

Trial Hearing
Witness: KEN-OTP-P-0469

(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 and Joshua Arap
5 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 Friday, 4 April 2014
10 (The hearing starts in open session at 9.39 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 Appearances, please. Sorry, court officer please call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in
17 the Republic of Kenya, in the case of The Prosecutor against William Samoei Ruto and
18 Joshua Arap Sang, ICC-01/09-01/11. We are in open session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 Appearances, please.
21 MR PUGLIATTI: Mr President, your Honours, good morning. For the Prosecution
22 Lucio Garcia, Regina Weiss, Peter Schotsman and I'm Lorenzo Pugliatti.
23 MR NARANTSETSEG: Good morning, Mr President, your Honours. On our side
24 Orchlon Narantsetseg and James Mawira for victims. Thank you.
25 MS LAWRIE: Good morning, your Honours, Mr President. Appearances remain

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1 the same for the Ruto Defence.

2 MS BUISMAN: Good morning, Mr President. For us also the -- for the Sang team
3 the appearances remain the same, still in the absence of Katwa Kigen. Thank you.

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

5 Witness, welcome back. Mr Pugliatti will continue his examination-in-chief. We're
6 now in public session. Do we remain here?

7 MR PUGLIATTI: Mr President, the point at which we left off yesterday, we finished
8 yesterday I recall in private session and we were about to move into a new topic.
9 That new topic itself should also be canvassed in private session, we submit, and so
10 we'd request to go into private session to elicit that testimony. We estimate
11 approximately 15 minutes for that segment.

12 PRESIDING JUDGE EBOE-OSUJI: And what's your estimate about completion time
13 for your examination-in-chief?

14 MR PUGLIATTI: Yes. Well, I recall my learned friend's comments at the end of
15 yesterday's session about the Prosecution finishing at 11, and while -- and I hate to
16 disappoint her. That won't be possible, but we are progressing with full force to
17 finish by the lunch break and that's our sincerest and most earnest hope to do so.

18 PRESIDING JUDGE EBOE-OSUJI: All right, proceed.
19 Private session.

20 *(Private session at 9.42 a.m.) Reclassified as open session

21 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

22 WITNESS: KEN-OTP-P-0469 (On former oath)
23 (The witness speaks Swahili)

24 QUESTIONED BY MR PUGLIATTI: (Continuing)

25 Q. Witness, good morning. I'm going to continue asking you the questions this

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1 morning for the Prosecution. Yesterday, near the end of the day, you had told the
2 Court how you had arrived at the house of person number 13. Do you see the sheet
3 in front of you? Do you have it today, Madam Witness?

4 A. I have it.

5 Q. Excellent. So you had told the Court how you were at the house of person
6 number 13 and you were there with (Redacted), and then you told the Court
7 that, "We went downwards through a place where we couldn't be seen. So we went
8 there and met a number of people, such as number 9, and then a convoy was formed
9 including somebody who was of Kisii ethnicity." Do you recall saying that
10 yesterday?

11 A. I said it.

12 Q. Now, we're in private session and so you can speak freely. Where was that
13 place that you went?

14 A. On 30 December 2007, I went to number 13's home. She's called (Redacted).
15 When I arrived I was accompanied by (Redacted). The number of this
16 (Redacted) is number 18. And when I arrived, number 16 - (Redacted)- she
17 arrived with another person called (Redacted) is at number 14. (Redacted)
18 (Redacted)

19 So we went together with (Redacted), number 16, and I was still
20 accompanied by (Redacted) number 18, (Redacted), together with (Redacted)
21 (Redacted). We went to where we had to hide in order not to be seen, and when we
22 went there we found number 19, (Redacted). There was also another (Redacted)
23 (Redacted), and together we went to go to a place called (Redacted) in order to hide
24 ourselves there. And as we stayed there with one or two children --

25 PRESIDING JUDGE EBOE-OSUJI: All right. Is the answer that you went to a place

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1 called (Redacted)

2 THE WITNESS: (Interpretation) Yes, that is correct.

3 MR PUGLIATTI: And, Mr President, I believe the spelling that's captured is correct,
4 in the transcript.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, it's easy to forget advices on
6 these things, but I need to gently remind you again what we said yesterday, to listen
7 to the question and just answer that. The lawyer, if he needs to ask you more
8 questions for details, he will. He -- his question to you was where was the place that
9 you went. If the answer was (Redacted), then that would have been enough to tell him
10 you went to (Redacted). And then it's up to him to now start asking you further
11 questions, if he wants to, or if he needs to, to ask you questions about who you were
12 there with and other circumstances about that. But for now, if the answer to the
13 question is (Redacted), we can leave it at that and Mr Pugliatti would ask you further
14 questions. Thank you.

15 MR PUGLIATTI:

16 Q. Witness, the place that you went at (Redacted), how far is that from where you
17 were in (Redacted)

18 A. (Redacted)

19 Q. And can you describe where you were hiding, the place where you were hiding
20 in (Redacted)?

21 A. We hid in (Redacted)

22 Q. How did you get to (Redacted)

23 A. We went there in order to hide because there was no security.

24 Q. Maybe I wasn't clear in my question. What means did you use to get from (Redacted)
25 (Redacted) How did you travel there?

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1 A. We went on foot.

2 Q. And how long did that take you on foot?

3 A. I couldn't tell you exactly the amount of time that it took. I can just say that it
4 took a lot of time because there was (Redacted)

5 Q. You don't have to be exact, Madam Witness. If you could give an approximate
6 time that would be sufficient.

7 A. It took about (Redacted)

8 Q. And how many of you were there hiding (Redacted)

9 A. There were about (Redacted)

10 Q. And these (Redacted), what was their ethnicity?

11 MR PUGLIATTI: Mr President, I notice the witness.

12 VWU ASSISTANT: Mr President, she's not okay. If we could have a break?

13 PRESIDING JUDGE EBOE-OSUJI: Madam, we understand this is difficult for you
14 and -- take your time. Do you need some break now?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE EBOE-OSUJI: We will rise for ten minutes and then we will see
17 how the witness is doing. The court officer will monitor the situation and come let
18 us know. We will check back in at ten minutes, that will be five-past-10.

19 The blinds will come down now.

20 *(Closed session at 9.55 a.m.) Reclassified as open session

21 (The witness stands down)

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

23 THE COURT OFFICER: All rise.

24 (Recess taken at 9.55 a.m.)

25 *(Upon resuming in private session at 10.15 a.m.) Reclassified as open session

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1 THE COURT USHER: All rise.

2 Please be seated.

3 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back. Are you feeling better
4 now?

5 THE WITNESS: (Interpretation) Yes, I'm better.

6 PRESIDING JUDGE EBOE-OSUJI: Just take your time. And this is certainly a
7 difficult exercise for you, we fully understand that. If at any time you feel you need
8 a break, just let me know. All right? Okay. And also --

9 THE WITNESS: (Interpretation) Yes, that's fine by me.

10 PRESIDING JUDGE EBOE-OSUJI: And also try and have Mr Pugliatti do more of
11 the work, and by that is just, you know, let him lead the way. Give him only
12 minimum, in few words, as few words as possible the answer to the question. Try
13 not to give a lot of answers to a question. Just listen, and if it's possible for you to
14 answer by yes or no, that is the best approach. And if it is also possible for you to
15 answer with one word or two or three, if that is sufficient, that is also the best
16 approach. Do not try to create more pressure on you by giving a lot of information
17 in an answer. Do you understand?

18 THE WITNESS: (Interpretation) Yes, I have understood.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will continue. And, again, if
20 you need a break, you let me know.

21 Mr Pugliatti.

22 MR PUGLIATTI:

23 Q. Witness, earlier you had said that there were (Redacted) with you (Redacted)
24 And I'd asked you, my question was what their ethnicities were.

25 A. There were some Kikuyus and one Kisii.

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1 Q. When you say "there were some Kikuyus," were there any other groups?

2 A. This is what I said: There were Kikuyus and one Kisii.

3 Q. What time of day was this?

4 A. It was around 19 hours.

5 Q. And do you know what was happening in (Redacted) while you were at

6 (Redacted)

7 A. They were burning houses, and some tear gas was also being thrown about
8 emitting some noises.

9 Q. How could you tell that they were burning houses?

10 A. We were able to see the smoke rising from the (Redacted) area.

11 Q. And can you tell the Court what you heard?

12 A. They were using some objects that produced some sound like tear gas.

13 Q. Just very briefly, can you describe what that sounds like? What does it sound
14 like?

15 A. One could hear sounds which sounded like explosions of tear gas. You see, in
16 Kenya when there is a demonstration and the riot police shows up, it uses tear gas,
17 and that is how I was able to make the analogy -- analogy rather to the use of tear gas.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, I interrupted your thought. Do we
19 need to remain in private session for all this?

20 MR PUGLIATTI: Yes, Mr President. That was my last question about that matter.

21 There are further matters I'd like to elicit regarding the witness's time at (Redacted),
22 and they should be in private in our strong submission.

23 PRESIDING JUDGE EBOE-OSUJI: All right. It may be a good idea to elicit the
24 really identifying information and then go out and do the details, because there's a
25 number of questions and answers here that need not have been in private session.

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1 MR PUGLIATTI: I'm aware of that, Mr President. I'm also aware of (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted). Of course it's a matter for the

5 Chamber, but these are delicate matters and we're very cognizant of trying to be in

6 public when we can. But this time (Redacted), we submit, for matters that

7 will become -- which are already apparent but will become ever more apparent in a

8 few moments, require that we remain in private session.

9 PRESIDING JUDGE EBOE-OSUJI: Proceed.

10 MR PUGLIATTI: I'm grateful.

11 Q. Madam Witness, you said that this was at 7 o'clock. Did you spend the night

12 at (Redacted)

13 A. Yes, we spent the night there. And we were there 'til 4, and we were there 'til 4

14 a.m. 'til the 31st.

15 Q. And during the night, did anything happen? Did you see anything that you

16 recall?

17 A. While we were hiding, I saw (Redacted) and other persons who were in his

18 company. The only person I was able to recognise from that group was (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, one second. The question there at

20 17, the overlapping, where the notation "(Overlapping speakers)" appears, should be

21 the word "during." Only that word "during."

22 MR PUGLIATTI: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: So the question is, "During the night ,did

24 anything happen?", just for the record. You can proceed, Mr Pugliatti.

25 MR PUGLIATTI: I hadn't spotted that. I'm grateful.

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1 Q. Witness, can you describe how you were hiding?

2 A. There is a landscape in (Redacted) which has a (Redacted), and there is a (Redacted)
3 as well. (Redacted).

4 (Redacted)

5 Q. And when you saw (Redacted) and his group, where were you hiding?

6 A. (Redacted)

7 Q. Can you explain what position you may have been hiding in?

8 A. We spent the entire night in (Redacted)

9 Q. Now, Witness, just so that there is no confusion for the Court, is the (Redacted)
10 that you're referring to on the sheet in front of you, and if so, which number?

11 A. Yes, he is at number 2.

12 Q. Now, do you know if (Redacted) was carrying anything?

13 A. He was holding something in his hand, but I was not able to clearly identify the
14 object. However, I do recall clearly that he was holding something in his hand.

15 Q. And if you can approximately, it doesn't have to be exact, how far away from
16 you was he?

17 A. He was not far from where we were hiding.

18 Q. Are you able to provide a distance?

19 A. What I said is that he was not far away from our hiding place.

20 MR PUGLIATTI: Mr President, with your leave I'll use the courtroom.

21 PRESIDING JUDGE EBOE-OSUJI: Proceed.

22 MR PUGLIATTI:

23 Q. Witness, I'd like to do the same thing that we did yesterday and use the room if
24 we can. From where you're sitting, is there a distance that you can point out in this
25 room or not? Only if it's possible.

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1 PRESIDING JUDGE EBOE-OSUJI: And if it is, if the distance is longer than the
2 courtroom, also tell us.

3 THE WITNESS: (Interpretation) We were about to that wall, so the wall behind the
4 counsel of the Defence.

5 MR PUGLIATTI: And for the record the witness also pointed at the wall behind
6 Prosecution counsel as well, to my observation.

7 PRESIDING JUDGE EBOE-OSUJI: Proceed.

8 MR PUGLIATTI:

9 Q. Now, Witness, while you were hiding (Redacted), did (Redacted) see you and -- or
10 did any members of his group see you?

11 A. I don't know if they saw us or not, because they were further up. We were
12 further down. I don't know if they saw us. I think they didn't see us.

13 Q. And were you able to tell the ethnicity of the other members of (Redacted) group?

14 A. I couldn't know that. The only person I recognised was (Redacted), because I had
15 seen him before during the day when they were fighting on the road and I recognised
16 the clothing that he was wearing. He was the only one I recognised.

17 Q. Now, Witness, at that point what was going through your mind? Why did you
18 think that they would be there?

19 A. Only God could save us, because on the 28th they were saying that we had to
20 return to Othaya and at that time only God could save us because I didn't know if our
21 life could be spared because I didn't know what their intentions were.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, when do we go back to the public
23 session?

24 MR PUGLIATTI: That was my last question and so we can go back into public now,
25 but either the Bench can do it or I can do it, as we re-enter public session, but it would

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1 be useful in my submission to remind the witness that as we'll be going into public
2 that for locations and names the use of the PIS should be adhered to.

3 PRESIDING JUDGE EBOE-OSUJI: Yes, you can do it. You also -- (Redacted)
4 (Redacted), you would have to also control that process of your
5 questions in a way that reminds the witness at every opportunity you anticipate a
6 question might result in identification to also refresh her memory and try and control
7 that.

8 MR PUGLIATTI: Indeed.

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR PUGLIATTI: I will refresh and be as precise as I can be.

11 PRESIDING JUDGE EBOE-OSUJI: Public.

12 MR PUGLIATTI: Thank you.

13 (Open session at 10.35 a.m.)

14 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.

15 MR PUGLIATTI:

16 Q. Witness, we've now returned to public session which means that people outside
17 the courtroom can hear your words. So I'd like to remind you now that, when you
18 give answers, unless I say it's okay please don't say any names of people, or the
19 names of any places, locations. Please use the sheet in front of you. And I'll try to
20 remind you of that as I ask the questions, but please remember that as well.

21 PRESIDING JUDGE EBOE-OSUJI: And I also remind you, Witness, with the fewest
22 words possible to answer the questions so we can minimise the risk of you giving
23 answers that the lawyer did not anticipate and further answers that may contain
24 information we don't want to come out in the public version. When he asks you a
25 question he has in mind what information he's looking for and he has in mind that

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1 that sort of information can be given in the public session, so always try to stay with
2 him in that just very few words. If you can say "Yes" or "No," as I said earlier, it's the
3 best. If a one word answer is possible, still the best, and two or three words fine, but
4 don't give further answers than are strictly called for by the question so we don't have
5 risk of you giving information we don't want to reveal in public session at this time.
6 Thank you.

7 MR PUGLIATTI:

8 Q. Now, Witness, you said to the Court that you returned home to your home
9 early in the morning. Using the sheet in front of you, can you tell the Court, if it's
10 there, which location you returned to in the morning of 31 December?

11 PRESIDING JUDGE EBOE-OSUJI: Witness, when you said "home", do you mean
12 location number 2?

13 THE WITNESS: (Interpretation) Yes.

14 MS LAWRIE: Mr President, if it helps - apologies - my learned friend can lead on
15 this point if that will help elicit the evidence a little bit more straightforwardly.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, then proceed.

17 So do not give us the name of the location. Only say "Location number 2" for home,
18 we know that, and Mr Pugliatti will also ask questions in a way that minimises the
19 risk. Thank you.

20 MR PUGLIATTI: I'm grateful.

21 Q. So, Witness, is it correct that you returned to your home to your house?

22 A. Returned to number 2.

23 Q. And this was at approximately 4 in the morning; is that correct?

24 A. Yes.

25 Q. And is it correct that you slept for approximately two hours until approximately

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1 6 in the morning? "Yes" or "No" is fine.

2 A. That's correct.

3 Q. And is it correct that, after you slept, you went to look at the houses in your area?

4 And do not say the name of your area.

5 A. Yes, I went to look at the houses.

6 MR PUGLIATTI: I will cease leading at this point.

7 Now, Witness, using the sheet in front of you - and once again don't say the

8 name - can you tell the Court if your area is on the list of locations?

9 A. Yes, that's at number 6.

10 Q. You said you went to look at the houses. Just to remind you don't use any

11 names, don't say the names of any houses, but can you describe the houses that you

12 went to see?

13 A. The houses had been burnt.

14 Q. Had all of the houses in your area been burnt?

15 A. They were Kikuyu houses that had been set on fire.

16 Q. What about the houses that did not belong to Kikuyus?

17 A. Houses of non-Kikuyus were saved.

18 Q. And, Witness, again without saying where this was or any names, can you tell

19 the Court how you knew which houses were which?

20 A. Well I know that because, even before these houses were set on fire, I knew

21 which houses belonged to which people.

22 Q. Now, using the sheet in front of you and only the sheet in front of you, could

23 you tell the Court where you went next? And if you saw anybody, spoke to

24 anybody, please also use the sheet in front of you only.

25 PRESIDING JUDGE EBOE-OSUJI: For now, let's take it one at a time. Let's move

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1 first to the location and then, if there's a need for you to ask questions about persons,
2 we'll do that in the next question.

3 MR PUGLIATTI: Quite right, Mr President.

4 Q. Witness, I'm going to ask the question again. Using the sheet in front of you,
5 and only the sheet in front of you, can you tell the Court where you went next?

6 A. Having seen the houses, I returned to (Redacted)

7 Q. Now, using the sheet in front of you, was anybody there at (Redacted)

8 A. (Redacted)

9 Q. If you can - if you can - could you just use the sheet in front of you. We appear
10 to have technical issues. I don't know if this one is any better?

11 PRESIDING JUDGE EBOE-OSUJI: No, it's not.

12 Interpreters, can -- you are my reference point. You can hear me? The interpreters
13 can hear me?

14 THE INTERPRETER: Indeed we can, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Mr Pugliatti, can you try again.

17 MR PUGLIATTI: I'm trying now. I think that's better.

18 PRESIDING JUDGE EBOE-OSUJI: Looks like the magic is when I speak to
19 interpreters things open up.

20 MR PUGLIATTI:

21 Q. Witness, could you just use the sheet to indicate which children you're referring
22 to, the (Redacted)

23 PRESIDING JUDGE EBOE-OSUJI: Witness, we see that (Redacted)

24 (Redacted) indicate children. Can you look there and tell us if any of those were there?

25 And then only refer to the numbers. But if the number of persons appear elsewhere

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1 than in that range you can also tell us, but only referring to numbers.

2 THE WITNESS: (Interpretation) (Redacted)

3 MR PUGLIATTI:

4 Q. Now, Witness --

5 If I could just have a moment, your Honour? Mr President, my next question could
6 be asked using the PIS, but I think out of caution I'd request to go into private session
7 for just one question.

8 PRESIDING JUDGE EBOE-OSUJI: Can you ask the question first? Let's see.

9 MR PUGLIATTI:

10 Q. Witness, can you look at the sheet in front of you and can you look at location
11 number 9. Do you see it? Don't say the name.

12 PRESIDING JUDGE EBOE-OSUJI: And the question?

13 MR PUGLIATTI:

14 Q. My question, Witness, is were all of your children with you the night before at
15 location number 9?

16 PRESIDING JUDGE EBOE-OSUJI: You can say "Yes" or "No" for now and, if we
17 need further information, then we can go into private session.

18 THE WITNESS: (Interpretation) No.

19 MR PUGLIATTI: Indeed, Mr President, I have a follow-up which I'd request be in
20 private session.

21 PRESIDING JUDGE EBOE-OSUJI: What is it? Can you ask it?

22 MR PUGLIATTI:

23 Q. Witness, using the locations on the sheet, if you can, the children who were not
24 with you that night, do you know where they were?

25 PRESIDING JUDGE EBOE-OSUJI: Let's go to private session then.

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1 *(Private session at 10.48 a.m.) Reclassified as open session

2 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Mr Pugliatti, proceed.

5 MR PUGLIATTI:

6 Q. Now, Witness, you said that not all of your children were with you when you
7 were spending (Redacted). Do you know where the children who were not
8 with you were that night?

9 A. That night the children who weren't with me were in another place with another
10 (Redacted)

11 Q. Just for the record, which children were they? We're in private session.

12 A. (Redacted)

13 Q. I believe the spelling at line 3 is (Redacted)

14 And what were they doing that night with (Redacted)

15 THE INTERPRETER: There are cutting microphones. I'm sorry, could the answer
16 be repeated because the microphones were cutting each other off?

17 MR PUGLIATTI:

18 Q. Witness, the microphone didn't capture your answer. I'd asked you what your
19 children were doing that night with (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Before that question is answered, let's keep it
21 consistent in order to avoid confusion. Even when we're in private session, let us
22 still use numbers so that -- so as to minimize the risk of confusion.

23 Witness, what I said is that yes, we're in private session, but it would be easier if we
24 still referred to the numbers. We know that the PIS tells us who is who. For
25 instance, (Redacted) is person number 11. So let's speak about person number

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1 11. So the lawyer will do that and if you can also do that. Thank you. So the
2 question is: What were the children doing that night, those who were with person
3 number 11?

4 THE WITNESS: (Interpretation) They were also hidden.

5 MR PUGLIATTI:

6 Q. And where were they also hiding?

7 A. They were hiding at number 9.

8 Q. And my last question on this matter, Witness, the night that you were hiding
9 there, had you seen those children and number 11? Did you see them the night you
10 were there?

11 A. I didn't see them, but the next day they returned to number 2.

12 MR PUGLIATTI: Mr President, I'm going to pause for a few moments.

13 PRESIDING JUDGE EBOE-OSUJI: I see we have five minutes to morning break time.
14 We might as well take the break now.

15 Witness, we will be taking an early break now to help you also to recompose yourself.

16 All right? We will adjourn for 35 minutes.

17 The blinds will come down and the witness will be ushered out of the courtroom.

18 MS LAWRIE: Mr President, if it helps at all as well, I can look over the statement
19 and identify areas where my learned friend can lead. That might help matters a little
20 bit.

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

22 Blinds down, please.

23 *(Closed session at 10.56 a.m.) Reclassified as open session

24 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.

25 (The witness stands down)

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1 PRESIDING JUDGE EBOE-OSUJI: And, Mr Pugliatti, also review your notes and see
2 what information you really critically need from this witness and what information
3 that it may be good to get out of her but in light of her circumstances you might
4 dispense with and deal with with other witnesses.

5 MR PUGLIATTI: Mr President, allow me to say two things. First of all, that was
6 the last question we had regarding (Redacted) and, secondly, as regards your
7 suggestion I can assure the Bench that we spent the evening engaging in that exercise,
8 but we will continue to do so.

9 PRESIDING JUDGE EBOE-OSUJI: It's always good to continue to do that. Thank
10 you.

11 We will rise.

12 THE COURT USHER: All rise.

13 (Recess taken at 10.58 a.m.)

14 (Upon resuming in open session at 11.38 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

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

18 Witness, welcome back. Mr Pugliatti will continue asking you questions. Again, if
19 you at any point need a break, just let us know.

20 MR PUGLIATTI: Thank you, Mr President. And before I commence, I'll indicate
21 that my learned friend Ms Lawrie had spoken to me over the break about areas on
22 which there was no problem with us leading the witness And I'm grateful for those
23 because they will expedite matters a touch.

24 Q. Witness, welcome back. Is it correct that once you found all your children, you
25 went to go to the side of the road -- to the side of the Iten Road to a place called

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1 Joyland?

2 A. Yes.

3 PRESIDING JUDGE EBOE-OSUJI: And we've got the answer to that as "Yes, and
4 again I want to remind both counsel and the witness that we are in open session.

5 MR PUGLIATTI: Thank you, Mr President.

6 Q. And is it correct, Witness, that you arrived there at approximately 9 or 10 in the
7 morning?

8 A. That is correct.

9 Q. And very simply, can you tell the court - and don't mention any names - can
10 you tell the --

11 PRESIDING JUDGE EBOE-OSUJI: I think -- I think the microphone is gone again.
12 See if the --

13 MR PUGLIATTI: Just trying the second one, but it doesn't --

14 PRESIDING JUDGE EBOE-OSUJI: -- interpretation magic will work again. Can
15 you hear me?

16 THE INTERPRETER: Yes, we can hear you, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Thanks.

18 MR PUGLIATTI: Is the connection -- yes, we have -- it does appear to be the magic
19 touch. Where was I?

20 Q. Yes, Witness, what I was asking is, very briefly, and do not mention any names,
21 can you tell the Court the reason that you took your children to Joyland?

22 A. Women and children were asked to go to the road or to go to the sides of the
23 road.

24 Q. And what was the reason for that?

25 A. The reason is that there was no security, and the idea was to try to save them.

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1 Q. And is it correct that Joyland is approximately half a kilometre from the
2 junction?

3 A. Yes.

4 Q. Is it between Junction and Iten on the Iten Road?

5 A. Yes.

6 Q. How many -- hello? I can't hear anything again.

7 PRESIDING JUDGE EBOE-OSUJI: Interpreters?

8 THE INTERPRETER: We can hear you, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR PUGLIATTI: Trying again. No, nothing.

11 PRESIDING JUDGE EBOE-OSUJI: It didn't work this time.

12 MR PUGLIATTI: This time it didn't.

13 THE INTERPRETER: We can hear Mr Pugliatti as well.

14 PRESIDING JUDGE EBOE-OSUJI: The interpreters can hear you, Mr Pugliatti.

15 Can you --

16 MR PUGLIATTI: It's not -- now I can hear myself. I was going to say it's not
17 important if I can't hear myself provided everybody else can, but now I can hear
18 myself as well.

19 Q. So, Witness, my question was: How many people were gathered at Joyland?

20 A. I'm sorry, please, would you kindly repeat your question.

21 Q. Yes. Approximately how many people - it doesn't have to be
22 exact - approximately how many people were gathered on the side of the Iten Road?

23 A. I still had not quite understood your question. Do you want to know where
24 we were in Joyland, or -- or what is it that you're asking for specifically?

25 PRESIDING JUDGE EBOE-OSUJI: Witness, he's trying to understand the number of

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1 people. Is it -- who were there. If you can give us an estimate of the number of
2 people who were there? 100? 1,000? Ten? How many people?

3 THE WITNESS: (Interpretation) There were about 200 people there.

4 MR PUGLIATTI:

5 Q. Thank you, Witness. And what ethnicities were these people?

6 A. They were Kikuyus.

7 Q. And what ages were these people?

8 A. There were some elderly persons and there were also some adults as well as
9 children.

10 Q. Now, is it correct that there were also some policemen at this location?

11 A. Yes, there were six policemen at that location.

12 Q. And they had -- and they were armed with guns?

13 A. Yes, they had guns.

14 Q. And did the policemen tell you the purpose of their being there? Why were
15 they there?

16 A. They told us that they had been sent to save us or rescue us.

17 Q. Now, Witness, if I could ask you to refer to the sheet in front of you. Don't say
18 any names, but is it correct that person number 14 was also gathered there with you?

19 A. No, he was not among those who were with us.

20 MR PUGLIATTI: Mr President, at this juncture I'd request to go into private session
21 for approximately four or five minutes. There are some matters I'd like to canvass
22 privately. The bulk of the rest of the evidence regarding what is -- what happens
23 next we say can be -- can be dealt with publicly, but there's a self-contained set of
24 questions following on from where we're at at the moment that we'd like to ask
25 privately if the Court minds -- if the Court is minded?

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 11.50 a.m.) Reclassified as open session

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

4 MR PUGLIATTI:

5 Q. Witness, we are in private session so I'd like to ask you about (Redacted). At
6 this stage do you know what had happened (Redacted), if anything?

7 PRESIDING JUDGE EBOE-OSUJI: Let us still refer to (Redacted)

8 MR PUGLIATTI: My mistake.

9 Q. Witness, location number 1 on the sheet, at this time do you know if anything
10 had happened (Redacted)-- to number 1, to location number 1?

11 A. Yes, I knew what happened at that location because I left the place where we
12 were and went close to (Redacted). Person number 14, (Redacted), asked me to give him
13 (Redacted). He was Luhya and he wanted to (Redacted).

14 Then there's another person, whose name is (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Then I returned to the place where we had been settled awaiting help, or waiting for
20 people who were to come and take us away from that location to safer grounds.

21 Q. Okay, Witness, I just have two or three very fast questions about that and then
22 we can move on. This person, (Redacted), could you please refer to the sheet or sheets
23 in front of you and tell the Court if this person (Redacted) is on this list and, if so,
24 which number?

25 A. He is at number 20.

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- 1 MS LAWRIE: Sorry, where there's just one name like (Redacted), I think you can just
2 point to it on the PIS if that helps speed things up.
- 3 MR PUGLIATTI: I'm grateful for that.
- 4 Q. Witness, how old was (Redacted) at the time?
- 5 A. He was (Redacted)
- 6 Q. Which would have made him what age at the time?
- 7 PRESIDING JUDGE EBOE-OSUJI: Does she have to do the math?
- 8 MR PUGLIATTI:
- 9 Q. Witness, would it be correct that he was approximately (Redacted)
- 10 A. Yes, that is correct.
- 11 Q. And, finally, do you know what ethnicity (Redacted) was?
- 12 A. He was Kalenjin.
- 13 MR PUGLIATTI: Mr President, unless the Court has any further questions, that was
14 all the Prosecution had for this session.
- 15 PRESIDING JUDGE EBOE-OSUJI: You mean in private?
- 16 MR PUGLIATTI: I beg your pardon. We can -- we can now return to public, unless
17 the Court has any further questions?
- 18 PRESIDING JUDGE EBOE-OSUJI: Public session.
19 (Open session at 11.56 a.m.)
- 20 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 22 MR PUGLIATTI:
- 23 Q. Madam Witness, we've now returned to public session, so please do not discuss
24 any of the matters that we spoke about just now. Now, you said that you "...
25 returned to where we were awaiting help." Are you referring to Joyland? Did you

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1 return to Joyland on the Iten Road?

2 A. Yes.

3 Q. And were the Kikuyus still gathered there?

4 A. No, they were not there. They had simply been taken there for security and
5 safety reasons. They weren't based there.

6 Q. Perhaps -- perhaps I wasn't clear in my question. Were the Kikuyus still at
7 Joyland awaiting help? Were they still there for security?

8 A. Yes.

9 Q. Now, Witness -- hello? Witness, hello?

10 Mr President --

11 PRESIDING JUDGE EBOE-OSUJI: No, I can't hear you, but I think the interpreters
12 can hear all of us, including you. Can you see if --

13 THE INTERPRETER: We can hear him clearly, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MR PUGLIATTI: Hello? Okay, we're back.

16 Q. Witness, without saying any names - if you need to say a name use the sheet in
17 front of you - can you tell the Court what you saw when you returned to Joyland?

18 A. When I returned to Joyland, I saw more than 1,000 people who had come from
19 location number 5 -- rather, number 8. When they came closer to where we were, the
20 policemen went and asked them to kneel down, which they did. They knelt down.
21 Then they asked them where they were going, and they answered saying that they
22 had learnt that William Ruto and Raila Odinga had been arrested and that they were
23 going to demonstrate peacefully. At that time, the Chief of Kimumu was going
24 around or about with Sami Ruto in a car. They were going to and fro.

25 Q. Thank you, Witness. I'll come to that in a few moments. I'd just like to ask

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1 you a few questions about the people that you saw arrive. First of all, can you tell
2 the Court what ethnicity these 1,000 people were?

3 A. They were Kalenjin. I also saw some Luo people, Turkanas. It was a mixture
4 of people.

5 Q. And which group -- I don't know if I'm being heard again?

6 PRESIDING JUDGE EBOE-OSUJI: I think you're not. We have to steady on and try
7 our best.

8 Interpreters, can you tell me if you can hear us? I couldn't hear.

9 THE INTERPRETER: Message from the interpreters: Yes, we can hear you.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, try again.

11 MR PUGLIATTI: Trying again?

12 PRESIDING JUDGE EBOE-OSUJI: Yes.

13 MR PUGLIATTI: Yes, okay.

14 Q. Witness, which ethnic group was the largest?

15 A. Most of the people were Kalenjins.

16 Q. And approximately what time of day did you see this, if you know?

17 A. It was around 10 or 11 in the morning and that was on the 31st.

18 Q. And are you able to say how old these people were?

19 A. I couldn't tell you exactly how old they were. There were some young people,
20 there were older people, but most of them were under 30 years of age.

21 Q. And by which means -- I've lost it again. Hello?

22 PRESIDING JUDGE EBOE-OSUJI: Can you hear me? Can you hear me? For
23 some reason --

24 THE INTERPRETER: The interpreters --

25 PRESIDING JUDGE EBOE-OSUJI: -- even the interpreters are now gone too. Can

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- 1 you hear me?
- 2 MR PUGLIATTI: Now I can hear, Mr President.
- 3 THE INTERPRETER: Message from the interpreters: The French and English
4 booths can hear you.
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 6 MR PUGLIATTI: Hello?
- 7 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 8 MR PUGLIATTI: Very well.
- 9 Q. Witness, this group of people that you saw coming in your direction, by what
10 means were they travelling?
- 11 A. They were in vehicles because most of them were not from the area. I'm sorry,
12 I beg your pardon. Please repeat your question.
- 13 Q. Witness, I'll try and be a little more specific.
14 I've lost the signal again.
- 15 PRESIDING JUDGE EBOE-OSUJI: Well that is part of the problem we're all having,
16 but we all have to be patient. There are some technical difficulties with the
17 microphone system. We have been having that since yesterday, as you noticed, but
18 we will try and persevere.
- 19 Interpreters, can you give me a message?
- 20 THE INTERPRETER: Messages from the interpreters: Yes, English and French
21 booths can hear you.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 23 MR PUGLIATTI: I'm trying my microphone. Yes, okay.
- 24 PRESIDING JUDGE EBOE-OSUJI: Interpreters, you have the key, you are unlocking
25 this whole thing when it locks up. Keep it up. Thank you.

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1 MR PUGLIATTI:

2 Q. Witness, I'll try to be a little more specific in my question, if I can be. Were
3 these people travelling on foot or by some other means?

4 A. The people that I saw close to where I was were on foot.

5 Q. And were they carrying anything?

6 A. They were carrying weapons. They had weapons in their hands.

7 Q. Are you able to tell the Court which types of weapons they were carrying?

8 A. They were carrying runkus. A runka is like a club, you hold it in your hand.

9 Q. Did you see any other weapons?

10 A. No, I did not see any other kind of weapon.

11 Q. Could you describe for the Court how these people were dressed?

12 A. They were wearing normal clothing.

13 Q. Now, Witness, if I can refer you to the sheet in front of you. Only use numbers,
14 don't say names. Could you tell the Court if you recognised anybody amongst the
15 group of people you saw arriving. Just use the number if you recognise somebody.

16 A. I was able to identify person number 1, 2, 3, 4 and number 21.

17 Q. Anybody else, or is that everybody?

18 A. Number 5 was there as well.

19 Q. I just want to ask you two questions about number 21. Again, don't say his
20 name. But first can you tell the Court his ethnicity?

21 A. (Redacted). He is a Luo person.

22 Q. Thank you, Witness. Now, when this group of people was stopped by the
23 policemen, were they subsequently allowed to pass or not?

24 A. Yes, they were allowed to continue along.

25 Q. And did they pass you from where you were positioned? Did they pass you?

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1 A. They went by the place where we were, they went close by and then they
2 continued along their way.

3 Q. And as they passed by you, were any -- were any of them familiar to you, apart
4 from the people you've already told the Court about?

5 PRESIDING JUDGE EBOE-OSUJI: Let's go briefly into private session just for a
6 quick minute.

7 *(Private session at 12.13 p.m.) Reclassified as open session

8 THE COURT OFFICER: (Interpretation) We are in private session.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 Mr Pugliatti, (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE EBOE-OSUJI: All right. So I just wanted to mark that. We
7 will accept it for now, but let's not argue later on that we've set a precedent that must
8 be followed in every other case.

9 MS LAWRIE: Just an observation, that there are 200 Kikuyus at Joyland, so I'm not
10 sure why (Redacted). It seems that there's a very large
11 group there. So I'm not completely understanding or following why he would
12 necessarily know the witness and be able to identify her.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Ms Lawrie, the reason why I said
14 we'll accept that for now is because of the special circumstances of this particular
15 witness, and that's why I made sure to say that we don't want in future for anybody
16 to allude to this as a precedent as to why names may not be mentioned in public.

17 MS LAWRIE: I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will proceed.

19 MR PUGLIATTI: Perhaps I'll ask this question in private session, if the Court's
20 minded?

21 Q. Witness, apart from the people who you've listed already, did you recognise
22 anybody else in this group that passed you?

23 A. I'm sorry, could you repeat your question?

24 Q. Yes, of course. You've already told the Court who you recognised in this
25 group of people. And I'm asking you, apart from those people, did you recognise

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1 any others as the group walked passed you?

2 A. I no longer remember.

3 Q. Were there any people who you'd seen in your local area?

4 A. The people that I saw when we were there, when we were gathered together, I

5 saw the Chief of Kimumu and Sami, Samuel Ruto, who was in the vehicle. They

6 were going by. They went towards the road that goes towards place number 3.

7 Then they went back. So they went back and forth. And they went towards

8 number 4, and then they went back.

9 Q. Yes, Witness, I still -- I will ask you questions about that. I'm still asking you

10 about the main group that you saw pass you. And my question was: Had you seen

11 any of those other people in the big group walking before in your area?

12 A. I said that I saw number 1, number 2, number 3, and number 4. I saw number

13 5 as well. And I saw number 21.

14 Q. Yes, of course. Apart from those numbers that you just listed, did you

15 recognise anyone else on the road from your local area walking, apart from the people

16 you just said?

17 A. I don't remember.

18 MR PUGLIATTI: Mr President, unless the Court has any other questions, we can

19 move into public to continue this.

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

21 (Open session at 12.21 p.m.)

22 THE COURT OFFICER: (Interpretation) We are in open session.

23 MR PUGLIATTI:

24 Q. Witness, you said that you saw the Chief of Kimumu and Sami Ruto going back

25 and forth in a car. Can I just check with you when you say "the Chief of Kimumu,"

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1 are you referring to the Chief Sang you told the Court about yesterday or somebody
2 different?

3 A. I'm talking about Chief Sang the person that I mentioned yesterday.

4 Q. And is the Sami Ruto that you're talking about the same Sami Ruto who you
5 told the Court had been elected to the position of councillor?

6 A. Yes.

7 Q. You said they were in a vehicle. Were they in the same vehicle or were they
8 each in a vehicle?

9 A. They were in the same vehicle.

10 Q. And this is you said between -- backwards and forwards between locations 3
11 and location 4; is that what you said?

12 A. Yes, that's right.

13 Q. Do you know who the vehicle -- hello? Do you know --

14 PRESIDING JUDGE EBOE-OSUJI: All right. Can you hear me again? I think not.
15 Interpreters, you can hear me?

16 THE INTERPRETER: The French and English interpreters can hear you.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I think you're back on.

18 MR PUGLIATTI:

19 Q. Witness -- yes, I am. Witness, do you know who the vehicle belonged to?

20 A. The vehicle belonged to Chief Sang.

21 Q. And did you see anything else in the vehicle?

22 A. In the back there were drums. They had drums at the back of the vehicle.

23 Q. What sort of drums were these?

24 A. They were black in colour.

25 Q. Do you know what such drums are typically used to transport?

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1 PRESIDING JUDGE EBOE-OSUJI: Are they drums, musical instruments, or
2 containers?

3 MR PUGLIATTI:

4 Q. Witness, what sort of drums were these?

5 A. They are containers. You can put water in them or oil, something like that.

6 Q. I should have asked you this a moment ago: What sort of vehicle was this that
7 was being driven?

8 A. It was a pick-up.

9 Q. Now, to the best of your knowledge, do you know why they were going to and
10 fro with these drums in the back of their pick-up?

11 A. In my opinion -- I saw them, they would go and then come back. The group
12 that had gone in front of us -- there was another group that came from Ziwa and they
13 were waiting for them to arrive.

14 Q. Witness, I'll come to that other group in a moment. I'd just like to ask you if
15 you -- if there's anything else you know about why Sami Ruto and the Chief of
16 Kimumu would be going backwards and forwards?

17 A. Chief Sang and Sami Ruto were going back and forth just to gain some time and
18 that way the group from Ziwa and the other group from Beta Farm, they were
19 waiting for those groups to arrive so that they could begin their work.

20 Q. And how long were you observing them do this backwards and forwards, this
21 to and fro? How long did it last?

22 A. Well, I'm trying to imagine the scene because, you see, I was confused. They
23 used -- it took them about an hour.

24 Q. Now, you said there was a second group that arrived from the direction of Ziwa.
25 Are you able to tell the Court how many people were in this group?

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1 A. I'm not in a position to know how many of them there were because at that
2 point we had gathered together and it was about half a kilometre in relation to the
3 place where they had gathered, but there were many of them.

4 Q. Witness, just approximately -- I've lost my microphone.

5 PRESIDING JUDGE EBOE-OSUJI: Let's try this. Before I go to interpreters, Mr
6 Narantsetseg, can you -- can you test your microphone.

7 MR NARANTSETSEG: One-two. One-two.

8 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, can you do the same please.

9 MS LAWRIE: One-two.

10 PRESIDING JUDGE EBOE-OSUJI: Interpreters, you can hear me?

11 THE INTERPRETER: The interpreters, yes, French and English booths can hear you.
12 No difficulties.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 MR PUGLIATTI: Trying again. Yes.

15 Q. Witness, the group from Ziwa, in your estimation, was it smaller, larger or
16 approximately the same size as the group that you had seen on the Iten Road?

17 A. I saw that there were many of them, but not more in number than the people I
18 saw who had come from Iten Road.

19 Q. And how far away were you approximately from the Ziwa group?

20 A. From the place where we were to the place where the people were at Ziwa, the
21 distance was about half a kilometre.

22 Q. The place where you were, was that still Joyland or had you moved to a
23 different place?

24 A. We were still at Joyland.

25 Q. And if you can remember, how was the visibility on that day at that time?

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1 A. It was during the day and there was still some daylight.

2 Q. And did you see how this Ziwa group, how were they -- how were they
3 travelling?

4 A. They were also travelling on foot.

5 Q. Now, you said earlier that one group arrived first and was waiting for the other
6 group to arrive. Using the sheet in front of you, could you tell the Court which
7 location that was, if it's on the sheet?

8 A. Can you repeat your question, please?

9 Q. Yes. You said that one group had been waiting for the other group to meet
10 them. Could you use the sheet and tell the Court the number of the location if the
11 location is on the sheet?

12 PRESIDING JUDGE EBOE-OSUJI: I'm not sure that question is clearer. I actually
13 had the same difficulty as the witness the first time. From where to where? If you
14 can correlate the location, that might --

15 MR PUGLIATTI: I can break it down into two questions.

16 Q. Witness, did the two groups meet each other?

17 A. The two groups met at number 4.

18 Q. Which group arrived first, the Ziwa group or the Iten group, at number 4?

19 A. Number 5, Iten group.

20 Q. When the two groups met, what happened next?

21 A. When the two groups met, they started to burn everything. We were
22 surrounded by fire everywhere.

23 Q. Could you just explain what you mean by "burn everything"? What was being
24 burnt?

25 A. They were burning houses.

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1 Q. Don't say any names, but do you know who those houses belonged to?

2 A. The houses that were burnt belonged to Kikuyus.

3 Q. And these Kikuyu houses that were being burnt, what were they made out of?

4 A. Some of the houses were built in planks and others in stone and others still built
5 with sand.

6 THE INTERPRETER: Correction from the interpreter: They were built in straw.

7 Microphone problems. Built -- built in pisé.

8 PRESIDING JUDGE EBOE-OSUJI: Right. Interpreters, can you give us back the
9 answer again?

10 THE INTERPRETER: "Some of the houses were built in stone, others in wood and
11 others built in pisé ...", says the interpreter -- the witness, "... which is compressed
12 earth, so to speak."

13 MR PUGLIATTI:

14 Q. And were all of these houses made of wood, made of stone and made of pisé,
15 were they all burnt?

16 A. Yes, they were all burnt.

17 Q. Just about the group that you saw from Ziwa, from where you were could you
18 see if they were armed or not?

19 A. I did not see any weapons. What I said is that I was at a location which was
20 half a kilometre from where they were.

21 Q. Now, regarding the burning, you spoke about Kikuyu houses. Could you tell
22 the Court what happened to the houses that did not belong to Kikuyus?

23 A. They did not burn houses belonging to persons from other ethnic groups.
24 They only burnt houses belonging to Kikuyus.

25 Q. Now, could you tell the Court how far away from this you were?

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1 A. Let me repeat myself. The location at which I was was 500 metres away from
2 the distance -- from the location where those people were, so they were half a
3 kilometre -- kilometre away.

4 Q. Again, Witness, without saying any names, can you describe the positions of the
5 houses that you saw being burnt?

6 A. (No audible response)

7 MR PUGLIATTI: Mr President, I notice the witness is shaking her head.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, let's go to private session.

9 *(Private session at 12.44 p.m.) Reclassified as open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Can you take the question again, Mr Pugliatti.

12 MR PUGLIATTI:

13 Q. Witness, we've moved into the private session and perhaps I'll ask you the
14 question again. Can you describe where the houses were that you saw being burnt?

15 A. They started by burning the houses and at that time we were surrounded. Fire
16 was coming from all directions, from the four cardinal points, north, east, west and
17 south, that is in relation to our location.

18 Q. And how close to you were -- how close were you to the fire at this point?

19 A. We were surrounded by the fire. It was in front of us, behind us, to our left
20 and to our right. We were surrounded by the fire. It was quite close to where we
21 were. We were surrounded by that fire.

22 MR PUGLIATTI: Mr President, I believe we can move back into public if the Court's
23 minded?

24 PRESIDING JUDGE EBOE-OSUJI: Public session.

25 (Open session at 12.46 p.m.)

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

2 MR PUGLIATTI:

3 Q. Witness, just a reminder we've moved back into public. This burning that
4 you've described for the Court, can you say how long you were there to observe this
5 for?

6 A. I would say that it was about three hours.

7 Q. And did the policemen present say anything to you while this was happening?

8 A. We were with the policemen and this is what they said, "You have seen how the
9 situation is deteriorating, so henceforth each person must save themselves."

10 Q. And I understand that you were subsequently transported to the Eldoret police
11 station; is that correct?

12 A. Yes, we were taken there.

13 Q. And is it correct you were taken there by lorry?

14 A. Yes.

15 Q. And is it correct that you were taken there by lorry?

16 A. Yes.

17 Q. And is it correct that the police – hello? Hello?

18 PRESIDING JUDGE EBOE-OSUJI: All right. Interpreters, you can hear me as well
19 again?

20 THE INTERPRETER: Yes, we can hear you, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti?

22 MR PUGLIATTI: One-two. One-two. Yes.

23 Q. Witness, is it correct that the other people who had been with you at the side of
24 the road, the other Kikuyu, were also taken with you to Eldoret police station?

25 A. Yes, we were all taken there together.

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1 Q. And is it correct that from your position on the side of the road the lorry needed
2 to make a number of trips, four trips in fact, to collect everybody who was there and
3 take them to the station?

4 A. The lorries that were used to transport people to the Eldoret police station made
5 four trips.

6 Q. And is it correct that on each trip each lorry -- the lorry carried approximately
7 40, 50 or 60 people?

8 A. That is correct.

9 Q. And you put your children on the first lorry; is that correct?

10 A. Yes.

11 Q. And you took the third, yes?

12 A. Yes.

13 Q. Now the lorries that were transporting you, were they full?

14 A. Yes, the lorries were full of people.

15 Q. Now, is it correct, Witness, that these lorries were not covered, but they were
16 open at the back?

17 A. Yes, that is correct.

18 Q. So were you able to see what was happening on the road as you were being
19 transported?

20 A. When we got to Eldoret police station, there were roadblocks -- or, rather, on
21 our way to the police station, there were roadblocks. At that time, there were some
22 Kalenjin women nearby. They were talking to us and they said things like,
23 "Madoadoa," "Sangari," "Go back to Othaya," and they threw -- they throw stones at
24 us.

25 Q. In what language did they say that?

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1 A. They spoke Swahili.

2 Q. Now, the roadblocks that you say you encountered, was this on the road
3 between the Iten Road and Eldoret Centre?

4 A. Yes.

5 Q. And do you recall how many roadblocks you encountered on your journey?

6 A. I do not remember the number of roadblocks, but I do remember that we came
7 across some roadblocks on our way.

8 Q. And can you describe, don't say any names, but can you describe who was
9 manning or operating these roadblocks?

10 A. It was Kalenjin women. I am sorry, please repeat your question.

11 THE INTERPRETER: Says the witness.

12 MR PUGLIATTI:

13 Q. Of course, I'll repeat the question. Could you describe who was manning or
14 operating these roadblocks?

15 A. Where there were roadblocks, I noticed that it is the policemen with whom we
16 were who came out of the vehicles to remove the roadblocks so that we could go
17 through.

18 Q. And were people stationed at the roadblocks or located at the roadblocks?

19 A. Yes, there were some Kalenjin women at the roadblocks and they spoke to us.
20 They said, "Madoadoa," "Sangari," "Go back to Othaya."

21 Q. Were there any youths on the roadblocks?

22 MS LAWRIE: Apologies, could I ask my learned friend not to lead at this point.

23 MR PUGLIATTI: I'll rephrase the question.

24 Q. Witness, other than the women, did you see anyone else at the roadblocks?

25 A. Yes, there were some Kalenjin youth -- some Kalenjin youth at the roadblocks.

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1 Q. And do you know if these Kalenjin youths were armed or not?

2 MS LAWRIE: Again I think that's leading, but I think the damage has been done.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, proceed with some caution there,
4 but let the witness answer the question.

5 Witness, you said Kalenjin youths were at the roadblock. Did they have anything on
6 them or with them?

7 THE WITNESS: (Interpretation) They had stones in their hands and they threw
8 their stones at us while we were in the lorry.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, I notice it is one minute to 1.

10 MR PUGLIATTI: That's correct, Mr President. I'd like to say that under ordinary
11 circumstances we would have been finished by now. We took some breaks, of
12 course, today and we've lost a significant amount of time due to technical issues. We
13 are very, very close. We are moving -- we've moved through most of the large topics.
14 If we can crave the indulgence of the Court to have 15 to 20 minutes in the next
15 session, which is less in fact than the time I understand we may have lost today
16 through various matters out of our control, then we will wrap up.

17 PRESIDING JUDGE EBOE-OSUJI: We will -- when we come back, you will have
18 five minutes then to complete your examination-in-chief.

19 MR PUGLIATTI: I'm grateful.

20 PRESIDING JUDGE EBOE-OSUJI: Madam Registrar, try also to -- we know the
21 technicians are working on it, but let's try harder on this difficulty. Of course, by
22 now you'll have noticed that when I talk to the interpreters and they speak back to us
23 things seem to move. Maybe that's something they can keep in mind.

24 Witness, we will now take our lunch break.

25 MS BUISMAN: Mr President, if I just may have one second? Because we go first in

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1 the afternoon, so I just wanted to say we are just using the core binder, tab 6. So if
2 everyone can bring it after the lunch break, that would be great. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: Come again?

4 MS BUISMAN: It is tab 6 of the core binder. We have already indicated that, but
5 we are not using the afternoon. We indicated maybe tab 6 and 7, but it will just be
6 tab 6. So it will be good if everyone -- we've also announced that to the interpreters
7 and they have the right references.

8 PRESIDING JUDGE EBOE-OSUJI: All right. So, Witness, we will let you off on
9 lunch break now and then we will meet again at 2.30. Thank you very much.

10 We will bring down the blinds and escort the witness.

11 *(Closed session at 1.02 p.m.) Reclassified as open session

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

13 (The witness stands down)

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

15 THE COURT OFFICER: All rise.

16 (Recess taken at 1.02 p.m.)

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

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, welcome back. We continue to
21 monitor the microphone systems' difficulty, but we will try and persevere.

22 Mr Pugliatti, we're in public session.

23 MR PUGLIATTI: Thank you, Mr President.

24 Q. Witness, welcome back. Is it correct that you stayed at the Eldoret police station from
25 31 December 2007 to 6 January 2008?

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1 A. Yes.

2 Q. And is it the case that there were many other people who were at the Eldoret police
3 station at this time?

4 A. There were many of us.

5 Q. Approximately how many people were at the Eldoret police station when you were
6 there?

7 A. We were many in number, but I can't give you a specific or precise number.

8 Q. Would you describe it in the tens or in the hundreds or even greater than that?

9 A. There were thousands of us.

10 Q. And from your observations, which ethnic group was the largest at the police station?

11 A. There were many Kikuyus.

12 Q. And if you know, could you tell the Court some of the places that the people at the
13 police station had come from?

14 A. The people who were at the police station came from Ruma -- correction, Huruma,
15 Munyata (phon), Kimumu, Turbo, Maili Nne, Iten. They came from all those places within
16 Eldoret.

17 MR PUGLIATTI: Just one spelling for the record. I'll be corrected if I'm wrong, but
18 I believe at line 21 that's M-A-I-L-I space N-N-E.

19 PRESIDING JUDGE EBOE-OSUJI: You mean appearing before Turbo and Iten?

20 MR PUGLIATTI: Between Turbo and Iten.

21 THE WITNESS: (Interpretation) There is Turbo and Iten.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you, Witness, for the clarification. We were
23 trying to correct something on the transcript. We were placing the word as somewhere
24 between on line --

25 MR PUGLIATTI: Yes, Mr President. On line 21, between those two places.

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1 Q. And, Madam Witness, is it correct that after Eldoret police station on 6 January you
2 were taken to the Eldoret Showgrounds?

3 A. Yes.

4 Q. And that, apart from your eldest, your other children went with you; is that correct?

5 A. Yes, I was with the other children.

6 Q. And is it correct that you stayed at the showgrounds until October 2009?

7 A. Yes.

8 Q. Now, could you tell the Chamber which ethnic group was the largest at the
9 showgrounds?

10 A. The Kikuyus.

11 Q. And after you arrived at the showground, could you describe how the security situation
12 was there?

13 A. The police were brought in to ensure our safety.

14 Q. Were there any incidents that you recall regarding the security at the showgrounds?

15 A. At that time when we were at the showgrounds, a group came and torched that place
16 and I saw some police officers who went there and put out the fire so that the fire would not
17 spread to where we were.

18 Q. Could you just describe this group that came?

19 A. Are you talking about the people who set the fire, or the police officers who put out the
20 fire? I haven't understood your question.

21 Q. I'll be specific. I'm referring to the people who came and set the fire; the people who
22 came and torched the place.

23 A. They were Kalenjins.

24 Q. And how long after you had been taken to the showgrounds did this occur?

25 A. We left the Eldoret police station, we went to the showground and we spent a week

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1 before we were given any tents. It took a week before they gave us tents. In other words,
2 the group that had come and torched the first week when we had just received the tents.

3 Q. Just so that I'm clear, Witness, are you saying -- is it correct that you're saying that this
4 occurred the week that you received the tents?

5 A. That's right.

6 THE INTERPRETER: No interpretation from the Swahili booth, unfortunately.

7 Microphone problem. Could the witness be asked to repeat her reply?

8 MR PUGLIATTI:

9 Q. Witness, unfortunately your answer wasn't picked up by the microphones. Could you
10 just repeat your last answer?

11 A. I was saying this: We left the police station in Eldoret and it was one week before we
12 got any tents. The second week we did get tents. And on the third week, during the third
13 week, that is when they came to try to burn down the place where we had pitched our tents.

14 Q. So this is in either late January or early February 2008; would that be correct?

15 A. It was late in the month of January.

16 Q. And my last question on this topic, Witness. To the best of your knowledge, do you
17 know why the showground would have been attacked at that time?

18 A. I think that they wanted to attack us at the showground because we had gone there and
19 we had gathered and we wanted to stay there. You see, they wanted us to go back to
20 Othaya.

21 Q. Just to be clear, who are you referring to when you say "they"?

22 A. They were Kalenjin.

23 MR PUGLIATTI: Mr President, with the Court's leave, if we could move into private session
24 for our last handful of questions and then the Prosecution will conclude its questioning? It
25 should take about three or four minutes.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 2.51 p.m.) Reclassified as open session

3 THE COURT OFFICER: (Interpretation) We are in private session.

4 MR PUGLIATTI:

5 Q. Witness, we're now in private session. While you were at the showground, do you
6 know what happened to (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. And approximately how long after you had been brought to the showgrounds did you
17 (Redacted)

18 A. It hasn't been a long time. It was January and I got to the showground in January, so in
19 other words not a lot of time had gone by.

20 Q. Witness, those are all the questions I have for you. I just want to clear up one matter
21 with you. If you could turn to the fourth page of the sheet in front of you and back to your
22 CV please, and if you could -- if I could take you to the part about your education where it
23 says (Redacted) Could you please tell the Court if that's correct, or if it should
24 read (Redacted)

25 A. (Redacted)

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1 MR PUGLIATTI: Thank you for clarifying that, Witness, and I have no further questions for
2 you.

3 Mr President, those are the Prosecution's questions.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. We go to the public session now.

5 (Open session at 2.56 p.m.)

6 THE COURT OFFICER: (Interpretation) We are in open session.

7 PRESIDING JUDGE EBOE-OSUJI: Who will go first?

8 MS BUISMAN: I'll go first, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, all right.

10 Before you do, Mr Pugliatti, you explored I believe the ethnic composition of those
11 gathered at Joyland, is that the case, at Joyland? You also -- did you do the same for
12 Eldoret police station?

13 MR PUGLIATTI: Mr President, given the time constraints, what we asked was who was the
14 largest, but we didn't go through them one at a time.

15 PRESIDING JUDGE EBOE-OSUJI: That's all right. What about the showgrounds, did
16 you --

17 MR PUGLIATTI: The same.

18 PRESIDING JUDGE EBOE-OSUJI: So what was the answer about the ethnic composition of
19 those at the Eldoret Showground?

20 MR PUGLIATTI: That the largest group was the Kikuyu.

21 PRESIDING JUDGE EBOE-OSUJI: Were there Kalenjins at the Eldoret Showground as far as
22 you could determine, Witness? I mean, amongst the refugees or displaced persons.

23 THE WITNESS: (Interpretation) There were Kalenjins, some, because you see if -- if
24 you -- if you are a Kalenjin lady married to a Kikuyu, the Kikuyus fled with their wives. But
25 if you were a Kalenjin man, and you had a Kikuyu wife, that Kikuyu lady was driven away

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- 1 along with the other Kikuyus.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you. Do you have any question arising?
- 3 MR PUGLIATTI: None. Excuse me. None, none, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 Ms Buisman. We are in public session.
- 6 Witness, Mr Pugliatti, the Prosecutor's lawyer, has finished his questions to you and
- 7 now Ms Buisman, the lawyer for Mr Sang, will ask you questions in
- 8 cross-examination. Now, recall my advice to you; kindly listen carefully to the
- 9 question she will ask you, and one question at a time and one answer at a time in as
- 10 few words as possible. Thank you.
- 11 MS BUISMAN: Thank you, Mr President.
- 12 QUESTIONED BY MS BUISMAN:
- 13 Q. Good afternoon, Witness. Do you hear me well?
- 14 A. Yes, I can hear you.
- 15 Q. Okay. Witness, yesterday you told us that on 29 December 2007 the person who had
- 16 the most votes was the Honourable Mwai Kibaki. Do you recall saying that?
- 17 A. Yes, that's what I said.
- 18 Q. Witness, I suggest that you are mistaken. I suggest that on 29 December 2007 it was
- 19 clearly Raila Odinga who was leading up, up to the end, at least of the 29 of December.
- 20 Would you accept -- accept that maybe you are mistaken?
- 21 A. I didn't make a mistake. Raila Odinga was there on the 29th. On the 29th --
- 22 THE INTERPRETER: And there is apologies for a microphone problem.
- 23 THE WITNESS: (Interpretation) On the 29th he was leading it.
- 24 PRESIDING JUDGE EBOE-OSUJI: Interpreters, did you get all of that, or should we have to
- 25 have the witness --

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1 THE INTERPRETER: Could we take that again, your Honour, my microphone kept cutting
2 out?

3 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we -- as you notice, we've been
4 having microphone problems since yesterday. These things happen. This technology,
5 when it works it works well, but when it doesn't it becomes a problem. Could you kindly
6 repeat that answer?

7 Ms Buisman is saying you are mistaken. She's asking whether you agree that you
8 are mistaken that it was Mr Kibaki that was leading on the 29th. Her suggestion to
9 you is that it was Mr Odinga that was leading in the vote count on the 29th. Do you
10 agree with her?

11 THE WITNESS: (Interpretation) I'm saying the following: On the 29th, it was the
12 President Mwai Kibaki who was leading. It wasn't Raila Odinga.

13 MS BUISMAN:

14 Q. Thank you, Witness. You mentioned someone called Kivuitu yesterday. Do you
15 recall?

16 A. Yes, I remember.

17 Q. And you said about Kivuitu that he was the person who was supposed to announce the
18 results of the election. Do you recall saying that?

19 A. Yes, I recall it.

20 Q. So, I suppose, you are aware that Kivuitu, Samuel, his first name was -- is there a
21 problem? Apparently there is no transcript at the moment and no sound.

22 PRESIDING JUDGE EBOE-OSUJI: It says "No microphone". Can you hear me?

23 MS BUISMAN: I can hear you, but not through hear.

24 PRESIDING JUDGE EBOE-OSUJI: Not through the microphone, okay. There we go again.

25 Interpreters, can you hear me?

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1 THE INTERPRETER: We can hear you, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you. I think we can hear you now.

3 MS BUISMAN: So I will start again. So I take it you're aware that Samuel Kivuitu was the
4 chairman of the Electoral Commission of Kenya; is that correct? You knew that, right?

5 A. Yes, I knew that.

6 Q. Did you hear at all that during the day of 29 December 2007, Kivuitu was on the radio,
7 Kass FM? Do you -- do you know about that?

8 A. During the elections all the radios -- all the radio stations, television stations were saying
9 the same thing.

10 Q. Well, with the permission of the Court, I would like for all of us, including yourself, to
11 listen to an audio of Kivuitu. And this is on Kass FM in the morning. It is in English.
12 I know your -- English is not your first language, but I suggest we listen to it and then I read
13 out the English so that the interpreters can also give you the interpretation in Swahili. With
14 the permission of Court, I would like to do that. And perhaps when we listen to the English,
15 maybe you can try to listen to what he says. Is that okay?

16 A. Don't ask me questions concerning the radio. I was speaking about the time that
17 Kivuitu went on television and spoke on television.

18 Q. Witness, I just want to make a proposition to you, what Kivuitu said on the radio on 29
19 December because it suggests that you are mistaken. And I can either read it out, or we
20 listen to the tape, or both.

21 PRESIDING JUDGE EBOE-OSUJI: Was it for --

22 THE WITNESS: (Interpretation) No, no, no. I followed Kivuitu when he spoke on the
23 television. I didn't follow the radio. I wasn't listening to the radio. I wasn't listening to
24 Kass FM. I don't understand Kalenjin. But I know that Kivuitu when he spoke he was on
25 television, that's to say on 29 December.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, see how -- we'll proceed in this way:
2 Remember when I spoke to you, the first time you arrived in court, I said that we will tell you
3 when not to answer a question? Just listen carefully to the question. You may find that you
4 have an answer to every question. Your answer doesn't have to be one way or the other.
5 Your answer doesn't have to be to agree. It is an answer also to disagree with somebody. If
6 they're saying something you don't know, it is good enough an answer to say "I don't know
7 that," or "I do not agree." And when you know it you say, "Yes, I know that." When you
8 agree you say, "Yes, I agree." So there is always an answer.

9 Just calm down and listen to the witness -- to the lawyer. Let's hear the question first and
10 then you will decide whether you are in a position to answer it one way or the other. But
11 first let's hear what the lawyer has to ask you. Do you understand?

12 THE WITNESS: (Interpretation) Yes, your Honour. I've understood you.

13 MS BUISMAN:

14 Q. Well, first of all, Witness, I put it to you that this was live on television and on the radio.
15 So it was not just radio that Mr Kivuitu made his speech, but I would like the permission of
16 the Judges perhaps to listen to this --

17 PRESIDING JUDGE EBOE-OSUJI: Let's --

18 MS BUISMAN: -- and then we can have her comments on it.

19 PRESIDING JUDGE EBOE-OSUJI: Let's first of all see what it is you are playing, okay.

20 MR PUGLIATTI: Also, Mr President, if I may, if something is going to be put to the witness,
21 then perhaps the witness can have a chance to respond to that -- that which is being put to
22 them.

23 PRESIDING JUDGE EBOE-OSUJI: We can proceed now.

24 MS BUISMAN: I accept that, but I'd rather us listen to the tran -- the broadcast, which is in
25 English, and then I can read out the translation and then we also have a translation into

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1 Swahili and then I'll put my questions to her. That would -- that would be the way I would
2 like to proceed.

3 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed. Proceed, Ms Buisman.

4 MS BUISMAN: So I propose we -- we listen to audio. And the time stamp is 0147-42 and
5 up to 015020. And this is of the audio, it's already in evidence, it's EVD number D11, so it's
6 T -- D11-00016 and it's a broadcast -- sorry, it's KEN-D11-0006-0025. And the translation is
7 KEN-D11-008-0001. And this is 29 December broadcast at Kass FM. It's in the core binder,
8 tab 6. And the page numbers for the translation are 0008 up to 00039. That's the one page.
9 (Playing of the audio excerpt KEN-D11-0006-0025)

10 MS BUISMAN: Thank you. I will now read out the English for the interpretation so that
11 they can immediately translate that into Swahili.

12 PRESIDING JUDGE EBOE-OSUJI: Before you do, what point are we pursuing with this
13 exercise?

14 MS BUISMAN: Well, I want to pursue the point that this is Raila Odinga who is leading on
15 29 December.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 MS BUISMAN: One more point that I haven't started that yet.

18 PRESIDING JUDGE EBOE-OSUJI: The reason I ask you that is that there's a lot that has been
19 said in the audio broadcast. Can you just read around the Raila Odinga result rather than
20 the whole thing?

21 MS BUISMAN: I can do that. I will read out the results for both Kibaki and Raila Odinga.
22 Thank you.

23 THE COURT OFFICER: (Interpretation) Please, could you confirm the level of
24 confidentiality if you'll be so kind, Counsel.

25 MS BUISMAN: It's public.

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1 THE COURT OFFICER: (Interpretation) Thank you.

2 MS BUISMAN:

3 Q. "Those are the figures we have now. On those figures, President Kibaki has a total of ...
4 I hope you're holding your pen, this guy looking at the others is the one who keep on asking
5 repeats. Ah, it is three million four hundred and sixteen, and one thirty nine."

6 Then I'll start from Raila Odinga.

7 "Raila Odinga, three million, seven hundred and seventy six, two forty seven."

8 And for the record I see page 60, line 3, that must be "thirty nine." It's line 2.

9 Witness, did you hear that?

10 A. Your Honour, Presiding Judge, I have something to say.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

12 THE WITNESS: (Interpretation) They have just played an audio extract during the
13 interview I spoke about the 28th. And it was at that time that people went (Redacted)
14 And it was said that they had spoken on Kass FM, but you're having me listen to a recording
15 from 29 December. I didn't speak about Kass FM. I don't know where you've taken that
16 audio extract from.

17 What I do know is that on the 28th it was Raila Odinga who was leading and on the
18 29th was Mwai Kibaki until the 30th.

19 MS BUISMAN:

20 Q. Witness, yesterday - I can refer to the exact page, this is page 59, lines 13 and 14 - you
21 said, "... on 29 December 2007, the person who had the most votes was the Honourable Mwai
22 Kibaki." That's what you said yesterday, and that's why I'm suggesting to you today that
23 on 29 December, it was in fact Raila Odinga who had more votes.

24 A. Madam, I was in Kenya, I was following the television. Where were you to know that
25 it was Raila Odinga who was leading? I know that on the 29th it was Mwai Kibaki. That's

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1 to say Kibaki was leading on the 29th and on the 30th.

2 Q. I'll just make one more point. I'll move on?.

3 PRESIDING JUDGE EBOE-OSUJI: Before you do, private session for one minute or less.

4 *(Private session at 3.18 p.m.) Reclassified as open session

5 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

7 (Redacted)

8 MR PUGLIATTI: (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go back to public session.

10 (Open session at 3.19 p.m.)

11 MS BUISMAN: Just for your information, this is a live --

12 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, we're back in the public session

14 and remember the advice to be mindful of the answers you give so you don't reveal

15 identifying information. I also would like to urge you to speak more slowly than you are

16 doing recently. There were times in the past when you spoke with a perfect pace, but let's

17 return to that, when you speak more deliberately, so that the interpreters can more easily

18 interpret what you are saying. Thank you.

19 MS BUISMAN:

20 Q. Witness, to clarify, this was the broadcast of what he said live on television as well. So

21 I put it to you that on 29 December 2007, the situation is that Raila Odinga is leading with, in

22 fact, 360,108 votes, if you do the mathematics. That's what I put to you, and I put that to you

23 because Kivuitu is the one who should know. Do you accept that?

24 PRESIDING JUDGE EBOE-OSUJI: Let's not argue with the witness now. The new point to

25 your question is that what you read out on the radio, you're saying, was also on TV. So that

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1 is a new question. So let's ask that.

2 MS BUISMAN:

3 Q. So, Witness, I put it to you that this -- what I just read out to you is exactly what he also
4 said on television. Do you agree?

5 PRESIDING JUDGE EBOE-OSUJI: And, Witness, your point was that you're saying that the
6 figures of 29 December had Mr Kibaki in front and not Mr Odinga. That's your position, isn't
7 it?

8 THE WITNESS: (Interpretation) That's correct.

9 PRESIDING JUDGE EBOE-OSUJI: If it is the case that the lawyer is telling you that on
10 television you would be hearing that Mr Odinga was in front, would you agree with that on
11 the 29th? If you don't agree with her, you can say "no". You are maintaining your position
12 that it was Mr Kibaki who was in front on the 29th on television as well, you can tell her that.

13 THE INTERPRETER: Your Honour, the Swahili booth is having problems. There are
14 technical problems.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you. But the witness hasn't responded yet.

16 MR PUGLIATTI: Mr President, I'm informed that the continuing technical problems have
17 arisen again and that there is no Swahili interpretation arriving to the witness.

18 PRESIDING JUDGE EBOE-OSUJI: Oh, I see. Is the problem -- Interpreters in Swahili booth,
19 can you hear me now? You can hear me? All right.

20 Ms Buisman, can you take again the question about the figures or what appeared in
21 audio -- radio being the same as on TV.

22 MS BUISMAN:

23 Q. Witness, what I just read out to you, Witness, I suggest that that was exactly what was
24 said live on television on 29 December 2007 by Samuel Kivuitu. That's what I'm putting to
25 you. And I ask you whether in light of this you change your mind whether or not Raila

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1 Odinga was leading or was it Kibaki?

2 A. On the 29th it was Honourable Mwai Kibaki. He was in front.

3 PRESIDING JUDGE EBOE-OSUJI: And you heard -- you said that was the information you
4 got from watching television. Is that the case?

5 THE WITNESS: (Interpretation) It is. That's where I got the information from.

6 MS BUISMAN: I will move on.

7 Q. Witness, you also mentioned that on 28 December 2007, some people told you they
8 heard an announcement on Kass FM that Raila Odinga was the winner. That was on 28
9 December 2007. Do you recall saying that?

10 A. I said that.

11 Q. And just to clarify, it was not you listening to the radio; you heard that from these
12 people, correct?

13 A. That's correct.

14 Q. And these people told you that the announcement was made by Joshua Arap Sang.
15 That's what you told us yesterday. Do you agree?

16 A. They said that Kass FM had communicated that. But when I was interviewed, I was
17 asked who Kass FM belonged to. I answered saying it belonged to Joshua Arap Sang.

18 Q. Are you telling us now that it wasn't Joshua Arap Sang who made that announcement
19 according to these people?

20 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, was your question -- what point are we
21 getting at with this question about what people told her on the 28th? The reason for the
22 cross-examination on that point would have to be, wouldn't it, that no one told her that?

23 And that is your point, yes, I see, but I don't see the point of cross-examining the witness on
24 what other people told her.

25 MS BUISMAN: Mr President, we're not necessarily suggesting that that's not what she heard.

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1 We're just suggesting that the information was incorrect, and it's something that I want -- I
2 want to give the witness an opportunity to respond to -- I have some propositions to make
3 and I want to hear her proposition.

4 PRESIDING JUDGE EBOE-OSUJI: I see your point, but the -- what do we make of an answer
5 to that kind of question if other people's information were incorrect? Did she say that in her
6 view that was correct information?

7 MS BUISMAN: Mr President, we want to clarify for the record that this is not -- this wasn't
8 something that was said on the radio, and it's important because a lot of what the witness says
9 follows from that. So we basically want to clarify it.

10 And it's not necessarily -- we're not necessarily suggesting that this witness is
11 lying - she may be mistaken, she may not be mistaken - but I think it's fair at least to
12 give her an opportunity to respond to a number of propositions that clearly contradict
13 that Joshua Arap Sang would have said something like that on 28 December 2007.

14 PRESIDING JUDGE EBOE-OSUJI: But isn't it enough that she did not hear Joshua Sang say
15 it? So we can move on, you know? We've had difficulty with microphone and the witness
16 and other things. So if there is some questions that we don't need to ask, I think we can
17 dispense with those and move on.

18 MS BUISMAN: Can I just clarify what these people said to her, because in the transcript of
19 yesterday we have his name mentioned? So if we clarify that, and then if there is no
20 mentioning of Joshua Arap Sang I move on. I'll leave it there.

21 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed then.

22 MS BUISMAN:

23 Q. Witness, am I to understand you correctly that when you -- when these people told you
24 that Kass FM made an announcement on the radio on 28 December 2007 announcing Raila
25 Odinga as the winner, they did not tell you that that was Joshua Arap Sang? Did

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1 I understand you well?

2 MR PUGLIATTI: I'm sorry, Mr President, but it's just a matter of phrasing. If my learned
3 friend is asking the witness, "Am I to understand you well that you said ...", and then to put
4 her proposition to the witness rather than the witness's own response, which we have in the
5 transcript from yesterday, I think it may be cause for confusion. It's probably just a phrasing
6 issue, but -- of course I understand my learned friend has a proposition to put, but I don't
7 think "Am I to understand you well?" is the best preface to my learned friend's proposition.

8 MS BUISMAN: I can put both propositions, because we have the transcripts of yesterday
9 and we have the transcripts of today. If you want, I can say exactly what the transcript says
10 she said today and what the transcript says she said yesterday. Would that help?

11 PRESIDING JUDGE EBOE-OSUJI: Yes, why don't we start with that.

12 MS BUISMAN:

13 Q. Witness, I read your answer from today. You said, "They said that Kass FM had
14 communicated that, but when I was interviewed I was asked who Kass FM belonged to. I
15 answered saying it belonged to Joshua Arap Sang". This is what you told us today.
16 Now, what I want to know is because yesterday you told us -- and this is at page 40
17 and this is line 22. The question to you is, "Do you recall if they said who on Kass
18 FM announced Odinga as the winner?", and then your answer is that, "It was Joshua
19 Sang". So could you clarify, Witness, whether or not what these people told you.
20 Did they tell you that an announcement was made on 28 December 2007 and if that
21 announcement was made by Joshua Sang, or not?

22 A. Ma'am, this is what I said. On the 28th, those people came (Redacted). They said to
23 me that Kass FM had just announced that Raila Odinga had won the election, but during the
24 discussion they asked me who was the owner of Kass FM and I said -- and I said to them that
25 it was Joshua Arap Sang.

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1 MS BUISMAN: All right. Thank you very much, Witness, and safe travels back.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you, Ms Buisman.

3 Witness, the lawyer for Mr Sang has finished her cross-examination and now

4 Ms Lawrie, the lawyer for Mr Ruto, would have some questions for you as well.

5 QUESTIONED BY MS LAWRIE:

6 Q. Good afternoon, Witness. Now, most of us in court are not as familiar as you are with
7 the various places that you've mentioned in your testimony, so I'd like to seek your assistance
8 in helping us to understand in a little more detail where exactly you say some of these events
9 took place, okay?

10 A. (No interpretation)

11 PRESIDING JUDGE EBOE-OSUJI: Are the microphones working?

12 THE INTERPRETER: The Swahili booth has just said that they did not get the answer.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Ms Lawrie, maybe I think you should go just
14 straight to the question. So the less we ask in this exercise the better for everyone, in light of
15 the technical difficulties we're having.

16 All right. Mr Pugliatti, I -- (Microphone not activated)

17 MR PUGLIATTI: Yes, it should be -- it should be with Court Management now.

18 PRESIDING JUDGE EBOE-OSUJI: All right.

19 Ms Lawrie, please proceed.

20 MS LAWRIE:

21 Q. Witness, I'm going to ask you a series of quite basic questions probably in your view
22 because you're a Kenyan, but because we're not Kenyans I'm seeking your assistance to get
23 greater clarity, but hopefully that becomes clear from my questions. So yesterday and today
24 you mentioned the position of chief in your testimony. So you're familiar with that term,
25 aren't you?

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- 1 A. Yes, I know.
- 2 Q. And you're also -- can you hear me? Sorry, I don't hear anything. I'll try again?
- 3 We're good? No.
- 4 PRESIDING JUDGE EBOE-OSUJI: Has the microphone tripped off again?
- 5 Interpreters, can you hear me?
- 6 THE INTERPRETER: We can hear you, your Honour.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 8 MS LAWRIE:
- 9 Q. And you're also familiar with the term "assistant chief", aren't you?
- 10 A. Yes.
- 11 Q. And in Kenya the chief is responsible for a particular area, isn't he?
- 12 A. Yes.
- 13 Q. And I'm right when I say that that particular area, which is the chief's area of
- 14 responsibility, is called a location, isn't it?
- 15 A. That's right.
- 16 Q. And also just to --
- 17 A. No, no, no, sub-location.
- 18 Q. You said you were familiar with the term "assistant chief". I put it to you that an
- 19 assistant chief is responsible for a sub-location and a chief is responsible for a location.
- 20 That's correct, isn't it?
- 21 A. The chief is responsible for the location. Well, I haven't really understood you.
- 22 Q. I'll put it again. A chief is responsible for quite a large area and that area is called a
- 23 location, isn't it?
- 24 A. Yes, that's right.
- 25 Q. And a chief is assisted in his work by assistant chiefs, isn't he?

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1 A. Yes.

2 Q. And the area which an assistant chief is responsible for is called a sub-location. That's
3 correct, isn't it?

4 A. I don't know whether it's called a sub-location or whatever, but I do know that the chief
5 and his assistant work together and they help one another with their various duties.

6 Q. There is an assistant chief in Kimumu called Maswai, isn't there?

7 A. That's right.

8 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, do we mean now, or at the post-election
9 violence period?

10 MS LAWRIE: Your Honour, my questions will clarify that.

11 Q. And his full name is Elijah Cheruiyot, isn't it?

12 A. Are you asking me the name of the assistant chief?

13 Q. I am, yes. I'm just putting to you that his full name -- the Assistant Chief Maswai, his
14 full name is Elijah Cheruiyot. Do you know his full name?

15 A. I don't know him by any other name. I just know that he was the assistant to the chief
16 and his name was Maswai.

17 Q. And Mas -- try again?

18 PRESIDING JUDGE EBOE-OSUJI: Interpreters, we've lost our mic. Can you help us again?
19 Can you hear me?

20 THE INTERPRETER: Yes, we can hear you.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MS LAWRIE:

23 Q. And Assistant Chief Maswai was assistant chief in Kimumu in 2007, wasn't he?

24 A. Yes, he was.

25 Q. And he remains the Chief of Kimumu's sub-location today, doesn't he?

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1 A. I don't know. (Redacted)

2 MR PUGLIATTI: I'm sorry, if we could just get a clarification because at line 11 the witness
3 is asked about the Assistant Chief Maswai and then at line 14 he's asked, "And he remains the
4 chief ..." Perhaps that could be clarified?

5 MS LAWRIE: I'm grateful.

6 Q. When I talk about Maswai, I mean Assistant Chief Maswai. You understand that, don't
7 you?

8 A. Yes, I know that.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, it is for you to have accepted the clarification
10 and then we can move on.

11 MS LAWRIE: I'd like to show a photo with the Court's leave. It's at tab 1 of the bundles,
12 which I believe have been distributed, and the ERN is KEN-D09-0033-0007. I should clarify
13 that we would like the photo just to be shown in the courtroom.

14 Q. Madam, are you able to see the photograph which is currently on your screen?

15 A. Yes, I can see it.

16 Q. This is Assistant Chief Maswai, isn't it?

17 A. Yes, that's him.

18 Q. And the chief who Assistant Chief Maswai reports to is Chief Sang, isn't it?

19 A. Yes.

20 Q. That's the same Chief Sang who you have mentioned in your evidence today, isn't it?

21 A. Yes, Chief Sang.

22 Q. And Assistant Chief Maswai, he's responsible for Kimumu's sub-location, isn't he?

23 THE INTERPRETER: The English interpreter has not received interpretation from the
24 Swahili booth. Here it comes.

25 THE WITNESS: (Interpretation) When you talk to me about location and sub-location,

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1 going by my own level of schooling I really couldn't tell you the difference. It's all very
2 confusing to me. Ask me a clear question and then I will answer.

3 MS LAWRIE:

4 Q. And you're familiar with an assistant chief called Komen from the area known as
5 Jerusalem, aren't you?

6 A. (Redacted).

7 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie --

8 MS LAWRIE:

9 Q. And his full name --

10 PRESIDING JUDGE EBOE-OSUJI: -- one second. Try to follow where this is leading. In
11 the past we have been liberal and generous with the principle that the Defence may use
12 Prosecution witnesses to set up their own cases, but this is one instance where we have to
13 keep that exercise to the barest minimum possible, if at all we need to do it. We're having
14 difficulties with this exercise from various angles, including difficulties with the public
15 address system in the courtroom, so we cannot afford the luxury of having the Defence build
16 up their case with this witness. You've done it before and we didn't stop your side, but we
17 will ask you to move on to really the testimony of this witness that presses on your case.

18 MS LAWRIE: I'm guided, Mr President. I can move on.

19 Q. The next section I would actually like to use maps. And I think it might be prudent
20 then to move into private session depending on -- well, looking at the time, I would imagine
21 that we will finish the session in private session, with your leave. I think there is ten minutes
22 remaining.

23 PRESIDING JUDGE EBOE-OSUJI: So you want to go into private session now?

24 MS LAWRIE: Yes, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Private session then.

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1 MS LAWRIE: And it will take us to the end of the day --

2 PRESIDING JUDGE EBOE-OSUJI: Yes.

3 MS LAWRIE: -- I would estimate.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 *(Private session at 3.51 p.m.) Reclassified as open session

6 THE COURT OFFICER: (Interpretation) We are in private session.

7 MS LAWRIE:

8 Q. Now, I'd like to refer you to a map, Madam. And I'm not sure how familiar or

9 comfortable you are with using maps, but I would like to try to see if we can work together on
10 this and to see how we fare. Is that okay?

11 I would actually ask for the witness to be shown a map, it's at tab 6 of everybody's bundles.

12 The ERN is KEN-D09-0033-0011 and obviously it should be shown confidentially. I've also
13 got a hard copy if that would also assist the witness. So I'm hoping that she can look at the
14 screen but also look at the hard copy. And with the Court's assistance, I could give her a
15 map. I'm looking at the screen, I'm not sure how clear it is, but hopefully the hard copy
16 versions are easier to follow.

17 PRESIDING JUDGE EBOE-OSUJI: It is clear enough on my hard copy. I would assume it is
18 the same with the other Judges. As for -- you might want to see if that's clear for the witness,
19 Ms Lawrie.

20 MS LAWRIE:

21 Q. Witness, you're looking at a map. And I'm going to help you familiarise yourself with
22 it. I understand that maps are not everything that -- are not things that everybody is
23 comfortable using. So just take a moment to have a look at it and then I'm going to work
24 with you to look and to orientate yourself in the map, okay?

25 A. Very well.

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- 1 Q. So looking at the map that's in front of you, you will see some yellow lines. These
2 represent -- these represent roads and they're roughly in the shape of a Y. Do you see them?
- 3 A. Which spot are you talking about?
- 4 Q. If you look at the yellow lines, there is one which is towards the left-hand side of the
5 page, and it's running top to bottom. Can you see that?
- 6 A. Yes, I can see that.
- 7 Q. And then there's another yellow line and it goes across the page moving from right to
8 left. Do you see that line? It's going across horizontally.
- 9 A. Yes, I can see that.
- 10 PRESIDING JUDGE EBOE-OSUJI: Witness, what do you see written on that line that goes
11 from -- that goes across? Do you see any numbers written on it?
- 12 THE WITNESS: (Interpretation) I can see some numbers.
- 13 PRESIDING JUDGE EBOE-OSUJI: Are you able to tell us what the numbers say? You
14 didn't hear me? Interpreters, can you hear me?
- 15 THE WITNESS: (Interpretation) I understand, your Honour. I can see that it's written
16 here (Redacted). On the other side someone has written (Redacted)
- 17 PRESIDING JUDGE EBOE-OSUJI: Very good.
- 18 MS LAWRIE: Mr President, we can also pause here, if it helps, and I can prepare a larger
19 map for her and we can start again on Monday.
- 20 PRESIDING JUDGE EBOE-OSUJI: She's already --
- 21 MS LAWRIE: Okay.
- 22 PRESIDING JUDGE EBOE-OSUJI: -- got the map, the roads, so if you can -- with reference to
23 those numbers and then ask questions.
- 24 MS LAWRIE:
- 25 Q. So we've looked at the lines. I'd like you to look at the very bottom of the page towards

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1 the middle. There is the words (Redacted) written and it's to the right of a word "Google".

2 Do you see that?

3 A. Yes, I can see that.

4 Q. And then moving directly above, so moving up from (Redacted), if you follow with

5 your finger, go all the way up towards the road, you'll come to the words (Redacted)

6 (Redacted). Do you see that?

7 A. Yes, I see that.

8 Q. And now if you follow the road, which you've marked or you've identified has the (Redacted)

9 in it, if you take your finger along that road moving towards the left, you'll come to the words

10 (Redacted) Do you see that?

11 A. Yes, I can see that.

12 Q. And having orientated yourself in the map, you'll agree that this is a map of the

13 (Redacted), isn't it?

14 A. That's not the map of (Redacted). I don't know where you've got this map. It's not the

15 map of (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, we have to leave it there for now.

17 MS LAWRIE: Your Honour, Mr President, I just have one clarification for the transcript.

18 Apparently at page 75, line 12, the word should read Google, G-O-O-G-L-E. Thanks.

19 PRESIDING JUDGE EBOE-OSUJI: All right. So we will adjourn for today and then we

20 reconvene on Monday. There is the status conference happening in the Banda case in the

21 morning. We will be convening -- what time again do we have for -- at 12, and then we'll

22 meet again at 12, yes. One second.

23 All right. I was confused as to whether we were sitting in Banda from 10 to 12, in

24 which case it wouldn't make sense to start immediately at 12. But the Registrar has

25 informed me that it is from 9.30 to 11.30 in Banda, and then we will reconvene at 12

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1 for the Ruto-Sang case.

2 We will now adjourn for the day. Witness, we know it's been difficult for you and
3 also for us technically and all that, all the difficulties we've had, but we thank you for
4 being patient and persevering. You will be excused until Monday when you'll come
5 back to court to join us again. We will be starting back here on Monday at 12 o'clock.
6 So you have a restful weekend. Do not talk about this case with anybody, and try
7 and get the case off your mind if you can so you're fresh to answer questions on
8 Monday, all right?

9 THE WITNESS: (Interpretation) Yes.

10 PRESIDING JUDGE EBOE-OSUJI: We'll go into closed session so the witness will be
11 ushered out of the courtroom.

12 *(Closed session at 4.03 p.m.) Reclassified as open session

13 THE COURT OFFICER: (Interpretation) We are in closed session.
14 (The witness stands down)

15 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

16 THE COURT OFFICER: All rise.

17 *(The hearing ends in closed session at 4.04 p.m.) Reclassified as open session

18 RECLASSIFICATION REPORT

19 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
20 2013, and the instructions in the email dated 23rd May 2014, the version of the
21 transcript with its redactions becomes Public.