENTON: No more than a couple of minutes.

21 PRESIDING JUDGE EBOE-OSUJI: Private session then.

22 (Private session at 9.50 a.m.) Reclassified into open session.

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

24 MS RENTON:

25 Q. Witness, can you tell us the names of some of the people who you recognised

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1 in the crowd?

2 A. Yes. I was able to recognise some young people who were there and who
3 had come from the (Redacted). There was a young man, for
4 example, (Redacted). Then there was another one called (Redacted). The
5 chief Kogo was also present. Nyondo, the councillor, was there. Councillor Tembe
6 (phon) was also there. Ishmael, the councillor, was also present, and there was also
7 a member of parliament whose name is Lanat -- Lamat (phon) who was present at
8 that time when people were clamouring for their rights.

9 Q. Witness, could you repeat the name of the MP please?

10 A. Yes, I can. Elijah Lagat. That is the name. He was there.

11 MS RENTON: Your Honour, we may move back into public session with your
12 leave.

13 PRESIDING JUDGE EBOE-OSUJI: Public session.

14 (Open session at 9.52 a.m.)

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

16 MS RENTON:

17 Q. Witness, you mentioned that you saw MP Elijah Lagat amongst the crowd.
18 Was he saying anything?

19 A. Yes. As I already stated, I saw him and he spoke. He said, "Let us go and
20 fight for our rights," because the ballot boxes had been stuffed. This happened on
21 the 3rd as well.

22 Q. Staying with what you saw on 31 December, how could you hear what Elijah
23 Lagat was saying amongst the crowd of people?

24 A. At that time Elijah Lagat wanted to delve further into the issue of the elections
25 and how the voting had unfolded. He was wondering whether an election had

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1 actually taken place, a fair election. You see, at that time people were extremely
2 unhappy. They were all shouting that the elections had been stolen, that the
3 Kikuyus had rigged the elections.

4 Q. Witness, my question is, in a large crowd of people, how were you able to
5 hear what Mr Lagat was saying?

6 A. He was using a public announcement system, so to speak. And he said that
7 the truth had to emerge and that their rights had to be respected.

8 Q. Can you describe the public announcement system for us?

9 A. Yes. They had a sound system that was mounted on a pick-up vehicle.
10 Someone was sitting at the back of the pick-up.

11 Q. Which direction did the crowd go?

12 A. The crowd was moving towards the stadium.

13 Q. What was the mood of the people when you saw them moving to the
14 stadium?

15 A. At that time the crowd was angry, but not extremely angry. It is on the 3rd
16 that we saw the crowd totally enraged.

17 MS RENTON: Your Honour, if we could move into private session for the next few
18 questions, please.

19 PRESIDING JUDGE EBOE-OSUJI: Private session.

20 (Private session at 9.58 a.m.) Reclassified into open session.

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

22 MS RENTON:

23 Q. Witness, did you continue going with the crowd to the stadium?

24 A. Yes. I continued to go along with the crowd. You see, I had been (Redacted)
25 (Redacted) when the crowd arrived, so I joined them and followed them. And no

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1 one would have been able to recognise me in such a huge crowd, so I followed the
2 crowd right to town. Now, when we arrived at the junction where one road heads
3 off to the stadium, I left the crowd to continue (Redacted).
4 (Redacted) continued with the crowd to the rally and listened to what was said there
5 and observed that the rally was actually organised to call on them to burn.

6 Q. I would like to stay with what you did on that day on the 31st. Did you
7 return home after (Redacted)?

8 A. Yes, I went back home.

9 Q. And what happened when you got back home?

10 A. At that time as I was heading back to my home, I got to (Redacted)
11 (Redacted) (phon).

12 Q. What happened when you got to (Redacted).

13 A. When I got there to (Redacted), some young people were there and they were
14 talking, listening to the radio. They said that Sang was not lying. These young
15 people were angry. They said, "Let's see. Let's see what happens."

16 Q. Did you continue home after you were at (Redacted)?

17 A. Yes. I went back home. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted).

21 (Redacted), I saw some other young people who were there who
22 were talking amongst themselves. They were angry as well. One of these young
23 people was speaking on the telephone and others were speaking to each other, and
24 they were leaving the group, going off a few metres and then speaking into their
25 telephones.

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1 I was not alone. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted).

6 Q. Witness, staying with 31 December, after you left the crowd at Kapsabet
7 town, did you go home and listen to the radio?

8 MR HOOPER: Yes. Perhaps my friend reflects on her question.

9 MS RENTON: I'll rephrase.

10 Q. Witness, you've told us you observed a crowd on the 31st. Do you know if
11 there were similar crowds in other places also on 31 December?

12 A. I beg your pardon. I haven't grasped your question.

13 Q. You've told us about the large crowd of people that you saw on 31 December
14 in Kapsabet town. Do you know if other people came out of their houses and
15 fought for their rights in other locations on 31 December?

16 A. Yes. I would say that that was the case. At that time in each village there
17 were young people or young women who spoke about that. So it is possible that
18 other people did gather in other locations, but I can't confirm that because I didn't
19 see them myself, but I do think that that did happen, yes.

20 Q. After you left the crowd and went to (Redacted), what did you do after
21 that?

22 A. After that, I got home. Once I was home, I went and switched on the radio.
23 I listened to the radio and we were also watching the television. I turned on my
24 radio and at that point Mr Sang was saying that some people from Kisumu were
25 calling for their rights and they were authorised to do so. He also spoke about

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1 Kisumu, Kakamega and other places. Sang mentioned those locations at that point
2 in time.

3 Q. What did he say specifically about these locations?

4 MR KIGEN-KATWA: Mr President, could I suggest to my colleague that we go to
5 public. I do not see any reason for being in private for that piece of -- that part of
6 the evidence.

7 MS RENTON: My mistake. Sorry. We can move back into public session.

8 PRESIDING JUDGE EBOE-OSUJI: Public session.

9 (Open session at 10.09 a.m.)

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

11 MS RENTON:

12 Q. You mentioned that you were listening to Mr Sang on the radio and he was
13 talking about Kisumu and Kakamega and other places. What was he saying
14 specifically about those locations?

15 A. Mr Sang said that in Kisumu they did good work. Even in Kakamega they
16 did good work. He didn't see why people should stay in their own -- in homes
17 when people were trampling upon their rights. At that point there was a man who
18 was calling upon them -- correction, who was calling in and they were talking about
19 the state of the country, and he said that people should not remain quiet, people
20 should call out and insist upon their rights.

21 Q. When you say "He said that the people should not remain quiet, people
22 should call out and insist upon their rights," was that Mr Sang who was saying it or
23 was it the person who was calling who was saying it?

24 A. Sang said so and the gentleman as well. He stressed the same point. That
25 person said it was true. We should insist upon our rights. We shouldn't accept

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1 these results.

2 MS RENTON: Your Honours, I'd just like to move back into private session for one
3 question hopefully.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 (Private session at 10.11 a.m.) Reclassified into open session.

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

7 MS RENTON:

8 Q. Witness, on the evening of 31 December, did you go anywhere on that
9 evening?

10 A. On 31 December in the evening I went (Redacted), and when we
11 were there there was someone who was supposed to (Redacted),
12 (Redacted)
13 (Redacted), I saw that there were several people, youths, some minibus
14 drivers, and they were talking about how things were going to turn out. They
15 talked about the situation.

16 At that time I was still on my way towards (Redacted).

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 When I got to (Redacted), in actual fact, I did see several people there. Some taxi
23 drivers from -- who had come from Nandi Hills, from Eldoret. All those people had
24 gathered at that place. And there were various vehicles parked off to the side.
25 They were in a group and they were talking to one another.

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1 When I got there, I asked (Redacted)

2 (Redacted).

3 I stayed there and I saw -- well, I realised I was becoming bitter. I was growing
4 afraid. I was all alone against this entire crowd, and these people were saying nasty
5 things. I had to get out of there. I had to go back home.

6 Q. (Overlapping speakers)

7 A. When I went back home --

8 Q. Thank you. Sorry for interrupting. I'd like to move on now to 1 January.

9 When you woke up on 1 January, what did you do?

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 we'll find some way of getting back home, some transportation. We moved ahead
21 about a hundred metres and then we saw smoke, a great cloud of smoke. We
22 wanted to go and check.

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

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

25 (Open session at 10.17 a.m.)

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

2 MS RENTON:

3 Q. Witness, you've said you saw smoke on 1 January. Where was the smoke
4 coming from?

5 A. The smoke was coming from the other side of the hospital. It was the house
6 of a lady who we used to call Chelel. This lady used to sell Tambo (phon) beauty
7 products.

8 Q. What is the ethnicity of Chelel?

9 A. She was a Kikuyu.

10 Q. Did you go closer to the house? Could you see the house of this lady?

11 A. Yes. We moved forward. And you see, this house was on the other side of
12 the Kobil petrol station. We didn't get all the way towards that house.

13 Q. What did you see when you moved forward in respect of that house?

14 A. As we drew near, we saw a large fire. There was a young man and a young
15 lady there.

16 Q. What was the young man and the young lady doing?

17 A. These young people and this lady, they were the ones who had torched the
18 house. When we got to the Kobil petrol station, some Kalenjin men were saying,
19 "Why did that lady do that?" And we realised that this lady and these youths who
20 had torched the house -- that it was them, because the lady had a bottle in her hand,
21 and these young people were along with her, and we realised that it was this lady
22 who had torched the house along with these young fellows.

23 Q. How many young fellows were there with the lady?

24 A. Somewhere between six and ten young men, because you see, there were
25 three on one side, three on the other side and two who were with the woman.

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1 There were other youths. I don't know whether they were with that woman or not.

2 I thought that they were other people who had come to loot. So about ten young
3 people, ten youths.

4 Q. What was the ethnicity of the lady and the group of about ten youths?

5 A. They were Kalenjin.

6 Q. After you saw this happening, what did you then do?

7 A. After that, we were bitter. We stayed there for about ten minutes and then
8 we went back. Everyone went back home. There were the three of us, three
9 women, and we went back home.

10 Q. Did anything else happen on your way home?

11 A. Yes. We got to one particular place -- we got to one particular place and we
12 came across a group of about ten young people. And these youths were talking to
13 one another and they were angry.

14 Q. Could you hear what they were saying, these young people?

15 A. Yes. We listened to these youths for about three minutes, and they were
16 saying -- they were saying, "Let us go to his father's home."

17 Q. Did you hear them say anything else or did you move away at this point?

18 A. When they said that, one of the youths was separate from them, a ways off.
19 These youths were calling on the telephone and they said, "Let us go to their father's,
20 get your transportation ready. Tell your father to come and save you." They were
21 beside a sign. And when they said that, we realised that the situation was not good
22 at all.

23 Q. Were they saying these things to you or were they talking to each other?

24 A. As they were saying that, they were speaking amongst themselves. When
25 we saw them, they were saying, "Get ready. Tell your father to come and save you."

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1 We realised that they were targeting us.

2 Q. Do you know who they were referring to when they said "your father"?

3 A. This was no secret. They were talking about Tarus, because Tarus refused to
4 join them. And Mr Tarus had broken their laws and he had joined up with the
5 Kikuyu and Tarus had married a Kikuyu woman. So he was no longer one of them.
6 He had become a Kikuyu.

7 Q. What do you mean when you say that Tarus had joined up with the Kikuyu?

8 A. At that time Tarus was part of the PNU camp and yet all the Kalenjin were
9 part of the ODM.

10 Q. Did anything happen to Tarus that you know of?

11 A. Yes. When we went our separate ways, after a while a report came out in the
12 year 2008, in April. We met up with another group of Kalenjin people, and they
13 said to us -- we asked them -- we asked them, "You were PNU supporters. Why
14 weren't you attacked?" And they said to us that it was possible to give three bulls
15 and two cows, two dairy cows, and some sheep to -- as a form of apologising to the
16 Kalenjin and thus ensuring that your houses would not be torched.

17 Q. Moving back to 1 January and when you were at this junction, what did you
18 do after you heard these people speaking?

19 A. At that time I learnt about what had happened and I went back to my house
20 and I had some friends. Then later on I went home.

21 MS RENTON: Your Honour, may we move into private session, please.

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 (Private session at 10.31 a.m.) Reclassified into open session.

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

25 MS RENTON:

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1 Q. Witness, on 1 January, after you had seen these things in the morning and you
2 went home, what happened when you got home?

3 A. When I returned to my house, (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 THE INTERPRETER: Correction from the interpreter: (Redacted)

10 (Redacted).

11 THE WITNESS: (Interpretation) (Redacted) a crowd of

12 young people were on the way to town. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted) flee because our houses

23 were going to be burnt down. Our houses were going to be burnt down.

24 So I left my home in a hurry with (Redacted), as well as the

25 (Redacted).

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted).

6 (Redacted)

7 (Redacted)

8 (Redacted).

9 After a while we saw some youth arrive. They were carrying drums of petrol.

10 One had a jerry can, or a drum, of petrol while another was holding arrows. Then

11 there was another one behind the one who was holding a jerry can of petrol who had

12 some paper in their hands -- in his hands. So they went past the location at which

13 we were hiding and at that time they were talking to each other.

14 Q. I'd just like to ask you one question, then we'll return to that. Also, for the

15 interpreters, it helps to take a break every now and then so they can catch up.

16 I just wanted to clarify what time did you (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted).

21 Q. Thank you for that clarification. Moving back to what you were mentioning

22 just before, (Redacted)

23 (Redacted) youth arrive carrying jerry cans or drums of petrol.

24 How many people were there that you saw?

25 A. There were 10 people, ten young people, youths. I do remember clearly. I

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1 was able to recognise five of them. The others I did not know, new faces, I must
2 say.

3 Q. What ethnicity were these youths?

4 A. I believe that some of them were Kalenjin. Most of them, actually, were
5 Kalenjin. There might have been one Luhya in that group because during their
6 conversations they also used the Swahili language.

7 Q. How were you able to recognise that some of them were Kalenjin?

8 A. I was able to recognise them because (Redacted)
9 (Redacted)

10 and that is why I was able to say that (Redacted).

11 Q. (Redacted)

12 (Redacted)?

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted).

18 (Redacted)?

19 (Redacted).

20 Q. Do you know the ethnicity of (Redacted)?

21 A. Yes, I know his ethnicity. He belonged to the Kikuyu ethnic group.

22 (Redacted)

23 (Redacted)?

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted).
- 6 Q. (Redacted). Did you see
- 7 what they did after that?
- 8 A. Yes, (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted) we were able to see how petrol was poured on the ground floor
- 13 while others went up to the next floor. You see, there was a -- there was a ground
- 14 floor, but there was another storey above the ground floor. So they poured some
- 15 petrol on the ground floor and then went up to the first floor, and shortly thereafter
- 16 we saw fire. And there was a popping which we heard, a popping noise, and we
- 17 didn't quite know what it was, and then later they left.
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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- 1 the house was torched, (Redacted),
2 (Redacted)
3 (Redacted).
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted) before reaching that location, (Redacted) house was
16 already on fire. And the atmosphere in Kisii was very tense as Kikuyus and Luhyas
17 had begun to flee. (Redacted)
18 (Redacted).
19 Q. Thank you. I'd just like to ask a few details about some of the things that you
20 mentioned. Firstly, what is the ethnicity of (Redacted)?
21 A. (Redacted) is Kisii. (Redacted) is Kikuyu.
22 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, do we remain in private session?
23 MS RENTON: I'm just a little bit concerned about the names at this moment. I
24 think we can move back into public session shortly.
25 Q. (Redacted)

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1 MS RENTON: Just for the purposes of the record, I believe at line 25 -- oh, it's just
2 been corrected.

3 Q. Witness, do you know the ethnicity of the people in the vehicles at (Redacted)
4 house?

5 A. Yes, they were Kalenjin.

6 Q. How could you tell that they were Kalenjin?

7 A. I was able to recognise them because the vehicle they used was what led me
8 to know that it was such and such and such a person.

9 Q. Were they speaking?

10 A. We were not close enough to hear what they were saying. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. You've told us that you saw people taking items from the house and loading
17 them into vehicles which then carted them away. What happened after they took
18 the items from the house?

19 A. They then torched the house.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, we have to take it up later.

21 MS RENTON: Yes, your Honour. I was just about to break. Thank you.

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

23 (Open session at 10.58 a.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Witness, we'll take our morning break now and

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1 we will come back and you rejoin us at 11.30.

2 Ms Renton, we've been in there for about -- for half-an-hour now in private session.

3 When we come back, how much longer do you propose to stay in there?

4 MS RENTON: Perhaps 15 more minutes and then we'll be able to move back into
5 public session.

6 PRESIDING JUDGE EBOE-OSUJI: All right.

7 MR KIGEN-KATWA: With your permission.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Kigen-Katwa.

9 MR KIGEN-KATWA: May I indicate that on our part we will be taking objection to
10 the need to remain in private session. If the items that are to be covered are similar
11 to what has just been covered, it's our view that it can be conducted in open session,
12 your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, you will need to take that concern
14 into account and take another look at the possibility of asking these questions in
15 open session.

16 MS RENTON: I'm guided, your Honour. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will now rise but the blinds
18 first so the witness can be ushered out of the courtroom.

19 (Closed session at 11.00 a.m.) Reclassified into open session.

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

21 (The witness stands down)

22 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

23 THE COURT OFFICER: All rise.

24 (Recess taken at 11.00 a.m.)

25 (Upon resuming in open session at 11.35 a.m.)

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1 THE COURT USHER: All rise.
2 Please be seated.
3 THE COURT OFFICER: We are in open session, your Honours.
4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Witness, welcome back.
5 Ms Renton will continue asking you questions, but I would like to recall the advice I
6 gave you yesterday, and I think it's important that we observe that, and that is, you
7 know, in the courtroom sometimes when people who are not very familiar with the
8 Court process see stories being told in court. It might seem like just stories being
9 told, but it is not like that, because when the Prosecutor has a case there is certain
10 information that she needs to prove her case.
11 What that means is that in an event that happens, you may have a witness who has a
12 lot of information about that event, but not everything, not every information, every
13 piece of information that the witness has is important for the case. It may be
14 important for other purposes, some other bits of information, but the lawyer who is
15 doing a case specifically has something in mind that they want to prove, because the
16 law requires certain things to be proved a certain way, and that is why the lawyers
17 select the sort of questions they will ask the witness and leave out some other
18 information.
19 So the witness might feel frustrated sometimes, why isn't she asking me this, or there
20 is something else I want to say. Yes, that may be the case, but it is the lawyer who is
21 doing the case that really knows what information they need from you. So let us go
22 back to that advice I gave you yesterday, that Ms Renton has something in mind that
23 she wants to prove, and that's why she's asking you questions, certain questions and
24 needing certain information from you in a certain way.
25 So I'll ask you to bear with her and stay with her. Just listen to her questions very

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1 carefully. Make sure you understand the questions she's asking you, and then just
2 try and answer just that question. Even if there is something else you have in mind
3 you want to say, wait and see, you may well find out, as I told you yesterday, that by
4 the time she is finished asking you the questions she may come to those information
5 you have in mind that you want to talk about.

6 Also, there are two other lawyers who are waiting to ask you questions. So there
7 will be a lot of questions that will be asked of you before you leave us. And so just
8 exercise some patience, all right?

9 THE WITNESS: (Interpretation) Yes, I've understood.

10 PRESIDING JUDGE EBOE-OSUJI: So Ms Renton will start again. Just listen to her
11 questions and answer just those, all right? Thank you.

12 Ms Renton, you will continue. We're in open session.

13 MS RENTON: If we could move briefly into private session, and I hope to move
14 back into public after a few minutes.

15 PRESIDING JUDGE EBOE-OSUJI: Private session then.

16 (Private session at 11.40 a.m.) Reclassified into open session.

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

18 MS RENTON:

19 Q. Witness, do you see a piece of paper in front of you with a list of locations and
20 persons names?

21 A. Yes.

22 Q. Are you able to read those places and names clearly?

23 A. Yes, I can.

24 Q. I would like to ask his Honour to move back into public session. So what I
25 would ask is that if you want to refer to any of those places or any of those people

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1 when you answer my questions, please use the number instead of the name. For
2 example, if I say "Where did you go?" You would say, "Location 1" or "Location 5,"
3 et cetera. Is that clear?

4 A. Yes, I've understood.

5 Q. And similarly if I ask you, "Did you see anyone or were you with anyone?"
6 you would say, "Yes, person 3, person 9," et cetera. Is that clear?

7 A. Yes, it's clear.

8 MS RENTON: Your Honours, we may move back into public session.

9 PRESIDING JUDGE EBOE-OSUJI: Public session.

10 (Open session at 11.42 a.m.)

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

12 MS RENTON:

13 Q. Witness, before the break we were talking about how you witnessed two
14 houses being torched. Without mentioning any extra details, what time of the day
15 was it after the second house was torched?

16 A. The second house was torched at about 4.00 in the afternoon.

17 Q. While you were in the bush area near those houses, did you encounter anyone
18 else that you knew?

19 A. Yes, I ran into someone. But I don't see that person's name on the list.

20 MS RENTON: If we could move into private session just to identify that person,
21 please, your Honours?

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 (Private session at 11.44 a.m.) Reclassified into open session.

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

25 MS RENTON:

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1 Q. Witness, who was the person that you ran into at that time?

2 A. I met up with (Redacted).

3 MS RENTON: If we could move back into public session please, your Honours.

4 PRESIDING JUDGE EBOE-OSUJI: Do you have the spelling?

5 MR KIGEN-KATWA: I'm sorry, your Honour, for interrupting. I just wanted to
6 explain this being our position, your Honours. It's our position that the places that
7 were set on fire as listed by the witness, including the victims being variously
8 (Redacted) in our view is not protected
9 information.

10 And we can understand the concern of my colleague that the position where the
11 witness was and how she saw and the people she personally knows should be
12 protected, we do understand that, but if she could cluster that information about
13 personal knowledge of the witness and take us into private session for purposes of
14 that information, as opposed to concealing the fact of the setting on fire of these
15 houses, if that is what the witness is saying, we would really appreciate it, your
16 Honour, because this information of these houses having been set as far as we are
17 concerned is not protected information, and it is in the interest of the Defence to
18 have that information come out.

19 MS RENTON: Your Honour, it's the circumstances in which she witnessed those
20 houses being burned which may be identifying. I don't intend to revisit those topics
21 and so I don't intend to elicit any further information on that, but it was the specific
22 circumstances in which she was placed (Redacted) and it's very
23 difficult to carve that information out when she's answering the questions.

24 PRESIDING JUDGE EBOE-OSUJI: So your point is you don't intend to revisit that
25 area of the testimony, is that it?

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

2 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go back into public session then.

3 (Open session at 11.46 a.m.)

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

5 MS RENTON:

6 Q. Witness, we're now in public session, so please be very careful with the
7 information you mention in your answers. You told us that you ran into someone
8 you know. Without mentioning that person's name, can you tell us what, if
9 anything, you -- they told you or you told them when you ran into them?

10 A. When we went and hid in the second area of bush, we met some other people
11 who had also gone to hide in that area of bush. While we were there, someone had
12 a mobile phone, and he was able to speak to someone else on the telephone.

13 I'm sorry, that person who he was talking to on the telephone is person number 9
14 and he was telling him what was going on outside of the spot where we were. We
15 stayed at that place until 4 in the afternoon.

16 After that house was looted, it was set on fire. And, you see, we were still in that
17 area of bush. During that time, someone called us on the telephone. So it was
18 person number 9 who had called to tell us --

19 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go briefly to private session just
20 for one minute or so.

21 (Private session at 11.49 a.m.) Reclassified into open session.

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

23 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, now the witness gave the name -- is
24 (Redacted) right?

25 MS RENTON: That's what I heard, your Honour, yes.

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted), right. Can we write that with hand as
2 person number 12.
- 3 MR KIGEN-KATWA: Your Honour --
- 4 PRESIDING JUDGE EBOE-OSUJI: Can we spell that? Could it be (Redacted)
- 5 MR KIGEN-KATWA: My understanding is that it was not the name. I think the
6 Prosecutor's Kiswahili translator will confirm when the witness said (Redacted).
7 She meant that, (Redacted)
8 (Redacted). Probably the translator could assist
9 in that.
- 10 MS RENTON: What I understood from the witness's answer is that it was
11 (Redacted). I can clarify that with the witness.
- 12 PRESIDING JUDGE EBOE-OSUJI: All right. Can you ask again?
- 13 MR KIGEN-KATWA: If that is right, I can give the spelling and the witness can
14 confirm.
- 15 PRESIDING JUDGE EBOE-OSUJI: All right.
- 16 MR KIGEN-KATWA: Yes. The spelling is (Redacted) and the witness had said
17 (Redacted).
- 18 PRESIDING JUDGE EBOE-OSUJI: Did you say (Redacted)?
- 19 MR KIGEN-KATWA: Yes, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, was that your answer? Did
21 you say that (Redacted)
22 (Redacted) Was that what you said?
- 23 THE WITNESS: (Interpretation) Yes, I said (Redacted).
- 24 PRESIDING JUDGE EBOE-OSUJI: So it is a person called (Redacted)
- 25 THE WITNESS: (Interpretation) Yes. In Kisii language it means (Redacted).

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- 1 (Redacted)
- 2 (Redacted).
- 3 PRESIDING JUDGE EBOE-OSUJI: So there is a person, (Redacted)
- 4 (Redacted)
- 5 THE WITNESS: (Speaks English) Yes.
- 6 THE WITNESS: (Interpretation) Yes.
- 7 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 8 (Redacted)
- 9 THE WITNESS: (Interpretation) No.
- 10 PRESIDING JUDGE EBOE-OSUJI: All right. What we'll do, why don't we write
- 11 (Redacted) --
- 12 THE WITNESS: (Interpretation) Just this one particular person --
- 13 PRESIDING JUDGE EBOE-OSUJI: All right.
- 14 THE WITNESS: (Interpretation) -- (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: Let's write down (Redacted) as person number 12
- 16 on the PIS.
- 17 Now, we will go out -- Witness, we will go to the public session and then we will say
- 18 person number 12, that is (Redacted), all right?
- 19 All right. Back to public session now.
- 20 (Open session at 11.54 a.m.)
- 21 THE COURT OFFICER: We're in open session, your Honours.
- 22 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we're back in open session.
- 23 And the question that Ms Renton asked you is when you met person number 12 in
- 24 the hiding place where you said you met person number 12, Ms Renton's question is:
- 25 Did he say anything to you and did you say anything to him?

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1 THE WITNESS: (Interpretation) When we were in that area of bush, person
2 number 12 was trying to find someone. He had that person's phone number,
3 person number 9. He wanted to call that person so that that person would give us
4 some news, because in actual fact where he was, there were no enemies.

5 MS RENTON:

6 Q. Just to be clear, Witness, person number 12 called person number 9 on the
7 telephone; is that correct?

8 A. It was number 9 who first called number 12. And they spoke clearly. And
9 they were calling each other to give information. So number 9 called number 12 to
10 tell him what was going on in the place where he was.

11 Q. So number 12 was in the area where you were, and number 9 was in a
12 different area; is that correct?

13 A. Yes.

14 Q. And what location was number 9 at?

15 A. According to the information provided by number 12, the person was
16 at -- number 9 was around place number 5.

17 Q. Is that in Kapsabet, place number 5?

18 A. Yes, that place is in Kapsabet.

19 Q. And what did person number 9 tell person number 12 via telephone?

20 A. When we were in that area of bush, number 9 asked the person whether we
21 could leave the bush.

22 Q. Did you leave the bush?

23 A. No, we were not able to do that, because number 9 asked us not to leave the
24 bush until he gave us information as to whether or not we would be able to leave the
25 bush.

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1 Q. Did person number 9 eventually give you that information?

2 A. Yes. At one particular point in time, after that house was torched, at place
3 number 5, the people who were there left, and person number 9 told us that some
4 youths had been burnt in houses and they were trying to save them. We stayed at
5 that place, and later he told us to leave the bush. He said, "You can now leave the
6 bush."

7 Q. What time was this? What time did you then leave the bush?

8 A. We left the bush at around 7 p.m.. I would say between 7 and 8 p.m. It was
9 dark and you couldn't see someone who was a few metres away from you because of
10 the darkness.

11 Q. Where did you go when you left the bush?

12 A. When we left the bush, we were all wondering where to go. That took us
13 about 30 minutes while we wondered where to go, and we were also wondering
14 about what had happened to the other people who were not with us. We left the
15 bush, and we went to house number 7.

16 Q. Did you stay at house number 7 that night?

17 A. Yes. When we arrived at house number 7 at 9.30 p.m., I was with the
18 children. We left the children somewhere where they had been given a place to
19 sleep, and we stayed outside house number 7.

20 Q. How many nights did you stay at house number 7?

21 A. We spent the night at house number 7. That was the only night we spent
22 there.

23 Q. Without giving any extra details, how many people stayed at that house that
24 night?

25 A. It is not possible for me to know how many people were there, because each

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1 person came on their own and it did not depend on ethnicity. There were about
2 three ethnic groups present there. It was not only a single ethnic group.

3 Q. Which ethnic groups were present at number 7's house on that night on 1
4 January?

5 A. There were Kikuyu, Luhya and about two or three Kisii as well as their
6 families.

7 MS RENTON: Your Honour, if we could move into private session for a couple of
8 questions please?

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 (Private session at 12.06 p.m.) Reclassified into open session.

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

12 MS RENTON:

13 Q. Witness, who is the person that owned house number 7?

14 A. House number 7 belonged to someone who (Redacted)
15 (Redacted).

16 PRESIDING JUDGE EBOE-OSUJI: Can you look at your list and see if he's on the
17 list.

18 THE WITNESS: (Interpretation) Yes. He is on the list of names above.

19 PRESIDING JUDGE EBOE-OSUJI: What number?

20 THE WITNESS: (Interpretation) Number 7.

21 PRESIDING JUDGE EBOE-OSUJI: We're in private session. What is his name?

22 THE WITNESS: (Interpretation) His name is (Redacted),
23 " number 7 at the top. And on the list at the bottom, he is on the list as the (Redacted)
24 (Redacted).

25 PRESIDING JUDGE EBOE-OSUJI: So that's person number 10?

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1 THE WITNESS: (Speaks English) Yeah.

2 THE WITNESS: (Interpretation) Yes.

3 PRESIDING JUDGE EBOE-OSUJI: Ms Renton?

4 MS RENTON: Thank you, your Honour. We can move back into public session.

5 PRESIDING JUDGE EBOE-OSUJI: Public session then.

6 (Open session at 12.10 p.m.)

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

8 MS RENTON:

9 Q. Witness, on 1 January, you've told us that you were hiding in the bush, and
10 then in the evening you went to house location 7. Did anything else happen on that
11 evening, 1 January?

12 A. On that day, that is 1 January -- well, I didn't quite understand the question.
13 Would you kindly clarify, because many things happened that I do not know.

14 PRESIDING JUDGE EBOE-OSUJI: That's a good point. Ms Renton, are you able to
15 narrow the area of inquiry down without feeding the answer to the witness?

16 MS RENTON: I'll do my best, your Honour.

17 Q. Witness, as you went from the bush to house number 7 or while you were at
18 house number 7, did anything else happen that you saw on 1 January?

19 A. Yes. When I went to house number 7, during that night it was not possible
20 for us to sleep, because there were noises coming from all directions. There was a
21 lot of shouting, a lot of noises. And there were also noises that sounded like an
22 alarm call or a call to war. And we preferred to stay outside rather than sleep inside
23 the house.

24 I'm sorry, during that night of 1 January, apart from those noises, we could also hear
25 gunshots, but we did not know from which direction they were coming from.

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1 There was wind. And when it is windy, you can have echoes of those noises
2 coming from a different side other than from where the gunshots were coming.

3 Q. The alarm call or the call to war that you heard, do you know who was
4 making this noise?

5 A. I knew that it was the Kalenjin who were making those noises, because those
6 noises are not made by any of the other ethnic groups. These are noises that are
7 unique to the Kalenjin group. This is a call to war.

8 Q. What is the Swahili word, if there is one, for this noise that they make?

9 A. It is known as nduru. It is known as nduru, but not the type of sound also
10 known as nduru that is made by women. It is a different sound. I already heard
11 that type of noise in 1992, so I knew that this was not normal.

12 Q. Moving to 2 January, the next day, did you witness any damage or violence
13 on that day?

14 PRESIDING JUDGE EBOE-OSUJI: Are we going to ask -- are we interested in that
15 noise? Have you exhausted?

16 MS RENTON: I don't need any further information on that noise. Thank you,
17 your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Move on then.

19 MS RENTON:

20 Q. I'll repeat my question, Witness. Moving to the next day, which is 2 January,
21 did you witness any damage or violence on that day?

22 A. On 2 January, we woke up very early, at 5.30 a.m., that is because we had not
23 slept all night long. And so we felt that it was better for each person to go back
24 home to look for blankets for the children or for something for those children to eat.
25 So each person returned to their own home.

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1 On the way back, we came across some young people who were shouting or making
2 noises, but they did not speak to us. We continued on our way, and the person at
3 number 1 called me on the phone. He asked me where I was, and I said that I was
4 at home and that I had gone to fetch some food for the children.

5 There were people who had come together to look for ways to go to the police
6 station. Before I went to location number 1, we heard a vehicle with a public
7 address system mounted on it. It was the DC's vehicle. Announcements were
8 made appealing to people to come out and go to the police station. We kept quiet.

9 PRESIDING JUDGE EBOE-OSUJI: The Prosecutor's question was whether you had
10 witnessed any damage or violence on 2 January.

11 THE WITNESS: (Interpretation) On 2 January, I did not witness any destruction,
12 but there were a lot of disturbances, because when I went back to location number
13 1 -- that is why I was talking about the DC.

14 MS RENTON:

15 Q. Where did you spend the night on January 2nd?

16 A. On 2 January I spent the night in the bush once again.

17 Q. Why did you not stay at house number 7?

18 A. When I left number 7 and went to location number 1, and then I left number 1
19 once again to go back to number 7, we came across some Kalenjin elders who were
20 discussing. Some of them were saying that number 7 had acted badly by hosting
21 enemies in his house. Others said that he had acted correctly. So there was a
22 dispute amongst those elders. And then they left. They did not speak to us.

23 PRESIDING JUDGE EBOE-OSUJI: You mean they were saying the owner of
24 number 7 had acted badly, and others were saying, no, he had acted correctly?

25 THE WITNESS: (Interpretation) Yes, that is what I meant.

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1 MS RENTON:

2 Q. Did you speak to the owner of number 7 and ask whether you could stay,
3 talking about the night of January 2nd?

4 A. When we came across those elders, they left, and then I went in the direction
5 of location number 7. When I arrived there, I did not even have the time to ask
6 where I could spend that second night, because number 7 told us that he had been
7 warned to ensure that we left his house, otherwise that house would be set on fire.

8 Q. Did he tell you who told him this warning?

9 A. He told us that it was the youth who had warned him. He told us that the
10 youth had given him that warning.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, never forget to turn off your
12 microphone when the witness is answering.

13 Witness, I thought we established that the owner of number 7, the house number 7,
14 the owner is person number 10. I'm just reminding you. We make this -- even I
15 make this mistake from time to time.

16 THE WITNESS: (Speaks English) Okay.

17 MS RENTON:

18 Q. Witness, person number 10, who was the owner of location number 7, did he
19 tell you the ethnicity of the youths that gave him the warning?

20 A. (Interpretation) He did not tell us the ethnic group of those youth, but he
21 told us that if he continued keeping us in his house that house would be burnt
22 down.

23 Q. Without giving any extra details, how many people stayed in the bush with
24 you that night of January 2nd?

25 A. There were about 18 of us and the children also.

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1 Q. Turning now to the next day, which is 3 January, did you witness any
2 violence or any destruction on that day, January 3rd?

3 A. No.

4 Q. You've told us earlier that you saw Elijah Lagat on 3 January. What were the
5 circumstances where you saw him on that day?

6 A. On the 3rd in the morning, at about 9.30 a.m. or 10 a.m., Mr Lagat, you see,
7 some people were in his vehicle, and he was calling upon, he was calling for a rally.
8 And he had already informed people, he was in the process of making this
9 announcement, and the rally had been broadcast by Mr Sang. And people were
10 calling upon one another to go to that rally. It was a major rally, very large.
11 People who had come from all kinds of places were going to take part in the rally,
12 middle-aged women, seniors not too old, young people. There were all kinds of
13 different people, and they had green branches and they were heading towards the
14 stadium.

15 Q. Is this Kapsabet stadium?

16 A. Yes, I was talking about the Kapsabet stadium.

17 Q. And where were you when you saw Mr Lagat calling for a rally?

18 A. I was on the road on my way to number -- to location number 1.

19 Q. What was Mr Lagat saying?

20 A. Mr Lagat was saying that each person had to go, had to gather, and that they
21 should insist upon their rights, claim their rights, because their votes had been
22 stolen. He was calling upon them to talk about the way things would turn out.

23 Q. Was Mr Lagat in a vehicle, or was he on foot?

24 A. Mr Lagat was in his pick-up and there were some other vehicles with that
25 vehicle. It was a convoy. There was also another vehicle. You see, he was in a

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1 vehicle, yes.

2 Q. How were you able to hear the words that he was saying?

3 A. Mr Lagat was using a PA system and the vehicle that was following also had
4 one. It also had a PA system.

5 Q. Did you go to the rally?

6 A. No, I couldn't. I couldn't go to those rallies because we were victims.
7 Secondly, we were trying to save our own lives.

8 Q. You told us earlier that this crowd on 3 January were enraged. Why do you
9 say that they were enraged?

10 A. I beg your pardon? Please repeat your question. I don't understand
11 properly.

12 Q. You mentioned earlier that the crowd on 3 January were angry. What makes
13 you think that they were angry?

14 A. On the 3rd, those people were angry because the person who had won the
15 election had been proclaimed as well. Tension had grown after some houses had
16 been torched. Those people had completely changed. They were not the people
17 that we knew before that time.

18 Q. You've told us that you saw Elijah Lagat making this announcement in the
19 morning, but that you didn't go to the rally. What did you do after these people
20 passed and moved away?

21 A. When Lagat was announcing the rally, I was on the road and I was going to
22 location number 1 on the list. From the road to location number 1, it's a distance of
23 about 150 metres. So they did not go in front of me, but some neighbours went by
24 and they were saying -- but I did not take part in the rally.

25 Q. Did you continue going to location number 1?

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1 A. Yes, I went to location number 1. When I was at location number 1, I was
2 informed that some people had gathered at the home of person number 6 to try to
3 get a vehicle that could take them to the police station.

4 THE INTERPRETER: Interpreter correction: In the previous reply the witness
5 mentioned neighbours who had gone by and who were saying, "Let's go."

6 MS RENTON:

7 Q. What did you do when those people informed you that there was a vehicle
8 that could take them to the police station?

9 A. I went to location number 1. There was something that I wanted to get at
10 location number 1, and then -- then I went to location 6. And once I got there, I saw
11 that there was absolutely no one left there at place number 6.

12 Q. Place number 6, is that in the top half of the list or on the bottom half of the
13 list?

14 A. At the bottom.

15 Q. So what did you do when you went there and found that there was nobody
16 there?

17 A. Once I got there, I saw that there was no one there anymore. And being at
18 that place, I was informed that some people had gathered at another location.

19 Person number 1 called me on the telephone and said to me, "Get ready. They're
20 coming to get you."

21 When I went to the location that I was told to go to, I met some people who had
22 gathered there, and at the same time a police vehicle arrived.

23 MS RENTON: Your Honours, may we move into private session for a few
24 questions?

25 PRESIDING JUDGE EBOE-OSUJI: Private session.

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1 (Private session at 12.44 p.m.) Reclassified into open session.

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

3 MS RENTON:

4 Q. Witness, can you tell us the location that you were told to go to? If it's not on
5 the list, then you can just tell us because we're in private session.

6 A. Very well. At that time, when I went to number 6, I found no one there, and
7 I went. When I was there, person number 1 (Redacted)
8 (Redacted).

9 When I was there, I did come across one person who told me that person number 12
10 had spoken to person 9, and that person had said to him, (Redacted).

11 Once I got there, I came across person number 12 as well as other people who had
12 gathered there. (Redacted). When we were

13 there, person 12 said to us that he had just spoken to person number 9, and person 9
14 had told him that he had (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE EBOE-OSUJI: All right. The lawyer wants you to explain, but
8 try doing that in a few words if you can.

9 MS RENTON: Your Honour, we may also do this in public session.

10 PRESIDING JUDGE EBOE-OSUJI: Public session.

11 (Open session at 12.49 p.m.)

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 Witness, as you noticed, the red light is on, so it means we're in open session. And
15 the question for you is what you understood by the expression "The work must
16 continue." You can give that explanation, your understanding of it, but try saying
17 so in a few words. But do not identify yourself while you give that explanation.

18 THE WITNESS: (Interpretation) Okay. When people said that "The work had to
19 continue," that was a reference to Kibaki in 2005. After the referendum, Kibaki had
20 said that the constitution had been rejected, and people -- some people had to give
21 up politics so that the work could continue. Ever since that time, Kibaki has been
22 referred to in that way, by that phrase, the word must -- "The work must go on."

23 THE INTERPRETER: The witness speaks in Swahili.

24 PRESIDING JUDGE EBOE-OSUJI: The witness has been speaking in Swahili.

25 MS RENTON:

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1 Q. Witness, do you know the ethnicity of the police officer that made that
2 statement?

3 A. No, I don't.

4 Q. Witness, you've told us that the police officer said "Find some other solution."
5 Did you find another solution?

6 A. I don't think we've understood one another. I was saying that I wanted to
7 speak briefly. I said that person number 9, he was the one who called the police.
8 And the police answered him saying, "You said that the work must continue. Don't
9 bother me."

10 Q. My apologies, you're quite correct. In fact, you said that person number 9
11 said he had tried to find a solution but could not find one.

12 Did you after that point find a solution?

13 A. After suffering for a long time, the police vehicles arrived, and those police
14 officers who were in those vehicles asked everyone to pay 600 shillings and 300
15 shillings for the children, and if you didn't have that money you had to stay there.

16 (Redacted)

17 (Redacted).

18 Q. Was this still on 3 January?

19 A. Yes, it was 3 January.

20 Q. What was the ethnicity of these police officers who asked for money?

21 A. The police officers that we saw were from the Kalenjin ethnic group.

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

23 (Private session at 12.55 p.m.) Reclassified into open session.

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

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will need to redact for public

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1 broadcast what appears at line 21 to 23, at page 54 -- 53 -- sorry, 52, at page 52. That
2 would be the reference to (Redacted)

3 (Redacted)

4 (Redacted)

5 Those need to be removed from public broadcast.

6 Let's go back to private session -- public session, rather. Witness, this is not your
7 fault. These things happen. So don't feel that you've done something bad, okay?

8 (Open session at 12.56 p.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MS RENTON:

12 Q. Witness, after the police officers refused to take you, what did you do at that
13 point?

14 A. I stayed at that location with some other people who didn't have any money.
15 The people who had money were transported.

16 Q. Did you stay at that location for the rest of the day of 3 January, or did you go
17 somewhere else?

18 A. On the 3rd, the morning, at 5, 5 a.m., when we left the bush, there is a place
19 where we hid the children. And during all that time when I was at those locations,
20 I was not with my children.

21 When the police officers refused to take me, we left that location, and we went to the
22 location where we had hidden the children.

23 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, we will leave it there for the lunch
24 break.

25 Witness, it's come time for you to have some lunch and us too. So we will be taking

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1 our lunch break now, and we'll meet again at 2.30. Please do not discuss your
2 testimony during the lunch break. The blinds will come down for the witness to be
3 escorted from the courtroom.
4 (Closed session at 12.59 p.m.) Reclassified into open session.
5 THE COURT OFFICER: We are in closed session, your Honours.
6 (The witness stands down)
7 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
8 THE COURT OFFICER: All rise.
9 (Recess taken at 1.01 p.m.)
10 (Upon resuming in open session at 2.36 p.m.)
11 THE COURT USHER: All rise.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back. Ms Renton will
14 continue her questions of you. And, again, to remind you -- you were doing rather
15 well with my instructions to you before we went to lunch of listening to the question
16 and understanding the question Ms Renton is asking you and then responding just
17 to that question. We will take it one question at a time. All right?
18 Ms Renton, we will continue.
19 One little housekeeping matter. Mr Hooper, on the matter of the last disclosure
20 item that we discussed where we had to revise the order on redaction so that the
21 pseudonyms will be provided to you, consistent pseudonyms --
22 MR HOOPER: Yes.
23 PRESIDING JUDGE EBOE-OSUJI: -- do you intend to ask questions on that
24 material during your cross-examination?
25 MR HOOPER: (Microphone not activated) I received them today --

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- 1 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 2 MR HOOPER: -- and so I haven't gone through them again yet.
- 3 PRESIDING JUDGE EBOE-OSUJI: Right.
- 4 MR HOOPER: I was actually thinking about that as I was making my way here just
- 5 now.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right. All right.
- 7 MR HOOPER: And it's probably unlikely. Probably unlikely.
- 8 PRESIDING JUDGE EBOE-OSUJI: Okay. All right.
- 9 MR HOOPER: Because it deals with another --
- 10 PRESIDING JUDGE EBOE-OSUJI: Something --
- 11 MR HOOPER: -- another matter.
- 12 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.
- 13 MR HOOPER: But I reserve the position until tomorrow.
- 14 PRESIDING JUDGE EBOE-OSUJI: All right. The reason I ask is if given the
- 15 probability in that regard, it will be a good idea to have some sort of code, prepare a
- 16 sheet, a code sheet, something like a PIS, that will track the real name to the
- 17 pseudonym for the witness so that the witness wouldn't have to refer to people's
- 18 names but would know who we're talking about.
- 19 MR HOOPER: Yes, that would be a good idea just to extract. There are
- 20 pseudonyms already, and so if they could be -- we wouldn't have sight of that --
- 21 PRESIDING JUDGE EBOE-OSUJI: Will not have it, so it will be the Prosecution,
- 22 yes.
- 23 MR HOOPER: -- but the Prosecution and the witness could have sight of it should
- 24 that be an area which we go into.
- 25 PRESIDING JUDGE EBOE-OSUJI: Think about it, see if that's a good idea, or if

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1 there's a reason why it shouldn't be done, you can let the Chamber know.

2 MR STEYNBERG: Your Honours, may I just say that not all of the persons are
3 named, so in some instances it might be "A Kalenjin lady came to me," or et cetera,
4 but for those persons who have names I think we could certainly do it. It might be
5 difficult for the others.

6 PRESIDING JUDGE EBOE-OSUJI: To the extent that it can be done.

7 MR STEYNBERG: Very well.

8 PRESIDING JUDGE EBOE-OSUJI: So that we can do that and keep it handy. If
9 need be, you can be excused to talk to the witness just for purposes of the
10 pseudonym tracking and then we continue.

11 MR STEYNBERG: The other possibility might simply to have -- no. I was going to
12 say unredacted copies of the statement before the witness, but I imagine my learned
13 friend might have an objection to that. So we'll look into that, your Honours.

14 PRESIDING JUDGE EBOE-OSUJI: Okay.

15 MS RENTON:

16 Q. Witness, before the lunch break we were talking about some things that took
17 place on 3 January. I'll ask you a few more questions about that, but my first
18 question is: Where did you stay on the evening of 3 January? Where did you stay
19 that night?

20 A. On 3 January, if I remember correctly, I spent the night at the police station.

21 Q. How did you get to the police station?

22 A. I do remember that it was after some of the people left on board the police
23 vehicles. I stayed back at that location. I'm sorry, let me repeat. When I arrived
24 at the police station, person number 1 helped me to find a vehicle that would take
25 me to the police station.

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1 Q. And the police station is Kapsabet police station; is that correct?

2 A. Yes.

3 Q. Moving from the location where you were in the vehicle to Kapsabet police
4 station, did you encounter any obstacles on that journey?

5 A. Yes. There were about three roadblocks.

6 Q. Where were the roadblocks located?

7 A. Very well. There were three roadblocks.

8 Q. At which place or at which location did you find these roadblocks?

9 A. I do not think that I can give you that answer in open session.

10 Q. Is the location on the sheet of paper in front of you? Just answer yes or no.

11 A. Very well. One of those roadblocks was at location number 6. That is at the
12 top of the page. I do not see the others on the list.

13 Q. I'll just talk about that one roadblock first then.

14 A. (Speaks English) Okay.

15 Q. How many people were at the roadblock?

16 A. (Interpretation) There were many people at that first roadblock. It was not
17 possible for me to count them, that is because it was at that time that -- there was this
18 gathering of people going in the direction of the showground.

19 Q. Talking about the roadblock at location number 6, there were many people, I
20 understand. What was the ethnicity of those people that you saw there?

21 A. Those people were Kalenjin. At least those that I saw were Kalenjin.

22 Q. What were they wearing? Can you describe their clothing?

23 A. The people that we found at that location include -- that young people and
24 members of the population who were going towards the stadium, some of them
25 were carrying leaves or grass. There were also young people at the top of the hill.

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1 Those ones have -- had bows and arrows while others were carrying runigus and
2 pangas. So there was -- this was a diverse group of people.

3 MS RENTON: Your Honour, may we move into private session for a few
4 questions.

5 PRESIDING JUDGE EBOE-OSUJI: Private session then.

6 (Private session at 2.50 p.m.) Reclassified into open session.

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

8 MS RENTON:

9 Q. Witness, you've told us that there were three roadblocks on the way to
10 (Redacted). Where
11 was the second roadblock?

12 A. The first roadblock was (Redacted); it was set up (Redacted)
13 (Redacted). The second roadblock
14 was (Redacted). And the third one was (Redacted)
15 (Redacted)
16 (Redacted).

17 Q. Witness, we'll move back into public session. Instead of referring to the
18 locations, we'll just refer to roadblock 1, roadblock 2 and roadblock 3. Is that okay?

19 A. Very well. I'm sorry, I have just mentioned to you the roadblocks through
20 which I passed. (Redacted)
21 (Redacted)
22 (Redacted).

23 Q. Witness, I'd like to concentrate on the three roadblocks that you went
24 through, (Redacted). Is that okay?

25 A. Very well.

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1 MS RENTON: Your Honour, we may move back into public session.

2 PRESIDING JUDGE EBOE-OSUJI: Before we do, so we have numbers to

3 roadblocks. When you say roadblocks 1, 2, 3, do you mean (Redacted)

4 (Redacted)

5 MS RENTON: Yes. The way I understand it, the first one was (Redacted)

6 (Redacted), the second one (Redacted), and the third one (Redacted).

7 PRESIDING JUDGE EBOE-OSUJI: All right. So let's make sure the

8 witness -- we're all on the same page on that.

9 Witness, Ms Renton will be talking about or will require you to talk about

10 roadblocks 1, 2 and 3. So roadblock number 1 would be (Redacted),

11 and roadblock number 2 would be (Redacted) and number 3 will be (Redacted).

12 (Redacted). Do you understand it that way? All right.

13 THE WITNESS: (Interpretation) Yes, indeed.

14 PRESIDING JUDGE EBOE-OSUJI: We go to public.

15 (Open session at 2.55 p.m.)

16 THE COURT OFFICER: We are in open session, your Honours.

17 MS RENTON:

18 Q. Witness, were you able to pass through the roadblock number 1?

19 A. Yes. We were able to pass through that roadblock.

20 Q. When you reached roadblock number 2, what did you see there?

21 A. When we arrived at the second roadblock, we found many people there.

22 There was a fire in the middle of the road. Vehicles had been stopped and

23 prevented from continuing on their way, and they were parked by the side of the

24 road. There were people moving on foot and going towards the stadium. When

25 we arrived there, our vehicle was also stopped and we were told to alight.

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1 Before we came out of the vehicle, the driver alighted and spoke with those people.
2 He came back into the vehicle. He then asked us whether we had any money to
3 give to those people. We said, "No, we do not have any money," and then he said
4 he was going to make us leave the vehicle. We were going to get out of the vehicle
5 because he did not want to take any risks.

6 While we were still at that roadblock, I saw another vehicle arrive. That vehicle was
7 driving at speed. The vehicle was stopped. It contained someone and his family.
8 That struck me, but fortunately that person was saved. Someone there asked the
9 driver to come out of the vehicle. That person came out and started speaking with
10 the young people. However, they did not agree. They said that if money was
11 given to them they would let them pass, but the driver of the other vehicle said that,
12 "We cannot leave these passengers here. There's no way we will do that."

13 Q. Who was driving your vehicle?

14 A. It was driven by a soldier.

15 Q. What was the ethnicity of that person?

16 A. He was a Kalenjin.

17 Q. I heard you used the word "askari". When you use that word, do you mean
18 soldier or do you mean policeman?

19 A. In Kenya when you use the word "askari" it refers to a policeman. That is the
20 word that we use when we talk about policemen, given that the word "policeman" is
21 an English word, so we also refer to them as policemen.

22 Q. You told us that your vehicle was stopped and you were told to get out of the
23 vehicle. Who told you this?

24 A. It was the youth who came who ordered us to get out. They told us we were
25 not going any further, that we will stop there. When those youth came, the

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1 policemen alighted from the vehicle and stood nearby with the youth and started to
2 have some discussions or negotiations over a period of about five minutes.
3 During that time of the discussions -- during that time the civilians who were
4 present, and in particular the women, started to spit on us saying that we were black
5 snakes that ought to be eaten up.

6 Q. What was the ethnicity of the youth that stopped the vehicle and spoke to the
7 policemen?

8 A. They were Kalenjin youth.

9 Q. What did you understand them to mean when they said you were black
10 snakes?

11 A. Those were insults. You see, you cannot refer to a human being as a snake.
12 Wherever a snake is found it is killed, so we understood that we were sworn
13 enemies to them as far as they were concerned.

14 Q. What was the ethnicity of these civilians and the women who were saying
15 these things?

16 A. They were Kalenjin.

17 Q. Were you eventually able to pass through roadblock number 2?

18 A. Yes. Some discussions, some intense discussions took place between the
19 civilians and the policemen and, at some point, one of the policemen fired a shot into
20 the air because they were not able to reach compromise, that is, the youth and the
21 policemen were not able to agree. But when the policeman fired into the air, the
22 civilians and the youth people ran away in various directions and the car started and
23 we took off.

24 Q. Were you forced to stop at roadblock number 3?

25 A. When we got to roadblock number 3, a fire had been set in the middle of the

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1 road, a huge fire, and there were some stones that had been set up near the road.

2 When we got to that point, the policeman stopped and had a talk with those who
3 were manning the block -- the roadblock. Those there did not raise any particular
4 problem. They were not as wicked as those who had been manning roadblock
5 number 2.

6 Q. What was the ethnicity of the people who were manning roadblock number
7 3?

8 A. Those whom I was able to see were Kalenjin.

9 Q. Approximately how long did this car ride take from when you got picked up
10 to Kapsabet police station?

11 A. I think it must have taken us about four hours to get to the police station.

12 Q. When you got to the police station, were there other people already there?

13 A. When we arrived at the police station, we found that many people were there.
14 They had come to the police station on foot. Some had, however, come to the police
15 station on the 1st, in the evening of the 1st, while others arrived on the 2nd.
16 Another group came in on the 3rd in the morning. So there were many people
17 there.

18 Q. When you arrived on 3 January, are you able to estimate or give a sense of
19 how many people were there when you arrived?

20 A. When we arrived at the police station, there must have been some 4 to 5,000
21 people there, although I was not able to count them. All I can suggest is an
22 approximation.

23 Q. What were the ethnicity of these people at the police station?

24 A. The majority of those who were there were Kikuyus, but there were also some
25 Kisii and some Kamba people.

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1 Q. What areas had they come from?

2 A. They came from all over Nandi. All those who were able to make it to the
3 police station went there.

4 Q. If you know, why had they gone to the police station?

5 A. No one was safe and people had been asked to seek refuge at the police
6 station. It is the DC who made that request, mindful of the situation that was
7 prevailing at the time.

8 Q. Do you know of any injured people that were at the police station?

9 A. Yes. We saw some people who were brought in from other areas and who
10 were bearing machete wounds or wounds from arrows shot into their backs. Some
11 were also wounded on their legs and these were machete wounds.

12 Q. On which date were these people brought to the police station?

13 A. It was on the 4th, and I do recall this clearly. I saw the wounded people on
14 the 4th.

15 Q. What was the ethnicity of the wounded people?

16 A. They were Kikuyu.

17 Q. Do you know how they were injured?

18 A. We went close to those who had brought them in and talked with the
19 members of their families who had brought them in, and it is those family members
20 who told us the circumstances in which those persons had been injured. We were
21 told that they had been in hiding in some tea plantations when some young
22 Kalenjins who were going about with dogs were able to discover where they were in
23 hiding and to go ahead to attack them.

24 So one was shot in the back with an arrow. Another was cut with a machete. One
25 fled and sought hiding in a hole, and while hiding in the hole heard some footsteps

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1 and thought that they were the footsteps of people coming to rescue him, but when
2 he stood up, he was promptly attacked with a machete. He was cut on the head
3 and abandoned on that spot and taken for dead.

4 Q. You told us that these persons were hiding in some tea plantations. Where
5 were these tea plantations? Where were they brought from?

6 A. The tea plantations are located in Nandi Hills.

7 Q. So you arrived at Kapsabet police station on 3 January and were still there on
8 4 January. How many days did you stay at Kapsabet police station?

9 A. We were there for three days.

10 Q. How eventually did you leave Kapsabet police station?

11 A. The government made available a number of vehicles and provided security
12 to escort us from the police station to our homes.

13 Q. Did you go home from the Kapsabet police station?

14 A. No, we did not go home.

15 Q. Where did you go?

16 A. When we arrived at the police station, each person was asked where they
17 thought that they would feel safe, and each person provided a location to which they
18 wanted to be taken. So when we left the police station, we went to Nairobi, but we
19 did not make it to Nairobi.

20 Q. Where did you make it to?

21 A. We went as far as Eldoret, our place of origin.

22 Q. When you went from Kapsabet police station to Eldoret, did you encounter
23 any obstacles on that journey?

24 A. Yes. There were many roadblocks along the road and we went through
25 those roadblocks.

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1 Q. Without giving any extra details at the moment - I'll ask some more questions
2 later - how many roadblocks did you go through?

3 A. What I remember is that there were about eight roadblocks along the road, if I
4 am not mistaken.

5 Q. And again, without giving us any extra details at the moment, starting from
6 the first roadblock, can you tell us the locations that you remember? And these
7 locations are okay to be said in public session.

8 A. The first roadblock was at Namgoi junction. The second was at Chamgai
9 (phon) near a river. The other was at Moi university where there is a split in the
10 road to the Moi university. The other roadblock was at Kamonjiri. Then there was
11 a roadblock at Kapchemoyiwa. There was another one at Chepterit, and there was
12 another roadblock at Kosirai, while there was another at Mosoriot, and another
13 roadblock had been set up at Motwot. There was also a roadblock at -- well,
14 after -- after the gate to the airport where there was a stream. There was another
15 roadblock at that point.

16 Q. For the purposes of the record, I'd just like to check the -- some of these names
17 you've provided us. The first one was at Namgoi. The second one I heard was
18 Chamgoi (phon) near a river. Is that correct?

19 A. It's Chebarbar. Chebarbar.

20 Q. And then the next one was Kamonjiri; is that correct?

21 A. No. The next one was set up on the road towards the Moi university.

22 Q. You're correct. Sorry. That's my mistake. So the one after Moi university,
23 what was that location? Kamonjiri; is that correct?

24 A. No, there is Kamonjiri and then there is another roadblock at Moi university.

25 Q. Can you tell the Court generally who was manning these roadblocks that you

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1 went through?

2 A. The roadblocks were manned by Kalenjin youth. However, at the second
3 roadblock there was a group of Kalenjins and Luhyas. At the third it was Kalenjins.
4 At the fourth it was Kalenjin youth. And I can say that all the roadblocks through
5 which we went were manned by Kalenjin youth.

6 Q. I'd like to ask you some questions about the first roadblock at Namgoi
7 junction. What did you see at that roadblock?

8 A. At that first roadblock at Namgoi there were some youth. Some of them
9 were holding clubs, others had rungas while others had machetes, and some of them
10 had ODM scarves as well as normal or ordinary clothing.

11 Q. When you talk about the youth at the roadblock, was this men and women?

12 A. The youth who were manning the roadblocks were boys or men, but there
13 were some women who were at a distance from the roadblock proper, maybe two or
14 three metres away from the roadblock.

15 Q. Talking about the first roadblock at Namgoi junction, was there anything
16 blocking the road?

17 A. When I talk about a roadblock, I'm referring to a situation where there is an
18 obstacle in the middle of the road. In this case there was a fire that was burning.
19 There were some stones that had been laid in such a way that vehicles could not
20 drive through. And then there was a huge number of youths who were lying down
21 on the road. They were lying down and sleeping behind the roadblock, after the
22 roadblock, so to speak, on the road itself.

23 Q. Were these youths sleeping or were they simply lying down on the road?

24 A. No, they were not sleeping. They were simply lying down as if to indicate
25 that there was no passage there, that no vehicle could pass through there.

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1 Q. Did any of these youths speak to you?

2 A. No. When we left the police station, we were asked to be silent. We were
3 told not to speak no matter what we saw along the road and that the security people
4 were going to take care of us.

5 Q. My question was not whether you spoke to them but whether they ever said
6 anything to you.

7 A. When the security officers were taking away the obstacles from the road,
8 those young people were referring to us as snakes and saying that "You should go
9 back to Othaya. You are lucky, but this is your last day today." And there were
10 young women there who were shouting, "Black snakes. Kibaki snakes."

11 Q. What is the significance of the reference to Othaya?

12 A. During the campaign, we had been told to tell Kibaki to build a large house in
13 Othaya because all of us were going to go there to Othaya. We were told many
14 other things. Even while we were at that roadblock we were told that they had a
15 container and we were supposed to be put in that container and Kibaki would use
16 it -- us as fertilisers for his coffee and tea farms.

17 Q. You told us that at this roadblock, the Namgoi junction roadblock, there was a
18 fire burning and some stones laid on the road so that you could not drive through.
19 What other obstacles did you see at the other roadblocks?

20 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, your microphone.

21 MS RENTON:

22 Q. Witness, did you understand that question? Would you like me to repeat?

23 A. I understood it. When we arrived at the second roadblock, there were stones
24 on the road. And they had dug some trenches on both sides making the road very
25 narrow. There were young people all around. There there was no fire burning,

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1 but there was another fire on the roadblock that is on the road to Moi university.
2 They had laid a fire there. There were two roads. There was fire on one of the
3 roads, and on the other road there were large stones that had been placed there and
4 they looked like stones that had been transported in lorries.
5 At the fourth roadblock there was a large tree trunk which had been uprooted along
6 with the roots and laid across the road, and there were young people on the hill.
7 On roadblock number 5 there was a fire, not on the road itself but by the side of the
8 road, and you had young people standing on both sides of the road. That was the
9 Chepterit roadblock.
10 Regarding roadblock number 5, which was at Kosirai, there was a large tree trunk
11 which had been uprooted with the roots and laid across the road. Then the young
12 people were standing at a distance away from the road.
13 Roadblock number 6 at Mosoriot, there was a fire and you had young people on
14 both sides. On the Kabiyeet road there were people standing -- the Kabiyeet road,
15 there were people standing on the right side of the road, and on the other side there
16 were large stones.
17 Roadblock number 6 was at Motwot. There was a large hole that had been dug in
18 that area and vehicles could not pass. That was roadblock number 7.
19 Then at Kamotich (phon) there is a road from Kugum (phon) and there were large
20 stones placed on the road. No vehicle could pass.
21 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, I signalled for her to stop. Do you
22 want her to keep --
23 MS RENTON: No, that's okay. I'll go back. Thank you.
24 PRESIDING JUDGE EBOE-OSUJI: All right.
25 MS RENTON:

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1 Q. Thank you, Witness. I have a few questions about some of the things that
2 you've mentioned. My first is just to check something that you said in an earlier
3 answer. You said when you were at the roadblock at Namgoi junction that you
4 were told they had a container and you were supposed to be put in that container
5 and Kibaki would use it -- would use you as fertiliser for his coffee and tea farms.
6 Is that correct?

7 A. That is correct.

8 Q. Witness, you also mentioned that at the second roadblock -- no, at the
9 roadblock near Moi university there were large stones that had been placed there,
10 and they looked like stones that had been transported in lorries. Can you help us
11 by giving us an idea of the size of these stones?

12 A. The reason I said that those stones were transported there is because no one
13 could actually lift one of those stones. Those types of large stones are only found in
14 places where there are road repairs going on. So you had a great number of these
15 types of stones there.

16 Q. Witness, you mentioned that at the first roadblock at Namgoi junction some
17 of the people had ODM scarves and some had normal or ordinary clothing. At the
18 other roadblocks that you passed, did you notice any distinctive clothing on the
19 people at the other roadblocks?

20 A. Yes. I can say that they were dressed differently, because at the Chepterit
21 roadblock there were young people wearing T-shirts and trousers that were partially
22 folded up on the right leg.

23 Those young people at Kapchemut (phon) included some who were wearing scarves
24 while others were wearing vinyasas (phon) and t-shirts, short sleeved t-shirts.

25 Those who were at Kapchemoyiwa had arrows and bows. At Mosoriot, the young

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1 people there had their faces painted white, and they were wearing scarves on their
2 waists just like belts. They had arrows that they were carrying on their backs as
3 well as bows in their hands. They had arrows in the other hand. There were also
4 women whose role was to shout out or make noises and throw stones. All those
5 people were not wearing the same type of clothing.

6 Q. Witness, did you understand the significance of partially folding up the
7 trouser leg?

8 A. I came to know about that subsequently after I arrived Eldoret. We met
9 other people who had come from Kimumu, from Yamumbi, Kiambaa and even from
10 Langas. While we were at the police station, those people told us that folding up
11 the trouser leg on one side was a sign to indicate to each other that they were in the
12 same camp. That is because there are many -- there are people from several ethnic
13 groups who lived in the Eldoret area. During that war which took place there, it
14 was not good or necessary to target Luos or Luhyas, so by folding up the trouser
15 legs, this was a way of communicating with each other.

16 Q. What was the colour of the scarves that you saw some people wearing?

17 A. There were various colours. Some of them were grey while others were
18 white.

19 THE INTERPRETER: Or, rather, green and white corrects the Swahili interpreter.

20 MS RENTON:

21 Q. Witness, what time did you eventually reach Eldoret?

22 A. We reached Eldoret between 4 and 5 p.m.

23 Q. And you went to Eldoret police station; is that correct?

24 A. When we arrived Eldoret, we were supposed to continue right to Nairobi, but
25 the DC said that we could not continue because the road was blocked and there was

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1 a war going on in Salgaa. Some vehicles which had left had even had to turn
2 around again. So we were asked to go to the police station.

3 Q. When you arrived at the police station, were there other people already there?

4 A. Yes. There were people from Kimumu who were already there. People
5 from Huruma, Kamukunji and even people who had come from Wanyaka (phon).
6 There were people from Kiplombe, from Burnt Forest and even Batimboroa (phon).
7 Those people were all at that police station.

8 Q. What was the ethnicity of the people who were there?

9 A. Those people that we found at the police station were Kikuyu.

10 Q. Did you stay at the police station that night or did you go somewhere else?

11 A. We stayed there. We did not yet join the convoy that was supposed to take
12 us. At that time there was a discussion between the DC and those people. Finally,
13 we were taken to the showground. We arrived the showground at about 7.30 p.m.

14 Q. Is this the Eldoret showground?

15 A. Yes.

16 Q. And was this 7.30 on the same day that you arrived at Eldoret police station?

17 A. Yes.

18 Q. How many people were with you when you went to Eldoret showground?

19 A. I no longer remember, but there were many of us there.

20 Q. When you arrived at the showground, can you describe what you found
21 when you reached there?

22 A. Very well. When we arrived at the showground, we were led to the
23 esplanade of the showground, and each person was asked to alight. We were
24 supposed to wait for the government officials to take the decision for us to leave the
25 following day. There was a lot of grass growing at that place. It was like a bush.

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1 PRESIDING JUDGE EBOE-OSUJI: We're almost at our break point for the day, but
2 the question for you is: Are we going to be asking questions about the
3 showground?

4 MS RENTON: Not many more than that. I'd just like to ask her a few questions
5 that relate to her specifically, not the showground generally. I expect I could
6 probably finish up in 20 minutes tomorrow.

7 PRESIDING JUDGE EBOE-OSUJI: Why don't we leave it there for now then. She's
8 had a long day, so we'll give her a break and take it up again tomorrow.

9 Witness, we will stop here for now and then you will join us again at 9.30 tomorrow.
10 We understand it's difficult to do this, but you've done so well so far with telling the
11 story you came to tell us. We will start again tomorrow. All right?

12 THE WITNESS: (Interpretation) Yes.

13 PRESIDING JUDGE EBOE-OSUJI: Blinds will come down and the witness will be
14 ushered out of the courtroom.

15 (Closed session at 3.59 p.m.) Reclassified into open session.

16 THE COURT OFFICER: We are in closed session, your Honours.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: Who will be going first in cross-examination?

19 MR KIGEN-KATWA: Mr Hooper will, your Honours.

20 PRESIDING JUDGE EBOE-OSUJI: All right. There are no issues pending I take it?

21 MR KIGEN-KATWA: We are agreed on that arrangement.

22 PRESIDING JUDGE EBOE-OSUJI: All right. So we will then reconvene at 9.30
23 tomorrow. Court will rise now.

24 THE COURT OFFICER: All rise.

25 (The hearing ends in closed session at 4.00 p.m.) Reclassified into open session.

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1 RECLASSIFICATION REPORT

- 2 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
3 2013, and the instructions in the email dated 14 May 2014, the version of the transcript
4 with its redactions becomes Public.