

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 Sang - ICC-01/09-01/11
5 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and Judge Robert Fremr
6 Trial Hearing
7 Thursday, 3 April 2014
8 (The hearing starts in open session at 9.36 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
13 Court officer, please call the case.
14 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in the
15 Republic of Kenya in the case of The Prosecutor versus William Samoei Ruto and Joshua Arap
16 Sang, ICC-01/09-01/11.
17 We are in open session.
18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
19 Appearances, please.
20 MR STEYNBERG: Good morning, your Honours. Anton Steynberg for the Prosecution.
21 With me Lorenzo Pugliatti, Lucio Garcia, Regina Weiss, Peter Schotsman and Grace Goh.
22 If I can just indicate that Mr Pugliatti will be taking the next witness and addressing the Court
23 on the in-court protective measures.
24 MR NARANTSETSEG: Good morning, Mr President, your Honours. Orchlon
25 Narantsetseg and James Mawira for victims. Thank you.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 MR KHAN: Good morning, your Honours, Mr President. Ms Leigh Lawrie, Mr Essa Faal,
2 Ms Shalini Jayaraj, Ms Grace Sullivan and myself for Mr Ruto. Ms Lawrie will be taking the
3 next witness.

4 MS BUISMAN: Good morning, Mr President, your Honours. Today Mr Katwa Kigen is
5 not here, so it's myself, it's Logan Hambrick, Honor Lanham and of course Mr Sang.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 We will go into private session and discuss measures in relation to this witness -- to the next
8 witness, Witness 469.

9 MR PUGLIATTI: That's correct.

10 (Private session at 9.39 a.m.) Reclassified into open session

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

12 MR STEYNBERG: Your Honours, if I may, I was approached just before the start by my
13 learned friend for Mr Ruto just to discuss some scheduling issues for the -- for the next session,
14 and it also concerns certain discussions we've had with VWU about logistics of getting the
15 next witness here. I wonder whether I might briefly address the Chamber on that while
16 we're in private session, or if the Court prefers, it can wait until after the in-court protective
17 measures have been dealt with.

18 PRESIDING JUDGE EBOE-OSUJI: Is it necessary to do that before this witness's testimony,
19 or is this something that can wait later?

20 MR STEYNBERG: Your Honours, it's not strictly necessary to do it now, but bearing in mind
21 that there are arrangements that we will have to start putting in place already for the next
22 session if it is to start on the 29th as currently scheduled. I might just indicate the indication
23 that I had in discussions with my learned friend was that it might be suitable to all parties,
24 including the VWU, if we could shift the start date back by a week until 5 May. For various
25 reasons I will also make clear when I have the opportunity, we may in fact not be able to fill

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 the session as currently scheduled. So it wouldn't cost the Court any extra time as it were.

2 PRESIDING JUDGE EBOE-OSUJI: To take the submissions now, you mean, on the matter?

3 MR STEYNBERG: I'm -- well, yes, that too. And also to move -- to move the start date back
4 by a week. Perhaps if I may just, rather than speaking cryptically, in a sentence or two set it
5 out.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 So the proposal -- joint proposal, as I understand it from myself, from Mr Khan, and
17 I understand from VWU, I haven't yet had indication from the Sang team, but I see
18 Mr Sang himself nodding in the background, is that we would delay the start of the
19 next session for one week until the 5th, which would also give the teams an
20 opportunity to have a short break between -- between the two sessions. The next
21 session might be quite a -- quite a taxing one, I believe.

22 MR KHAN: Yes, I'm grateful, Mr President. My learned friend puts the matters
23 absolutely accurately. (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 But, your Honours, given that it seems unlikely that we're going to fill the next session and we
4 have an Easter break immediately before, in addition to the welfare issue, which of course
5 must trump, all things being equal, convenience of counsel, apart from the fact of not
6 requiring the witness to come here and stay for a month, it's my respectful submission that it
7 would be quite nice to give both counsel for the Prosecution and counsel -- and the team for
8 the Defence a few days off over Easter and then start a week later. That seems more sensible
9 than starting on the 29th and going short. It will allow things to be planned so members of
10 the team that have been working tirelessly can have a few days off, still do some work to
11 prepare for the next session, and a start date a week later probably would meet all the
12 concerns and interests of the Prosecution and Defence.

13 So, your Honours, we would be supporting my learned friend for the Prosecution.
14 I've taken the liberty of speaking both to Ms Buisman and Mr Sang and they are in
15 accordance on this issue.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Submissions in the matter are done, we've
17 noted. We will think about it and get back to you.

18 By the way, Mr Steynberg, this might be -- it is certainly late on my part but
19 (overlapping speakers) --

20 THE INTERPRETER: Could the speaker turn towards the microphone, please?
21 (Trial Chamber confers)

22 PRESIDING JUDGE EBOE-OSUJI: I understand there's some difficulty with the microphone.
23 I have the floor channel on. Hold on.

24 THE INTERPRETER: I'm sorry, your Honour. It's just because you were turned away from
25 the microphone, the interpreters couldn't hear you.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: I'm also now on the English channel.

2 I was saying, Mr Steynberg, Witness 508 we forgot to put on the record whether or
3 not the Rule 63(1) and Rule 74(1) caution, whether that was given to him before he
4 started testifying. It's better late than never to put it on the record, that is.

5 MR STEYNBERG: Your Honours, my understanding is that it was. However, the witness
6 preparation was done by Ms Zago and Ms Renton, neither of whom are here. I will follow
7 up with them and place it on the record at the next opportunity.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR STEYNBERG: Thank you, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will now proceed with the
11 submissions on the special measures regarding this witness.

12 Before you go into the usual submissions process -- Mr Pugliatti, you will be the one
13 speaking?

14 MR PUGLIATTI: Mr President, good morning. Yes, that will be me.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted). These recommendations came from expert psychological assessments of
20 the witness by the VWU.

21 I take it that there are no difficulties with that?

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MR PUGLIATTI: Before I commence those submissions, Mr President, and they will be
7 rather brief, I can put on the record now that as regards the preceding witness, Witness 508,
8 we have received confirmation that the witness was formally cautioned under both Rules 63
9 and 74. So that was done.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR PUGLIATTI: The Prosecution made written applications for in-court protective
12 measures in regards to this witness, 469. The witness was originally intended to testify at the
13 latter part of 2013, but for various reasons didn't and so the application was made as the
14 Prosecution's second application, number 1044. We reiterated and added to that application
15 in our fourth application, number 1129, and we have since reiterated and supplanted that
16 application with further submissions in our latest application, 1223. So those applications we
17 stand by our written submissions and have nothing further to add with those.

18 Since then, of course, the VWU has provided its written report on suggested in-court
19 protective measures during the testimony of this witness, and we're cognizant of the
20 conclusion of the VWU and their recommendation.

21 We note that they recommend the same measures and the same in-court measures
22 that we've requested and, therefore, also support their recommendation. It's the
23 same that we are seeking.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie?

25 MS LAWRIE: Mr President, we don't object to the requested protective measures, nor the

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 recommendation by the VWU. However, I would make a couple of observations.
2 The first is that the (Redacted) should be properly detailed both in the filing and
3 the VWU report. At the moment, as my learned friend has properly identified, the
4 Prosecution's -- the basis on which the Prosecution requests the protective measures
5 in three filings, the majority of those filings in respect of this witness is basically
6 redacted information.
7 Now, we have received disclosure from the Prosecution about alleged (Redacted)
8 so if the information has been provided to us why is that not filtered into the motion
9 and also the VWU report? There is no reason why it should -- should not have been.
10 Indeed, the last request is dated 24 March 2014, this year, (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 I'm looking at the second paragraph as well of the section in the VWU report entitled
19 "Protection Analysis," where it says that, "The VWU deems prudent to recommend
20 measures that would allay the witness's subjective fears," so it appears that they still
21 consider the fears to be subjective.
22 Your Honours, it's our submission that basically we shouldn't have to ferret through
23 all the disclosure that's been provided to find out the basis on which these witnesses
24 are making their allegations of threats, but as I say on this occasion we don't object.
25 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 MS BUISMAN: Mr President, we share these observations. For the record we do object,
2 but I'll leave it.
3 I'll make one observation and that's that, on the basis of the VWU report, we think
4 that this application should be denied. As my colleague already pointed out, it talks
5 about subjective fears and it talks about the protective measures that they should be
6 granted as a precautionary measure. We do not think that that is what protective
7 measures are about. We think protective measures should be applied exceptionally.
8 But as my colleague also learned -- also informed you about, there is a lot of
9 information that we've been given by the Prosecution and it's not in the report. So
10 we leave it ultimately in your hands.
11 PRESIDING JUDGE EBOE-OSUJI: And beyond the subjective fears, let's not also forget the
12 objective demonstration of intent of some people to interfere and intimidate witnesses that we
13 saw early on in these proceedings. We mustn't forget that. When the VWU now makes
14 assessment and then gives us subjective fears, we will take that into account against the
15 background - the objective background - that has been laid out before us. Thank you.
16 MR NARANTSETSEG: Good morning, Mr President, your Honours. On our side, we
17 support the Prosecution's request as recommended by the Victims and Witness Unit. These
18 measures are justified, in our view, and proportionate and at the same time necessary, your
19 Honour.
20 As your Honours have correctly pointed out, your Honours, I would like to just recall
21 one of your oral decisions issued 20 February 2014. In that decision, your Honour,
22 concerning also the same protective measures, your Honours have pointed out that
23 the Statute, the Article 68(1), not only recognises the need to protect witnesses and
24 victims from physical threats, but also this article and the Statute as a whole
25 recognises the need to protect and promote the well-being of witnesses.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 And your Honours also have stressed that it's not an outsider who should explain
2 these concerns, and the Court must take into account the witness's own concerns - his
3 or her own concerns - when it comes to their own security and well-being.

4 That concludes our submission, your Honour. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Mr Pugliatti, any reply?

7 MR PUGLIATTI: Yes, I'm grateful.

8 PRESIDING JUDGE EBOE-OSUJI: Particularly while you're at it, Ms Lawrie's concerns?

9 MR PUGLIATTI: Yes, Mr President. In fact, that was precisely what I was going to address.
10 The Prosecution submits that the assessment here is both objective and subjective and, as your
11 Honour correctly - very correctly - stated, these should both be taken into consideration to
12 arrive at a combined conclusion.

13 I don't agree, I must say, with Ms Lawrie's submission that there are only subjective
14 concerns at play with this witness. The material provided to the Defence quite
15 amply demonstrates objective risks as well, in our submission, and those incidents are
16 detailed in the second Prosecution application for in-court protective measures.

17 PRESIDING JUDGE EBOE-OSUJI: Our concern that I had in mind really was the -- was
18 redaction of material that should have been shared with them.

19 MR PUGLIATTI: Mr President, the redactions that were implemented in that
20 decision predate the Chamber's oral decision of 28 February that my learned
21 colleague, Mr Narantsetseg, referred to. (Redacted)

22 (Redacted)

23 (Redacted), and it is that material that forms the
24 underlying material for the Prosecution's redacted arguments and assertions in the
25 applications that are before the Court.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 So they have all the material. It's not voluminous, it's a rather self-contained bundle
2 of information and it's been in the Defence's possession for we would say an adequate
3 length of time to respond to these submissions.

4 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, I take it your concern was that it should have
5 been collated specifically for purposes of the protective measures application --

6 MS LAWRIE: Exactly, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: -- and not --

8 MS LAWRIE: Especially when it does post-date. It was dated 24 March.

9 PRESIDING JUDGE EBOE-OSUJI: All right.

10 MS LAWRIE: And also I think just also for clarity, we weren't saying that there were no
11 objective concerns. We're saying it's not in the report and, again, it's basically deficient
12 information.

13 PRESIDING JUDGE EBOE-OSUJI: All right. We've heard the submissions.

14 (Trial Chamber confers)

15 PRESIDING JUDGE EBOE-OSUJI: We will render our ruling. We will do so in closed
16 session -- in private session.

17 On 16 October 2013, the Prosecution requested the usual menu of protection for
18 witnesses in the courtroom, that those be also applied in respect of this particular
19 witness. The request of the Prosecution was filed originally in filing number 1044
20 and reiterated in filing numbers 1129 and 1223. On 2 April 2014, the VWU
21 recommended that those measures be granted.

22 We have now heard oral submissions from the parties. We also note the special
23 concerns raised by Ms Lawrie has been largely addressed by the Prosecution in the
24 sense that, yes, the redacted information - the information redacted in the original
25 filing - was eventually provided, although not in a collated form that directly speaks

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 to the relevance as to protective measures. Nevertheless, the information has been
2 given to the Defence.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 The Chamber also notes that, although discussions have been made about the report
11 being subjective, the Chamber is of the view that the subjective fears of witnesses is
12 not pointless in the circumstances of witness protective measures. The Statute was
13 drafted sufficiently to accommodate the right place for subjective fears.

14 But beyond that the Chamber also notes that early on in these proceedings, or in this
15 trial, it was shown that there were people who were actively engaged in intimidating
16 witnesses. That is an objective factor.

17 Now, having considered the specific circumstances of this witness, as well as the
18 assessment provided by the VWU and the submissions of the parties and participants,
19 the Chamber considers that the requested protection measures are proper in the
20 circumstances. The Chamber therefore grants them.

21 That is the ruling of the Chamber.

22 MR PUGLIATTI: As the Court pleases.

23 PRESIDING JUDGE EBOE-OSUJI: We will now go into closed session and bring in the
24 witness.

25 And while that is happening, Mr Pugliatti, you have put on record that the 66(3) and

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 74(1) cautions were given in relation to Witness 508.

2 Now, as regards this witness?

3 MR PUGLIATTI: Also the same. They -- they were given. We can confirm that.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 (Closed session at 10.03 a.m.) Reclassified into open session

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

7 MS LAWRIE: Mr President, if I might just ask while the witness is being brought in how
8 long my learned friend might expect to be in direct.

9 MR PUGLIATTI: It's always hard at the outset to give something which is precise but at the
10 out -- at this stage we're estimating five sessions. That's our ambition.

11 MR STEYNBERG: Your Honours, if I may, it may also inform your Honours' control over
12 the pace of the proceedings, but the following witness, who will be Witness 488, we met with
13 him yesterday. We'd had -- after discussions with the Defence, they accepted he was an
14 expert witness and it was not necessary to do the witness preparation here. I trust that will
15 be in order with the Chamber. But the point is that he has indicated that he will only be in a
16 position to travel, due to work commitments, on Tuesday evening and commence his
17 testimony on Wednesday. So at this stage, we will not have any witnesses prior to
18 Wednesday next week, and that will give us then four clear days to finish with -- with the
19 current witness and, of course, any more time that may be required.

20 PRESIDING JUDGE EBOE-OSUJI: Your information is noted, Mr Steynberg, but it's always
21 we will want witnesses to be examined as efficiently and as speedily as possible.

22 MR STEYNBERG: Indeed, your Honours. I just -- the information may be of use to you.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE EBOE-OSUJI: We go to open session now.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 (Open session at 10.04 a.m.)

2 THE COURT OFFICER: We're in open session, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Can you please administer the
4 oath, or the solemn declaration, to the witness.

5 WITNESS: KEN-OTP-P-469

6 (The witness speaks Swahili)

7 THE WITNESS: (Interpretation) I solemnly declare that I will tell the truth, the whole truth
8 and nothing but the truth.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And welcome to the courtroom.
10 When I welcome you, I am welcoming you for joining us, because we were here before you
11 arrived, but this is very much your courtroom as well and we want you to feel very at home
12 and at ease, very much so during your testimony.

13 You are here to help us find out the truth about what happened and who was responsible for
14 the post-election violence that happened in Kenya. It requires asking questions to get at the
15 truth. And thank you for coming to join us and for agreeing to take those questions.

16 The lawyers in the case will be the ones asking you most of the questions. The first
17 set of questions or the first lawyer -- rather, the first lawyer that will ask you
18 questions will be Mr Pugliatti, who is a Prosecutor. He will ask you questions in
19 examination-in-chief. And when he finishes asking you questions, then Ms Lawrie
20 for -- who is one of the lawyers for Mr Ruto, would also ask you questions. And it
21 may be that Ms Buisman or Mr Kigen-Katwa, representing Mr Sang, would also have
22 some questions.

23 Mr Narantsetseg, you have not applied, have you?

24 MR NARANTSETSEG: No, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: And you will not be applying?

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 MR NARANTSETSEG: We will not be applying, your Honour. Thank you.

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

3 Mr Narantsetseg is counsel for victims, but in this case he has not applied to ask you
4 questions. So the only lawyers who will be asking you questions while you are here
5 with us would be Mr Pugliatti, Ms Lawrie, and either Ms Buisman or

6 Mr Kigen-Katwa would ask you questions. There will also -- may also be a question
7 from the Bench, from the Judges to you.

8 In all of this, we work through questions and answers. So how you help us is to listen
9 carefully to the questions you will be asked. Try very much and very hard to understand the
10 question that has been asked of you. If you don't understand it, it may not be your own fault,
11 it may well be because the lawyer or the Judge asking you the question has not framed it
12 properly in a way that is intelligible for you or for anybody. Ask them to repeat if you don't
13 understand the question and the question will be repeated. And once you understand the
14 question then, please, answer it truthfully and briefly. You think about the information you
15 want to give in that answer, that response to the question, just give that information very
16 briefly that you have been asked about with that particular question and then stop and wait
17 for the next question.

18 One of the reasons why it is important for you to only think about a question you
19 have been asked in that moment and answer it, apart from helping us move the
20 proceeding quickly, so that you don't answer or give information that may not be
21 needed for the case by adding more.

22 There is also concern about your own identity. The Prosecutor asked us to give you some
23 protective measures so that when you are testifying your identity will not be revealed to
24 members of the public, and we granted that request. That is why we're not using your real
25 name; we're only referring to you by pseudonym, Witness 469.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 Now, if you start adding information to your answer that is not strictly necessary, or
2 the -- the lawyer has not called for in his question, or if you start talking about
3 something else that you think it may be of interest, there is a risk that you may give
4 away information that will reveal to members of public who you are. So that's why
5 it is key to listen to the question and answer only that question. The lawyers in the
6 courtroom know that you are protected, your identity is not to be revealed, and when
7 they ask you questions they keep that in mind. They will not ask you questions that
8 will make you reveal your identity when we are in the public session.
9 Some questions may be asked of you, but we go into what we call private session.
10 And I will come to you, I'll tell you that when we get into that later.
11 So the point I'm making is please listen carefully to the question, understand the
12 question and answer only that question and then once you answer it, if you stop there
13 and wait for the lawyer to ask you the next question.
14 Try not to guess at answers to questions. Answer -- give only information you know
15 of. Try not to guess. Let the lawyer -- try also not to draw inferences if it can be
16 avoided. Inferences, you know, the usual mathematics, one plus one equals two.
17 Your task or your job is to give us the one plus one, if that is what the answer calls for.
18 Do not worry about what it amounts to in the end. That is for the lawyers to argue
19 about later. Just give us the raw material and leave out the inferences if we can
20 avoid that.
21 We are also more interested in information that you yourself -- we're interested in
22 what you yourself observed personally, less so in what you heard from other people.
23 If it is not necessary to give us information you heard from other people, try avoiding
24 them and limit yourself to only what you know and what you observed. If you are
25 giving us information, if you deem it necessary to tell us what somebody else told you,

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 always try to make it clear that this is what you heard from somebody else, you did
2 not hear it yourself. But we will try to avoid what we call hearsay, being
3 information you heard from other people.
4 Now, sometimes when you're asked questions, sometimes when witnesses are asked
5 questions, because all that you're hearing are questions, questions, questions, it may
6 get irritating sometimes, especially when you feel that you've said the same thing
7 over and over again and you're still asked -- being asked questions about it. Do not
8 feel that way. The lawyers are doing their job. If they're asking you questions over
9 and over, there may be a reason why they're doing that.
10 Now, we are also alive to that kind of problem. We will not let lawyers pointlessly
11 ask you questions repeatedly that you've already answered, but try and answer your
12 question without worrying about whether or not the question is pointless and things
13 of that nature.
14 Also, try not to concern yourself with a question being unfair to you. I want to
15 reassure you that the purpose of the courtroom is not to have a witness come and sit
16 and get abused with questions, or people use the guise of questioning to abuse
17 witnesses. That doesn't happen in this courtroom. It will not happen to you. We
18 are here to make sure that doesn't happen. So I need to reassure you particularly
19 about that. So concentrate on the information that you need to give and just give
20 that information.
21 If it questions -- lawyers have not abused witnesses so far in this courtroom, and they
22 will not. Again, I want to reassure you, don't worry about that matter.
23 Now, back to the protection measures, which I was talking to you about earlier, I
24 already talked about it, you are -- you are testifying under a pseudonym. You are
25 not to reveal your name when we are in the public session. You're also not to tell us

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 where you live when we are in the public session, or give us the names of your
2 relatives or close friends when we're in the public session, or where they live as well.
3 It may also be the case that there are some -- there is a story you may know that only
4 you, or you and a very limited number of people could be the only ones who were
5 aware of that story, but somebody already knows that you know about that story. It
6 may be that when you start testifying in public about such unique events, those who
7 are listening to the public testimony or the public session of these proceedings, when
8 they hear that story being told might start thinking it is you or get to you. We don't
9 want you to tell that sort of story, those sorts of unique stories in public session. We
10 will be interested in them still, that sort of story, but when we go into private session,
11 we will call for you to tell us that kind of story.
12 So if a question is asked of you that may make you reveal your identity or identity of
13 people around you or where you live or unique stories that may reveal your identity,
14 you can tell us that and then we will go into private session so you can give that sort
15 of information. We're still interested in them.
16 Now, public session and private session I've been talking about. When we're in
17 public session, it means the members of the public will hear you, who are sitting in
18 the public gallery or who are watching the proceedings by television.
19 But when we are in private session, it's only people in this courtroom that will hear
20 you tell those. So we can receive identifying information in private session. And
21 when we're in private session, you will know. The court officer will announce, and
22 then you'll be told that. And also there is a button in front of you. If you -- there is
23 something there, you see there's a grey thing that has -- it's a red -- I see you're
24 looking at it. The red light is on it. Can you point it out for me, madam? Thank
25 you.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 So it is now red because we are in public session. When we go into private session, it
2 will turn to green. When it is turned to green, then it is safe. Green means safe for
3 you to give us identifying information. But when it is red, it means you may not do
4 that. It is now red because we are in public session.
5 So those are the matters of substance that you need to keep in mind.
6 There is another aspect of your work with us that will help us greatly. That is
7 making sure that what you say is recorded in the transcript of these proceedings.
8 And to help us do that, we have our colleagues who are doing the interpretation work
9 up there. You're speaking in Swahili. It will get interpreted into French and into
10 English for us to hear. And the same thing when you're asked a question. It will go
11 again in English, the same way it comes back to Swahili to you.
12 They're there doing the interpretation, and other colleagues are up there who are
13 recording what you are saying, what interpretation feeds them.
14 Now, you see they're not in the courtroom. They cannot hear you if the microphone
15 is not turned on, but the problem is when more than one person is speaking at the
16 same time, it creates an overlap. That makes it difficult for them to understand what
17 is being said, sometimes impossible, because only one channel is going to them and
18 two people are blocking it at the same time. So for that reason it's important for only
19 one person to speak at once.
20 When the lawyers are asking you questions, for us to have one person speaking at the same
21 time, you will wait until they finish their question completely, and then there is a little pause
22 that you need to observe, we call it 5 seconds pause. You count to five in your mind, one,
23 two, three, four, five. You can even breathe in and out completely when the question that's
24 finished before you start answering. So when you do that, that allows a gap so that there is
25 no risk of overlapping. That way the interpreters can hear you clearly and interpret properly.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 It's important that we do that.

2 And I know that's a lot of information I've given you, but we will proceed and there may be a
3 need to remind you from time to time. Thank you very much once again for joining us.

4 Mr Pugliatti.

5 MR PUGLIATTI: Thank you, Mr President. As my opening questions concern the personal
6 background of the witness, I'd ask at this early juncture to go into private session for those
7 questions.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, you were not here yesterday, but I say that
9 as a standard procedure, counsel should indicate how long they want to stay in private
10 session so that, again, because members of the public, we don't want them to be wondering
11 when are they coming out of private session.

12 MR PUGLIATTI: I'm grateful for that reminder. I should say that there are a number of
13 moments in the testimony of this witness we anticipate where private sessions will be
14 necessary. So I will incorporate that going forward.

15 Regarding this session requested at this moment, approximately 15 minutes.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Private session.

17 MR PUGLIATTI: And perhaps while that's taking place, I would also seek the assistance of
18 the court management to put the prepared PIS sheet before the witness.

19 (Private session at 10.24 a.m.) Reclassified into open session

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MR PUGLIATTI:

23 Q. Madam Witness, good morning. My name is Lorenzo Pugliatti and I will be asking
24 you the questions today on behalf of the Prosecution. You've just had some sheets of paper
25 put in front of you. If I could ask you to turn to the fourth page of those sheets and quietly

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 and to yourself and in your own time read that page. And when you're ready, if you could
2 confirm to the Court whether this is correct. And I'll have some questions to ask you after
3 that.

4 A. Yes, the information written here is correct.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, before you proceed, I notice the
6 witness is testifying in Kiswahili, but looking at the PIS, I noticed that language
7 indicated -- languages, rather, also include English, and the witness (Redacted)
8 (Redacted)

9 Witness, I speak to you directly. It is of course the case that when witnesses come to
10 court they want to testify because of the formality of the courtroom and what the
11 thing is all about, they want to speak in the language they feel the most comfortable
12 in. We understand that, but for our purposes if you are able to manage with English
13 it would be better to begin with that and see if you have difficulty. If you do, we're
14 not going to say, "Well, if you start in English, you will stay in English forever." No.
15 If there are occasions when you view this may be something you more easily or clearly
16 express yourself in Swahili from time to time, it will be better to proceed in that way. The
17 reason is there are about three relays in interpretation, as I indicated earlier. When
18 Mr Pugliatti asks you a question, it will get interpreted into French I think and then into
19 Swahili before coming to you.
20 So in all that relay, something may drop and then lawyers may start arguing. Oh,
21 and the same thing happens when you answer a question in Swahili. It goes the
22 same round, and by the time it comes back out to us, the lawyers might start saying
23 well, this is -- there are lawyers who understand Swahili. Well, Mr Kigen-Katwa is
24 not here today, but Mr Sang is here, and the Prosecution team also have an interpreter
25 who knows Swahili. So we may start saying "Well, the witness said ..." -- "The

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 witness said this, we heard in Swahili, but that's not what came out in English," and
2 then we start arguing. So that delays things.

3 So if you can manage in English, I would ask that you begin with that. Are you able
4 to do that?

5 MR PUGLIATTI: Mr President, may I be heard on this issue very briefly?

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MR PUGLIATTI: And of course, the sheet that is before your Honours does indicate the
8 three languages. It doesn't indicate their levels.

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR PUGLIATTI: English is the witness's first language and it's our very strong -- third
11 language. English is the witness's third language and it's our very strong view that the
12 witness's English is -- well, can best be described as a rather basic level. All interactions thus
13 far between us and the witness have taken place in Swahili through an interpreter and that's
14 not out of preference. We feel that's been out of necessity.

15 In terms of the witness's education, the witness did leave school early, so the
16 education is not complete. And I mean to cast no dispersions in -- aspersions in
17 saying that.

18 I understand your Honours' concerns about relay and Swahili --

19 PRESIDING JUDGE EBOE-OSUJI: Let's leave it at that. Your point is that, from your own
20 interaction with the witness, you do think that this is one instance where it is best to deal with
21 any difficulties we may have with interpretation?

22 MR PUGLIATTI: We're always alive in all our interactions with witnesses as to their ability
23 to communicate, and this is certainly one instance where we feel that it's in the best interest of
24 all in the Court that the testimony be in Swahili.

25 PRESIDING JUDGE EBOE-OSUJI: All right. We'll leave it at that then. Proceed.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 MR PUGLIATTI: I'm grateful, your Honour. And before I do commence, I'll also indicate
2 that my learned friends were kind enough to indicate in advance which parts of the witness's
3 background they do not agree with. And I'm indicating now that I won't lead on those
4 points.

5 Q. Witness, you've had a chance to read this piece of paper, that sheet, and you've
6 confirmed that it's correct. Are you hearing my interpretation just before I go any further?

7 A. Yes.

8 Q. Is it the case, witness, that (Redacted)
9 (Redacted)

10 A. That's right.

11 Q. And (Redacted); is that correct?

12 A. (No interpretation)

13 Q. Witness, did you hear my question?

14 A. Yes.

15 Q. Okay. I will just ask it one more time. (Redacted)

16 A. (Redacted)

17 Q. And it's correct, is it, that (Redacted)

18 A. That's right.

19 Q. And (Redacted)

20 A. (Redacted)

21 (Redacted)

22 Q. And you've come to testify today about the post-election violence. At the time of the
23 post-election violence, where were you living?

24 A. (Redacted)

25 Q. (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

- 1 A. (Redacted)
- 2 (Redacted)
- 3 PRESIDING JUDGE EBOE-OSUJI: So line 13, then, the word is (Redacted)
- 4 MR PUGLIATTI: That's certainly what I heard, Mr President.
- 5 Q. And, Witness, (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted) but, before I do, (Redacted)
- 10 (Redacted) and before coming to testify today, have you done any other work?
- 11 A. (Redacted)
- 12 (Redacted).
- 13 Q. (Redacted). Can you describe what
- 14 kind of a business that was for the Court?
- 15 A. (Redacted)
- 16 (Redacted)
- 17 Q. (Redacted)
- 18 A. No.
- 19 Q. (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted).
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted). Can you tell the Court the location - the

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 position - (Redacted)

2 A. (Redacted)

3 (Redacted).

4 MR PUGLIATTI: I can assist the transcript with the spelling of that. We have
5 (Redacted), my understanding of the pronunciation.

6 Q. (Redacted)

7 A. (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 (Redacted)

11 A. Yes, I could see it.

12 Q. Now, Witness, at the time of the post-election violence, were you affiliated politically
13 with any party?

14 A. No.

15 MR PUGLIATTI: Mr President, unless there are any further questions from the Bench, this
16 was all I had for this private session.

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

18 (Open session at 10.43 a.m.)

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

20 MR PUGLIATTI:

21 Q. Okay, Madam Witness, we're back into public session now, so just to remind you to be
22 cautious not to say any names or places unless I indicate that it's safe for you to do so. Do
23 you understand?

24 THE INTERPRETER: Message from the interpreters: The Swahili interpreter unfortunately
25 did not hear the reply from the witness.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Madam, can you move closer to the microphone and also
2 you can add more force to your voice when you speak so that there is no difficulty
3 understanding, or hearing you rather.

4 So you can proceed with the question.

5 MR PUGLIATTI:

6 Q. Madam Witness, how far is Kimumu from the centre of Eldoret?

7 A. About 5 kilometres.

8 Q. And is there a road that links them?

9 A. From Kimumu, or rather from the town of Eldoret, there is a road that goes towards
10 Inida (phon) Iten; that heads towards Iten.

11 Q. And do you know the name of that road that heads toward Iten?

12 A. We're in the habit of calling it Iten Road.

13 Q. Now, does that road split or diverge at any point?

14 A. From Eldoret there is a junction, and at that place, which we refer to as "Junction," there
15 is one road that we called Iten Road. And the other road heads towards Ziwa, and that road
16 goes all the way to another place called Kitale.

17 Q. (Redacted) -- Witness, could you use the sheet in front of you.

18 Take a look at the sheet in front of you and look at the second page. Do you see location
19 number 1 and location number 2?

20 A. Yes, I can see that.

21 MR PUGLIATTI: Your Honour, I wonder if private session may be more appropriate just for
22 two minutes.

23 PRESIDING JUDGE EBOE-OSUJI: Private session.

24 (Private session at 10.49 am) Reclassified into open session

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

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Let's do this: Witness, when you -- do you see that
12 document in front of you that has subsection, locations and then lower down you have
13 persons? The reason why this sort of document has been prepared is so that in public
14 session, when we're in the public, you will only be referring to the numbers, because we know
15 what the numbers mean. Say location number 1, like, as you can see there, it says (Redacted)
16 (Redacted). So in public session we will not talk about (Redacted), we would
17 only say location number 1. And when we say "Location number 1", we all know you mean
18 (Redacted). The same with location number 2, location number 4 and so on. So we'll only
19 be using the numbers when we're in public session. The same with persons. Again, you
20 say "Person number 1", we know we are talking about (Redacted), and person
21 number 2 would be (Redacted), person number 3 would be (Redacted)and so on. So when
22 we're in the public session, we will be referring to numbers of locations or numbers of persons.
23 Do you understand?

24 THE WITNESS: (Interpretation) I understand.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 MR PUGLIATTI:

2 Q. Now, Witness, location number 1 and location number 2, you've told the Court that they
3 were located on the (Redacted). Were they -- if one is heading in the direction of (Redacted)
4 were they before or after the junction?

5 A. I haven't understood your question.

6 Q. I'm trying to understand where (Redacted) these two locations would be. And you've
7 told the Court that (Redacted) goes from (Redacted) and then to
8 (Redacted). And you've said that there is a junction called the -- at -- where there is a road
9 called (Redacted); is that correct?

10 A. Yes, that's what I said.

11 Q. Now, my question is this: If I am travelling from (Redacted) to (Redacted), is (Redacted)
12 before or after I pass through the junction?

13 A. (Redacted) is located after the junction towards (Redacted).

14 MS LAWRIE: Mr President -- (Microphones overlapping) Apologies, I think I overlapped.
15 If it assists my learned friend we don't dispute the location if he wants to lead on that point.

16 MR PUGLIATTI: If my learned friend could turn her microphone off, I just had one last
17 question for the witness.

18 Q. Witness, if you can, approximately how far -- what is the distance from Junction to
19 (Redacted)

20 A. (Redacted)

21 MR PUGLIATTI: Your Honour, those were the last questions on situation, so public session,
22 I would submit, can -- we can return into now.

23 PRESIDING JUDGE EBOE-OSUJI: Public session.

24 (Open session at 10.55 a.m.)

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

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 MR PUGLIATTI:

2 Q. Now, Witness, at the time of the post-election violence, what ethnic groups lived in
3 Kimumu?

4 A. There were Kikuyu, Kalenjin, Turkana, Luo and Luhya people. There were many
5 ethnic groups at that place.

6 Q. And which group was in the majority?

7 A. The majority was formed by the Kalenjin and the Kikuyu.

8 Q. Was it the same numbers of Kalenjin and Kikuyu, or was one group larger than the
9 other?

10 A. The Kalenjin were greater in number than the Kikuyu.

11 Q. Do you remember at the time in 2007 who the mayor of Kimumu was?

12 A. I don't remember who the mayor of Kimumu was in 2007. However, I do remember
13 the mayor of the municipality of Eldoret in 2008.

14 Q. And who was that?

15 THE INTERPRETER: A message from the interpreters: Could the witness be asked to
16 repeat her reply?

17 MR PUGLIATTI:

18 Q. Witness --

19 PRESIDING JUDGE EBOE-OSUJI: Can you ask the question again?

20 MR PUGLIATTI:

21 Q. Witness, you said that you remember who the mayor of the municipality of Eldoret was
22 in 2008. And I asked you who that was. Who was the mayor of municipality of Eldoret in
23 2008?

24 A. The person who was elected mayor of Eldoret -- or, the municipality of Eldoret was
25 Samuel Ruto.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 Q. And do you know what ethnic group he belonged to?

2 A. He was Kalenjin.

3 Q. And did you know him or know of him prior to 2008?

4 A. I used to see him during the campaign. And when he was elected councillor for
5 Kimumu, I saw him on the road celebrating his victory.

6 MR PUGLIATTI: Your Honour, I note the time. I wonder if this would be a good moment
7 to rise.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, it will be.

9 Witness, we will be taking our morning break now for 30 minutes. We will be reconvening
10 in court at 11.30. So the court officers will usher you out of courtroom for the morning break.
11 And we go into closed session now.

12 (Closed session at 11.01 a.m.) Reclassified into open session

13 THE COURT OFFICER: (Interpretation) We are in closed session.

14 (The witness stands down)

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

16 THE COURT OFFICER: All rise.

17 (Recess taken at 11.02 a.m.)

18 (Upon resuming in open session at 11.43 a.m.)

19 THE COURT USHER: All rise.

20 Please be seated.

21 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back.

22 Ms Lawrie, you were --

23 MS LAWRIE: Yes. Just for the record, Mr President, to note that the Ruto Defence have
24 been joined by Mr David Hooper, QC.

25 PRESIDING JUDGE EBOE-OSUJI: Noted.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 MR PUGLIATTI: And perhaps we could also note that Mr Steynberg has now stepped out.

2 Thank you, Mr President.

3 Q. Madam Witness, before the break we were talking about Kimumu. Do you recall at the
4 time of the post-election violence who the chief of Kimumu was?

5 A. You want to know who the chief was, or do you want to know the name of somebody
6 else?

7 Q. Do you recall who the chief of Kimumu was in 2007 at the time of the post-election
8 violence?

9 A. He was called Sang, Chief Sang.

10 Q. And do you know which ethnic group he belonged to?

11 A. Chief Sang was Kalenjin.

12 Q. Now, Witness, to the best of your knowledge, in Kimumu, prior to the 2007 election,
13 which ethnic groups, if any, mostly supported the ODM and Odinga?

14 A. It was the Kalenjin, the Luo, and even other tribes, they supported the ODM.

15 MR PUGLIATTI: Mr President, I'm just waiting for the transcript to update.

16 Q. And, Witness, what other tribes were those?

17 A. Well, there were the Luhya, they supported ODM.

18 Q. And regarding the PNU, which groups -- which ethnic groups in Kimumu mostly
19 supported PNU and Kibaki?

20 A. It was the Kikuyu.

21 Q. Now, I don't want you to mention any names, but can you describe for the Court how
22 relations were in Kimumu between ODM and PNU supporters during the election campaign?

23 A. Relations were different. Those who supported ODM wanted ODM to be elected.

24 Those who supported PNU wanted PNU to be elected. That's to say that the relations were
25 different between the two groups.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 Q. Could you just explain what you mean by "the relations were different"?

2 A. I want to say the following: If, for example, the PNU belonged to Kibaki, and they
3 supported PNU, and if the Kalenjin and the Luhya were for ODM, then they supported the
4 ODM.

5 Q. And what was the atmosphere like in Kimumu during this time in the election
6 campaign?

7 A. At the time of the election campaign in Kimumu, well, they said that if ODM was
8 elected or not, the Kikuyu had to go back, to go home to their homes.

9 Q. And where are you referring to by "their homes"? Where is that?

10 A. They said the following: The Kikuyu had to go to Othaya, go back to Othaya.

11 Q. Do you know why people said that the Kikuyu had to go to Othaya?

12 A. They said that because the former president, His Excellency Kibaki, came from there
13 and Othaya is in Central Province. Othaya is in Central Province in Kenya.

14 MR PUGLIATTI: Just to spell Othaya for the record, that's O-T --

15 PRESIDING JUDGE EBOE-OSUJI: I think it's been captured.

16 MR PUGLIATTI: I see it now. Mr President, in fact I had follow-up questions for the
17 witness on this topic which would best be canvassed in private session, if the Court's minded?
18 Two minutes maximum.

19 PRESIDING JUDGE EBOE-OSUJI: Private session then.

20 (Private session at 11.52 a.m.) Reclassified into open session

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

22 MR PUGLIATTI:

23 Q. Now, Witness, you told the Court a moment ago that people said that the Kikuyu had to
24 go back to Othaya. Did you know, or did you recognise, any of the people that you heard
25 say this?

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 A. I do remember.

2 Q. So we're in private session now. It's okay to say their names. Could you please tell
3 the Court who you remember?

4 A. I remember the 28th, the former mayor of the municipality of Eldoret was Samuel Ruto.
5 He travelled in a convoy and he was celebrating. He said that the Kikuyu must go home to
6 Othaya. And on the same day, after he came through, there were groups of Kalenjin. They
7 were on board and they said that the Kikuyu had to go back to Othaya.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Just one moment, Witness. What was (Redacted) ethnic group?

16 A. He was Kalenjin.

17 Q. Witness, we'll come back to that story a little later. I will ask you about that. In the
18 meantime, you were answering my question about anybody else you recognised who you
19 heard say that Kikuyus should go back to Othaya. Is there anybody else?

20 A. It was (Redacted) There were groups of Kalenjin at that
21 time as well. And when Samuel Ruto came back, or when he was passing, they were
22 alongside the road and they were saying that the Kikuyu had to go home. And there was
23 also Samuel Ruto, the former mayor of the municipality of Eldoret, who also said that the
24 Kikuyu had to go back to Othaya. And on the same day when we went to the police station
25 they also said that the Kikuyu had to go back to Othaya, and that was (Redacted). All

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 these people were saying that the Kikuyu had to go back to Othaya.

2 Q. I'm asking you about before the 28th and before the election. I'm asking you about
3 during the election campaign. Do you remember anybody else? Do you recall anybody
4 else?

5 A. I don't --

6 THE INTERPRETER: Problem with the microphone.

7 THE WITNESS: (Interpretation) I don't remember.

8 MR PUGLIATTI:

9 Q. And one last question on this, Madam Witness. Do you know which ethnic group
10 (Redacted) belonged to?

11 (Redacted)

12 (Redacted)

13 MR PUGLIATTI: Mr President, we can move back into public session now with the Court's
14 leave.

15 PRESIDING JUDGE EBOE-OSUJI: Before we do, Witness, you said (Redacted)

16 (Redacted)

17 (Redacted)

18 THE WITNESS: (Interpretation) It was (Redacted) the Kalenjin. That was the person who told
19 me that we had to return to our home in Othaya.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We will go to public session now and, if you
21 have a need to refer to any of those persons you mentioned, you will look at the PIS, that
22 sheet of paper that was given to you, you see if the name of that person appears only refer to
23 the number. Do you understand?

24 THE WITNESS: (Interpretation) I do understand you.

25 PRESIDING JUDGE EBOE-OSUJI: Then we'll go to public session now.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 (Open session at 11.59 a.m.)

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 MR PUGLIATTI:

5 Q. Witness, you've said that people had been telling the Kikuyu they should go back to
6 Othaya. Do you recall if they referred to the Kikuyu in any particular way?

7 A. They said that we were madoadoa and sangari.

8 Q. Regarding madoadoa, is it correct that that is a Swahili word?

9 A. Yes, it is the Swahili word.

10 Q. Can you tell the Court what that word means?

11 A. Madoadoa means that Kikuyu were people who were everywhere. They were found
12 everywhere. You would find them here, you would find them there, you would find them
13 everywhere, and that is why they were referred to as madoadoa. Now, if you have an attire
14 which has an orange or white colour, what they meant by madoadoa was that the -- that we
15 were everywhere.

16 Q. And did the people who referred to the Kikuyu as madoadoa say what should happen
17 to the madoadoa?

18 A. They said that the madoadoa should return to Othaya.

19 Q. And did they say how the madoadoa should return to Othaya?

20 A. When they told us to return to Othaya, they said so by burning down our houses. That
21 was a way for them to chase us away. They built -- they burnt down our houses and looted
22 our property. Those were the signs. You see, you cannot continue to live in an area where
23 there is no peace and therefore we were expected to flee and to go elsewhere.

24 Q. And again without mentioning any names, who are you referring to when you say
25 "They burnt down our houses and looted our property"?

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 A. I am talking about those Kalenjins who burnt down our houses. They are the ones who
2 said that we should return to our places in Othaya because we had come and taken over their
3 compounds and their place, because you know Rift Valley was a -- is a place that is occupied
4 by the Kalenjin. I used to live at number 1.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Let's just leave the answer as it is.

6 MR PUGLIATTI:

7 Q. Witness, you've explained what you understood madoadoa to mean. Is there a literal
8 translation? How does the word translate exactly? I'll rephrase that. That's not well put.
9 What does the word literally mean, Witness?

10 A. Madoadoa means something -- you see, they said that we were the madoadoa, meaning
11 that we were everywhere, so it is something that is everywhere.

12 Q. And you said a moment ago that it was like attire with -- bear with me one moment. It
13 was like attire which has orange or white colors. Can you explain a little bit more, can you
14 provide a bit more detail to the Court what you mean by that with the madoadoa?

15 A. This is what I said, and let me explain further: You see, if I have a blue outfit and I
16 have another with a pink colour -- what I meant is that where we were living the Kikuyus
17 were dominant so to speak.

18 PRESIDING JUDGE EBOE-OSUJI: Witness, all right. The --

19 THE INTERPRETER: Actually, the microphone was off.

20 PRESIDING JUDGE EBOE-OSUJI: I should have -- I gave you a lot of information already.

21 Now here is the time to give you another one: When you speak, I will ask you to speak with
22 moderate speed, not too fast, also not too slow, but speak at a pace like I'm speaking now that
23 would make it easy for the interpreters to interpret what you are saying. Because if I speak
24 too fast then they may not follow what I'm saying, but if I slow down and spoke calmly and
25 deliberately, it would give them time to catch up and follow what interpretation is -- they

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 need to do. So it's for that that I ask you if you can pace yourself and not too fast so they can
2 follow. Do you understand? Thank you very much.

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

4 PRESIDING JUDGE EBOE-OSUJI: The lawyer was asking you what you were trying to
5 explain with colors, when you were trying to explain the meaning of madoadoa. Can you do
6 that again, the explanation in relation to the colours?

7 THE WITNESS: (Interpretation) I'll give you an example of two colors, blue and pink, but
8 it's the pink colour which is predominant. So if you look, you would see pink, pink, pink
9 everywhere. And it is for that reason that we were referred to as madoadoa given that the
10 Kikuyus were everywhere.

11 MR PUGLIATTI:

12 Q. Now, Witness, you also said a few moments ago that you heard the Kikuyus being
13 referred to as sangari. Is it correct that this is also a Swahili word?

14 A. Yes, it is a Swahili word.

15 Q. And once again, can you explain to the Court what this word means?

16 A. This is what sangari means: If in our area, for example, we have grass in the Central
17 Province from where I come, for example when this grass grows it invades the whole place
18 and that plant is -- is a plant that invades. It's very invasive and difficult to -- to uproot.

19 Q. So my -- the same question as before: Did the people who called the Kikuyus sangari
20 say what should happen to the sangari?

21 A. The grass had to be removed. That is why our property was looted, our houses were
22 torched, and we were told that the madoadoa sangari should return to Othaya.

23 Q. Okay, Witness. I'd now like to take you to the day of the elections, election day 27
24 December 2007. If you could look at the sheet in front of you please, and if the location is on
25 the sheet could you tell the Court where you voted on the day of the elections?

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 A. It is location number 3.

2 Q. And did the voting go smoothly on that day?

3 A. Yes, everything went on normally. There were no problems.

4 Q. And do you recall at approximately what time the polls closed on 27 December?

5 A. They closed at 18 hours.

6 Q. And at the time that the polls closed, do you know who was leading the votes or the
7 counting?

8 A. On the 27th when they started to count the votes, the person with the highest number of
9 votes was Honourable Kibaki.

10 MR PUGLIATTI: Mr President, I have further questions which I submit would best be done
11 privately, if the Court is minded, for approximately five minutes or thereabouts.

12 PRESIDING JUDGE EBOE-OSUJI: Private session.

13 (Private session at 12.15 p.m.) Reclassified into open session

14 THE INTERPRETER: The English interpreter would like to point out that there are
15 considerable problems with the microphone during this session, particularly in the French
16 booth. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: What is the nature of the problem?

18 THE INTERPRETER: The microphones keep repeatedly cutting, your Honour, during the
19 interpretation.

20 PRESIDING JUDGE EBOE-OSUJI: We mean the feed into the interpreter's headphone, is
21 that it?

22 THE INTERPRETER: No, your Honour, we mean specifically the technical equipment. For
23 some reason, particularly in the French booth, the microphone has been repeatedly switching
24 itself off which means that we're losing some of the interpretation for the transcript.

25 PRESIDING JUDGE EBOE-OSUJI: All right, so the feed out of the French booth. Okay.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 All right, let's keep going with that in mind. We may have to repeat questions. If that
2 difficulty occurs, please alert us.

3 Mr Pugliatti.

4 MR PUGLIATTI: Thank you, Mr President.

5 Q. Witness, we're in private session. Could you tell the Court where you went on the
6 evening of the election, 27 December? Where did you go?

7 A. After voting, I went back to (Redacted), as usual, and I continued with my usual activities,
8 then at 7 p.m. the vote counting started. Honourable Mwai Kibaki was leading in the vote
9 counts. There were many of us at (Redacted) and we were following the vote counting over
10 the radio. (Redacted), I left the place because I was feeling sleepy and I went to sleep. The
11 next day I got up a little bit late, and when I went (Redacted)

12 (Redacted) following the vote counting -- or, listening to the vote counting. So
13 we spent -- (Redacted). They called out to

14 me by my name which is (Redacted). They said (Redacted), things have gotten

15 offhand. Things have gotten bad." So I asked them, "What happened? What went

16 wrong?" And they told me, "Oh, Raila Odinga is now leading." So I asked them, "How
17 many votes does he have?" They told me that he now had 500,000 votes and I said, "There
18 are more than 7 million people who voted", so I said that the results from Central Province
19 had not yet been announced.

20 So I went on to do my regular business. Then later on, I saw some Kalenjins and Luos
21 coming into (Redacted) Kass

22 FM had just announced that Raila Odinga was the winner of the election.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 Q. Witness, I'm just going to stop you there, because I'd like to ask you a few questions.
- 15 You've given a lot of information. I'd just like to ask a couple of follow-up questions and
- 16 then we'll continue.
- 17 PRESIDING JUDGE EBOE-OSUJI: Do you have the spelling for (Redacted)
- 18 MR PUGLIATTI: Unfortunately not.
- 19 PRESIDING JUDGE EBOE-OSUJI: Witness, you said you were also known as, (Redacted)
- 20 (Redacted).
- 21 THE WITNESS: (Int.) (Redacted) is spelled (Redacted)-- well, let me start with (Redacted).
- 22 (Redacted)
- 23 PRESIDING JUDGE EBOE-OSUJI: No, no, (Redacted) we know. Just (Redacted).
- 24 MR PUGLIATTI: (Redacted)
- 25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 MR PUGLIATTI: Thank you, Mr President.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Could you tell --

6 PRESIDING JUDGE EBOE-OSUJI: One second. A small matter. I believe that the witness
7 during the spelling of (Redacted) did put an (Redacted), so it would be
8 (Redacted), but proceed, Mr Pugliatti.

9 MR PUGLIATTI:

10 Q. Could you tell the Court the name of (Redacted)

11 A. His name was (Redacted).

12 Q. Do you know his full name?

13 A. No. We only used to call him by that name, (Redacted).

14 Q. And do you know which ethnic group (Redacted) belonged to?

15 A. He was of the Luhya ethnic group.

16 Q. Now, my next question, you said that these persons told you that Odinga had been
17 announced the winner on Kass FM. Do you recall if they said who on Kass FM announced
18 Odinga as the winner?

19 A. He said that it was Joshua.

20 THE INTERPRETER: And once again, Mr President, we are having problems with the
21 microphone.

22 THE WITNESS: (Interpretation) That it was Joshua Sang.

23 THE INTERPRETER: Mr President, the Swahili booth also points out that there is a problem
24 with the microphones.

25 PRESIDING JUDGE EBOE-OSUJI: Noted. Please proceed. Court officer will of course -- I

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 see she is troubleshooting the matter of microphone difficulties, but we will keep going for
2 now.

3 MR PUGLIATTI:

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. No, I did not.

9 Q. Now, you've told the Court that (Redacted) was present. Is this the same (Redacted) you
10 described earlier who you said was a Kalenjin?

11 A. Yes, he's the one.

12 Q. Do you know his full name?

13 A. No, the only name I know is (Redacted).

14 Q. And how old is (Redacted), approximately?

15 A. At that time (Redacted).

16 Q. And can you describe his appearance at that time generally?

17 A. He was tall and had a dark complexion.

18 Q. Anything else you can tell the Court about him?

19 A. (Redacted)

20 Q. My last question about (Redacted). How well did you know (Redacted) before this incident?

21 A. (Redacted) used to (Redacted) and that is it.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 Q. Did you recognise or know anybody else?

2 PRESIDING JUDGE EBOE-OSUJI: Before we go to anybody else, can we see -- correlate any
3 of those names with the PIS if it is possible to do that?

4 MR PUGLIATTI: That's a very good suggestion. I'm grateful. I'll take the witness
5 through those.

6 Q. Witness, the Judge has asked me to ask you if you recognise these names on this sheet of
7 paper in front of you. So if you could look at the sheet of paper. And we were first talking
8 about (Redacted). So do you see the (Redacted) that you were describing on the sheet of
9 paper in front of you?

10 A. The person is at number 2.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Witness, you also mentioned a moment ago that you recognised a person called (Redacted).
17 Could you do the same exercise and look at the paper in front of you. And I'll also remind
18 you that there are names on two pages, so have a look at both pages when you do this and tell
19 the Court if you recognise that person.

20 A. The person is at number 1.

21 THE INTERPRETER: And the Swahili microphone was cutting repeatedly.

22 MR PUGLIATTI:

23 Q. And the same for (Redacted).

24 A. Number 4.

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 you spoke about earlier who you told the Court was a Kalenjin?

2 A. Yes, it's the same. Sorry, you were speaking about the person (Redacted)

3 Please could you ask your question again so that I could better understand it?

4 Q. Of course, Witness. (Redacted)

5 (Redacted)

6 (Redacted)

7 A. The same.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, what was it earlier? Was it not that the
9 message that Kikuyus would go back to Othaya, wasn't it, so that we can know we're all on
10 the same page?

11 MR PUGLIATTI: Mr President, that's my recollection. I don't have the exact transcript
12 reference, but it was messages of Kikuyus and Othaya, or going home.

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 Witness, the question is earlier you told the Court that a person named (Redacted) -- did
15 you tell us that, that the person named (Redacted) had said Kikuyus would go back to
16 Othaya? Did you say (Redacted) said that?

17 THE WITNESS: (Interpretation) Yes, I said that.

18 PRESIDING JUDGE EBOE-OSUJI: Is it the same (Redacted) that we are now talking about
19 again, who -- amongst the people who surrounded you and said that they heard on the radio
20 that Mr Odinga had won the election?

21 THE WITNESS: (Interpretation) The same (Redacted).

22 MR PUGLIATTI: And, Mr President, a matter for the transcript. Unless my learned friends
23 heard it differently, we heard at page 50, line 21, that (Redacted) was a Luo, not a Luhya.

24 MS LAWRIE: Mr President, I confirm we heard "Luo."

25 PRESIDING JUDGE EBOE-OSUJI: You heard "Luo" as well, okay.

26

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

- 1 So, Witness, (Redacted) at number 4, you said he was a Luo?
- 2 THE WITNESS: (Interpretation) Yes. Yes.
- 3 THE INTERPRETER: Problem with the microphone.
- 4 THE WITNESS: (Interpretation) Yes, a Luo.
- 5 MR PUGLIATTI:
- 6 Q. Now, Witness, you've told the Court that you recognised (Redacted). Did
- 7 you recognise, or know anybody else, in this group that surrounded you?
- 8 A. There was also (Redacted).
- 9 Q. What ethnicity is (Redacted)
- 10 A. A Kalenjin.
- 11 Q. Do you see (Redacted) name on the sheets in front of you?
- 12 A. Number 3.
- 13 Q. And how old is (Redacted)
- 14 A. (Redacted), but I'm not sure about his exact age. (Redacted).
- 15 Q. Witness, that -- it was my fault. Are you talking about at the time, or now? His age at
- 16 the time, or his age now?
- 17 A. I'm speaking about his age at that time.
- 18 Q. So you've told us about (Redacted). Anybody else you knew or
- 19 recognised?
- 20 A. I don't remember the names of the others any more.
- 21 Q. How many others were there approximately, even if you don't remember their names?
- 22 A. Approximately (Redacted).
- 23 Q. Now, (Redacted). Are you able to estimate their approximate ages, or their
- 24 age range?
- 25 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, we should try and ask as much of these

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 questions as possible in the public session. So we've it seems to me established that an event
2 occurred at location number 1; is that it?

3 MR PUGLIATTI: That's correct, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: And now -- and now we have names of people whom she
5 has been able to recognise. If we wanted to ask further questions about what happened in
6 location number 1, is it possible to do that in public session? Like the approximate age of
7 people who were at that event at location number 1, something along those lines?

8 MR PUGLIATTI: In fact, Mr President, I had almost extinguished the questions I had.

9 There was the question just put. I would, for the benefit of the record, like to ask the witness
10 if she knew surnames of those other individuals, but -- which is a matter for private session
11 I would submit, but after that I will in fact be moving on. So I can ask about the surnames
12 now and then about the ages in public and that would be it, or --

13 PRESIDING JUDGE EBOE-OSUJI: Yes.

14 MR PUGLIATTI:

15 Q. Witness, you've already told the Court that you didn't know (Redacted) surname. Did
16 you know (Redacted) surname, or family name?

17 A. I don't know the surname of (Redacted). He lived in a place where (Redacted) and
18 (Redacted). Other than that, I don't know his surname.

19 Q. And the same question for (Redacted) and for (Redacted)
20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. Did you know his full name, or his family name?

24 A. He was also called (Redacted)

25 Q. And finally, if I'm not mistaken, (Redacted). Did you know (Redacted) full name, or family

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 name?

2 A. No, I just knew him by the name of (Redacted). (Redacted)

3 (Redacted)

4 MR PUGLIATTI: Mr President, with the Court's leave, or unless there's anything further, we
5 can finish this line of questioning in public session, as your Honour suggested.

6 PRESIDING JUDGE EBOE-OSUJI: Public session.

7 (Open session at 12.45 p.m.)

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

9 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, proceed with care.

10 MR PUGLIATTI:

11 Q. Witness, we're now back in public session and I'm still asking you about the same
12 incident that we've been talking about, but please do not mention where it was or any names.
13 Now, you've told the Court that, in addition to the people you did recognise, there were
14 approximately 15 others whom you did not recognise. Are you able to tell the Court the
15 ethnicities that you recognised of these people?

16 A. There were Kalenjin and Luos.

17 Q. And approximately what ages were they at the time?

18 A. I just said that the person (Redacted)

19 (Redacted)

20 Q. Witness --

21 PRESIDING JUDGE EBOE-OSUJI: All right. The question now is you already gave us
22 some information about the ages of those you already gave us. Let's not go back to those,
23 but for the rest you say there were others whose names you didn't know. The question
24 would be are you able to give us a general estimate of the age, generally speaking, of the
25 others whom we've not spoken about whose names you did not know?

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 THE WITNESS: (Interpretation) I just said the following: These were young people.

2 They were under 30.

3 MR PUGLIATTI:

4 Q. Now, Witness, it's correct, is it, that you were able to get away from this group of people?

5 You were able to leave?

6 A. Yes, I managed to escape and I left.

7 Q. I'd like to move on, Witness. You had said earlier today that also on 28 December you

8 had seen that Samuel Ruto had been elected as councillor for Kimumu and was celebrating in

9 the street. Do you recall that happening?

10 A. Yes, that happened in that way on 29 December 2007.

11 THE INTERPRETER: "28 December 2007," corrects the interpreter.

12 MR PUGLIATTI:

13 Q. And did you see Samuel Ruto celebrating?

14 PRESIDING JUDGE EBOE-OSUJI: You can just say "Yes" or "No."

15 THE WITNESS: (Interpretation) Yes.

16 MR PUGLIATTI:

17 Q. Now, Witness, using the sheet in front of you and the list of locations, if the location is

18 there can you tell the Court where this was that you saw this?

19 A. They came from the place at number 3. They took the road at number 5.

20 Q. Now, you say "they". Was Samuel Ruto with other people? You don't need to say

21 names. Please just say if he was alone or if he was with others.

22 A. That's the person I recognise.

23 Q. And was Samuel Ruto on foot or was he travelling by some other means?

24 A. He was travelling on a vehicle.

25 PRESIDING JUDGE EBOE-OSUJI: But was he amongst a group of people or was he alone?

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 You don't need to tell us anything further than that for now.

2 THE WITNESS: (Interpretation) He was accompanied by other persons.

3 MR PUGLIATTI:

4 Q. Witness, I'm going to ask a question about that, but before I do I just want to ask you
5 which -- do you know which political party Samuel Ruto belonged to?

6 A. I don't remember. I don't remember what party he was elected to at that time.

7 Q. So you said that Samuel Ruto was accompanied by other persons. Were they in the
8 vehicle with him? Were they outside the vehicle? Could you describe the scene, please.

9 A. It was a convoy of vehicles. In the vehicle that he was where -- it had an open roof and
10 he was celebrating his victory. You could see his head outside of the vehicle. But there was
11 a convoy accompanying him.

12 Q. Now, without saying where you were, could you describe your position when you saw
13 this? But don't tell the Court what place you were at.

14 A. I was at the place at number 2.

15 Q. Now, do you recall hearing anything as this convoy was passing you?

16 A. It said the following: They had said that ODM had won and that's why the Kikuyu
17 needed to return to Othaya, to start returning to Othaya.

18 Q. Was it the person you recognised who said this or somebody else?

19 A. It was him, Samuel Ruto.

20 Q. And how far away from him were you standing when you heard him say this?

21 A. He came from place number 3 to go to number -- going on number 5 and I was at
22 number 2. When I heard the voice of the people, I went out and I was just next to number 5.

23 Q. Witness, I'm just trying to get some idea of distance. Perhaps you could use the room
24 that we're in now. If it's possible, was the distance that you were from this convoy can it be
25 compared to a point in this room from where you're sitting?

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 A. I was approximately there and he was on the other side. And that's when he was
2 passing.

3 MR PUGLIATTI: Mr President, for the record, the witness first pointed at the far wall on the
4 side of the room where our colleagues from the Defence are and then subsequently pointed to
5 the far wall behind the Prosecution.

6 PRESIDING JUDGE EBOE-OSUJI: Next time let's try and proceed from the general to the
7 particular with that sort of question, in terms of let the witness try and -- his or her best to
8 give indication without providing the parameters and then we'll see how that goes. We may
9 still end up doing that, but it's best not to begin with giving the witness the parameters in that
10 way.

11 MR PUGLIATTI: Of course, your Honour. I -- I just engaged in that exercise as the witness
12 appeared to be using local locations which not everyone in the courtroom would be familiar
13 with. I'm certainly not, but I'll -- I'll take -- I'll take that on for the next time, of course.

14 Q. Now, Witness, as this -- as this convoy passed you, did you happen to notice if anybody
15 in the convoy was carrying anything that you recall?

16 A. No, I didn't see anything in particular.

17 MR PUGLIATTI: Mr President, I notice the time. I wonder if the Court would like to rise
18 or would wish for me to continue questioning?

19 PRESIDING JUDGE EBOE-OSUJI: Yes, we will take our morning break now -- sorry, the
20 lunch break.

21 Witness, it is time for our lunch break. We will be rising and returning at 2.30 so the
22 court officers would usher you out of the courtroom but, first of all, we will bring
23 down the blinds for that to happen. Over lunch, please do not discuss your
24 testimony with anybody. Thank you.

25 (Closed session at 1.00 p.m.) Reclassified into open session

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

- 1 THE COURT OFFICER: (No interpretation)
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 (The witness stands down)
- 4 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 5 THE COURT OFFICER: All rise.
- 6 (Recess taken at 1.01 p.m.)
- 7 (Upon resuming in open session at 14.41 p.m.)
- 8 THE COURT USHER: All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 11 Witness, welcome back. Mr Pugliatti will continue his cross-examination.
- 12 I understand that everyone has been kept abreast of the development with the
- 13 technical problems and the efforts being made to rectify the difficulty with
- 14 microphone tripping off in interpretation booth. The work is on the way and
- 15 hopefully it will be corrected after today. At least when we come tomorrow, we
- 16 wouldn't have that difficulty any more. In the meantime we will try and deal with it
- 17 and proceed. Thank you.
- 18 MR PUGLIATTI: Thank you, Mr President. And I've also been advised that until it's fully
- 19 rectified, if I were to adhere to a seven second rule rather than a five second rule, it might also
- 20 ameliorate the proceedings until the matter is fully resolved. So if I'm pausing for what
- 21 appears to be more than five seconds, that's why. I've been asked to do so.
- 22 PRESIDING JUDGE EBOE-OSUJI: We will try it. I thought five seconds was too long to
- 23 begin with myself.
- 24 MR PUGLIATTI: We'll see how we go.
- 25 Q. Witness, welcome back. Before the lunch break, you were telling the Court about

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 witnessing Samuel Ruto passing by you in a convey celebrating his having been elected to the
2 position of councillor. And I'll just remind you at this stage that we have resumed in open
3 session, so don't tell the Court and don't say out loud where this was at this time.

4 And shortly before we broke for lunch you said that you had heard Samuel Ruto say
5 that as the ODM had won, that the Kikuyu needed to return to Othaya -- to start
6 returning to Othaya.

7 And my question is this --

8 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, before you deploy that question, you might
9 have noticed I was looking at my transcript shortly before we adjourned, and that was on that
10 matter. Did the witness really say that, or do we need to repeat the question and see -- and
11 get from her entirely what Mr Samuel Ruto said?

12 The problem may be with, again, having all this relay interpretation, but I would rather have
13 the witness say what Mr Samuel Ruto said on that occasion so that there is no confusion as to
14 whether the witness was interpreting something or whether that's exactly what she heard.

15 MR PUGLIATTI: Of course, Mr President, if I -- it's entirely a matter for the Court, and I'm
16 guided. If I draw your Honour's attention to the clarifications, the question itself was posed
17 on page 59 of the real-time transcript that I have in front of me from lines 4 to 8. And the
18 specificity that your Honour is referring to I believe is addressed in the follow-up question at
19 lines 9 to 11. But if the Bench feels that the matter should be put again, then of course I can
20 do that, but I'm guided.

21 PRESIDING JUDGE EBOE-OSUJI: No, it doesn't address it. If you look at lines 6 and -- 6 to
22 8, you might see what I'm talking about. The point is not that -- it might not have been said,
23 but just we want to be clear, clear on the matter that all that we see there were actually said by
24 somebody.

25 MR PUGLIATTI: I do -- I do see it and I will rephrase the question or I will put the question in a

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 similar manner.

2 Q. Witness, I'd just like to ask you again something I asked before lunch. As this convoy
3 was passing you, could you recount for the Court what you heard, if anything, as this convoy
4 passed you?

5 PRESIDING JUDGE EBOE-OSUJI: What you said you heard Mr Samuel Ruto -- right?

6 Mr Samuel Ruto, what exactly did you say you heard him say?

7 THE WITNESS: (Interpretation) It was not Samuel Ruto. It's Sami, Sami Ruto who was
8 speaking. And this is what he said: "The results have been announced and ODM has been
9 declared the winner. For that reason the Kikuyus must look for vehicles that will take them
10 back to Othaya so that they can go back to Othaya."

11 MR PUGLIATTI: Thank you, Mr President.

12 Q. Witness, when you say "Sami Ruto," is this the person who was elected to councillor that
13 day?

14 A. Yes. I am talking about that man who won the elections to become the councillor for
15 Kimumu.

16 Q. And did he say what types of vehicles the Kikuyus should start looking for?

17 A. No, he did not specify what types of vehicle.

18 Q. Now, the other members of his group in the convoy, can you tell the Court what they
19 may have been doing?

20 A. In that convoy, even the other persons were also celebrating. There were other vehicles
21 in that convoy including, for example, the vehicle belonging to someone who is called Ira,
22 who is a sports person who does the marathon. Then there was Sambera (phon), who was a
23 governor, and another person who holds a position with government -- within government,
24 which I do not know. His name was Mika Cheserem. So these people's vehicles were part
25 of that convoy.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 Mr Mika Cheserem owns a large farm at a location known as Marura. He gross
2 flowers in his flower farm.

3 Q. Witness, just pause there for a moment. Is the spelling of the name Sambera
4 S-A-M-B-E-R-A? Is that correct?

5 A. The spelling is S-U-B-E-W-A.

6 Q. And is Ira spelt I-R-A? Is that correct?

7 A. I-R-A.

8 Q. And the last name you mentioned, we just want to get the spelling correct, is the first
9 name Mika, M-I-K-A? Is that correct?

10 A. Yes.

11 Q. And that person's second name, Seselem, is it correct S-E-S-E-L-E-M?

12 A. It's C-H-E-R-E-M -- oh, I'm sorry, let me repeat. C-H-E-R-E-S-E-M.

13 MS LAWRIE: Apologies, Mr President. I just want to ask where that name is in the
14 statement? This is the first time it's been disclosed to us.

15 MR PUGLIATTI: I wouldn't exactly characterise it as a disclosure. We're dealing with the
16 statement around paragraphs 27 and 28, and the names that the witness has given are at that
17 location in the statement. We're not in a position to during court take it any further.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed, Mr Pugliatti.

19 MR PUGLIATTI:

20 Q. Now, Witness, you've told the Court that in this convoy the other persons were also
21 celebrating. Could you explain to the Court how they were celebrating? Were they doing
22 anything in particular?

23 A. They were happy. They were rejoicing over Sami Ruto's victory.

24 MS LAWRIE: Apologies. It was just to clarify. And we have been given a different
25 spelling, and we obviously proceed on the base -- a different name, and we obviously proceed

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 on the basis of the disclosure that we're given.

2 We have now been given a completely different name and our investigations have proceeded
3 on the name that we've been given. That's why we're assuming things like proofing take
4 place, but it was just to put on the record that's our concern.

5 PRESIDING JUDGE EBOE-OSUJI: Your concern is noted, Ms Lawrie.

6 Mr Pugliatti, proceed.

7 MR PUGLIATTI:

8 Q. Witness, you say they were rejoicing. Could you -- and they were happy. Could you
9 just perhaps give a little more detail, please?

10 A. They were celebrating Samuel Ruto's victory and Samuel Ruto said that it had just been
11 announced that the ODM had won the election. Therefore, the Kikuyus should look for
12 lorries to go back to Othaya. And, since he had just won, there was a young (Redacted)
13 (Redacted) who had a machete and was along the roadside. He was --

14 Q. Witness, I'm still asking you about Sami Ruto. Carry on, Witness.

15 MS LAWRIE: Apologies again. It was just for clarity. My understanding was that earlier
16 the witness had made a clarification. She said the name was Sami and not Samuel Ruto.
17 We're now proceeding on the basis of a Samuel Ruto, so I think it would help for us just to
18 clarify is it Sami, is it Samuel, and who's who?

19 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti -- Mr Pugliatti did not use Samuel in his last
20 question. He had said "Sami," but you're right. The interpretation did come back with
21 "Samuel Ruto."

22 Witness, can you tell us: You said the name of the person who was celebrating
23 within the convoy was Sami Ruto. Is he also known as Samuel Ruto?

24 THE WITNESS: (Interpretation) His name is Samuel Ruto.

25 PRESIDING JUDGE EBOE-OSUJI: All right. Is there -- we're trying to understand whether

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 there are two people, somebody called Sami Ruto and somebody else called Samuel Ruto. Is
2 that the case, or are we speaking about the same person keeping in mind the correction you
3 made earlier when you said "Sami Ruto"?

4 THE WITNESS: (Interpretation) I am talking about the same person. In some instances
5 the name can be shortened to Sami Ruto, or one can say "Samuel Ruto" and it would be one
6 and the same person.

7 PRESIDING JUDGE EBOE-OSUJI: Do you know of anybody else in connection to your -- to
8 what happened at the time which you are telling us about, would there be somebody else also
9 called Samuel Ruto?

10 THE WITNESS: (Interpretation) No, there is no one else. I am talking only about one
11 person, Samuel Ruto.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR PUGLIATTI:

14 Q. So, Witness, what I was asking you was, apart from what you heard Mr Samuel Ruto
15 say, can you tell the Court how the other members of his group would have been celebrating
16 the election victory?

17 A. They were happy and they were saying, "The Kikuyus are going to be going back. The
18 madoadoa, the sangari, let them go back to Othaya."

19 Q. Witness, could you just repeat the last line of your answer for the record please?

20 PRESIDING JUDGE EBOE-OSUJI: Is that because of madoadoa?

21 MR PUGLIATTI: Yes, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: I think we can accept that the witness said "madoadoa,"
23 so she doesn't have to repeat that.

24 MR PUGLIATTI: I'm very grateful. That's of much assistance.

25 Q. Now, Witness, could you describe how you felt, what you were thinking at this

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 moment?

2 A. At that time, they were celebrating. They were saying that the radio station just
3 announced that ODM had just won the election and that the Kikuyu have to go back to
4 Othaya.

5 Q. Yes, I understand that. My question was: When you observed this, how did you feel?
6 What did it make you feel, or think?

7 A. I was afraid because, since they had just said those words, the tension was beginning to
8 rise all the way to number 1.

9 MR PUGLIATTI: Mr President, I just have one or two follow-up questions which perhaps it
10 would be prudent to explore in follow-up session -- private session. Follow-up questions in
11 private session, I beg your pardon. It should not be more than two or three minutes.

12 PRESIDING JUDGE EBOE-OSUJI: Private session.

13 (Private session at 3.02 p.m.) Reclassified into open session

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

15 MR PUGLIATTI:

16 Q. Now, Witness, at this time did you see anybody else that you recognised, or that you
17 knew?

18 A. Yes, I saw some people there.

19 Q. As we're in private session at the moment, you can speak freely. Could you tell the
20 Court who you saw at this time?

21 A. At that time I saw (Redacted), and also the way (Redacted) went by with his
22 convoy there was a young fellow called (Redacted) who was there. (Redacted)
23 (Redacted). He had a machete. So I saw people, various groups of people, drawing closer to
24 the convoy, and they were saying that the Kikuyu should go back to Othaya.

25 THE INTERPRETER: Interpreter correction: In the last reply the witness said, "And also

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 Sami Ruto went by with his convoy."

2 MR PUGLIATTI:

3 Q. Witness, is the (Redacted) that you're referring to indicated on the sheet in front of you?

4 A. Yes, that's him, number 3.

5 MR PUGLIATTI: Mr President, provided we use the number 3, I believe we can explore the
6 remainder of this episode in public session. It's a matter for the Court.

7 PRESIDING JUDGE EBOE-OSUJI: We will go to public session then.

8 (Open session at 3.06 p.m.)

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

10 MR PUGLIATTI:

11 Q. Witness, we're back in open session and so just a reminder. Please use the number on
12 the sheet in front of you.

13 Now, you say that you saw person number 3 with a machete. Could you please tell
14 the Court a little more of what you saw that person doing with the machete?

15 A. He had a machete alongside the road and he was sharpening it, and then he was saying
16 that the Kikuyu had to be going back to Othaya.

17 Q. And can you describe the manner in which he was sharpening his machete?

18 A. Well, let's say that the road goes this way. He had the machete and he was sharpening
19 it so that it would be sharp. That's what he was doing.

20 Q. Witness, am I correct in saying that the word -- what is the Swahili word for the
21 machete?

22 PRESIDING JUDGE EBOE-OSUJI: Is that --

23 THE WITNESS: (Interpretation) Please repeat your question.

24 PRESIDING JUDGE EBOE-OSUJI: Is that --

25 MR PUGLIATTI: I could lead on it as well, I suppose.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Yes.

2 MR PUGLIATTI:

3 Q. Witness, is it correct that what he was holding was something one would call a panga,
4 or is it -- was it something different?

5 A. Person number 3 had a panga and he was alongside the road.

6 Q. Now, I asked you the same question a moment ago as regards the convoy. Can you tell
7 the Court now, seeing person number 3 with his panga, how you felt at that moment?

8 A. I was afraid because I realised that danger was imminent.

9 Q. Now, without saying any names, was there anybody else on the road at this moment?

10 A. While he was sharpening the panga, there were groups of people there (Redacted)
11 (Redacted). People were in groups and they were saying that the Kikuyu should go back to
12 Othaya.

13 Q. Okay, thank you, Witness. I'm going to move on now.
14 Using the sheet in front of you, could you tell the Court where you went next that
15 day?

16 A. On the 28th I went back home.

17 Q. And did you spend that evening at your home?

18 A. Yes, I stayed at home.

19 Q. Witness, I'd now like to ask you about the next day, 29 December. When you woke up
20 that day, what was the reports of the votes and the counting of the votes at that time?

21 MS LAWRIE: It's in the transcript. Your microphone is not activated. There's some
22 problem.

23 MR PUGLIATTI: I'm grateful.

24 Q. Witness -- well, there appear to be technical problems. I'm not sure if this is even being
25 transmitted. Is this one working? We're muted.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

- 1 MS LAWRIE: Mine works.
- 2 PRESIDING JUDGE EBOE-OSUJI: Interpreters, can you hear me? Yes, they can hear me.
- 3 THE INTERPRETER: Yes, the English booth can hear you fine.
- 4 PRESIDING JUDGE EBOE-OSUJI: We can also hear you. I can hear you.
- 5 Mr Pugliatti, can you try again.
- 6 MR PUGLIATTI: One-two. One-two.
- 7 PRESIDING JUDGE EBOE-OSUJI: Yes, we can hear you.
- 8 MR PUGLIATTI:
- 9 Q. Witness, there was a technical issue, but we're back.
- 10 On the morning of the 29th, the next day, 29 December 2007 -- just answer this question and
- 11 nothing more -- when you woke up that morning, who was leading the votes, in the counting
- 12 of the votes?
- 13 A. On 29 December 2007, the person who had the most votes was -- was the Honourable
- 14 Mwai Kibaki.
- 15 Q. And where did you learn that? Where did you hear that?
- 16 One moment, Witness. When I say "where", I mean was this television or some other
- 17 medium? That's what I mean in my question.
- 18 A. When I left my home on the 29th --
- 19 PRESIDING JUDGE EBOE-OSUJI: Witness, one second. Stop, please.
- 20 THE WITNESS: (Interpretation) -- I went to deal with some work --
- 21 PRESIDING JUDGE EBOE-OSUJI: All right, let's stop there.
- 22 MR PUGLIATTI: Mr President, that was my concern. Perhaps the answers could follow up
- 23 in private session.
- 24 PRESIDING JUDGE EBOE-OSUJI: Yes. For now, the lawyer is asking you how you heard.
- 25 You can just tell us. You remember he indicated what he had in mind, whether you heard it

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 on the radio or on the television. You can just briefly answer that and give them that
2 information.

3 THE WITNESS: (Interpretation) I heard it on the television, on the television.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Pugliatti, can you continue in open
5 session?

6 MR PUGLIATTI: Mr President, my next few questions, there aren't many, it's two or three
7 minutes, but my next few questions I'd please request private session.

8 PRESIDING JUDGE EBOE-OSUJI: Private session then.

9 (Private session at 3.16 p.m.) Reclassified into open session

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

11 MR PUGLIATTI:

12 Q. Now, Witness, you said a moment ago that after you woke up, you went to attend to
13 some work matters. (Redacted)

14 THE INTERPRETER: Message from the interpreters: The microphone seems to be
15 malfunctioning. Pardon me. From the Swahili booth: "Yes, that's what I was talking
16 about."

17 MR PUGLIATTI:

18 Q. And when you arrived at (Redacted), did you have a reason to speak to anybody there?

19 A. When I left my home, before I got to my work place, I met a lady, a Luo lady. Her
20 name is number 7 on the list. She said to me she had heard that Kibaki was leading. And
21 when she told me that piece of news, she began to cry. (Redacted)

22 (Redacted)

23 (Redacted)

24 From my house I went to the home of a friend. That person's name is number 9. We started
25 to listen to the television, and so I saw William Ruto. I saw him hit Kivuitu. Kivuitu was

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 the person who was supposed to announce the results of the election. Kivuitu said to Ruto
2 that he was forcing him to make the announcement, but he wasn't going to do that. And he
3 said that "One day I was born and one day I shall die."

4 And, you see, there was a lady from NARC Kenya who said, "See, we saw that 99
5 per cent of the votes, and when we're supposed to count our votes you say there there
6 are problems."

7 At that time when Ruto hit Kivuitu, James Orengo was there too, but the person who
8 hit Kivuitu was William Samoei Ruto.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted). That

13 person's name is number 6 on the list.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted) the Honourable Kibaki

18 was leading in the election and the situation was getting worse. The Kalenjin wanted Raila
19 Odinga to win. And that's why (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. Now, you said you went to your friend's house from there. Until what time did you
24 stay there?

25 A. I stayed there until the evening.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 THE INTERPRETER: The interpreters point out that the microphones are overlapping and
2 cancelling one another out.

3 MR PUGLIATTI:

4 Q. Approximately what time did you go home?

5 A. I went back home at 6 p.m.

6 Q. Now, that evening, do you recall anything else having happened in this area?

7 A. That day, the 29th, I learned that other women were going to Ilula to do casual work,
8 they called, and Ilula and Chepkanga had been burnt down. (Redacted)

9 MR PUGLIATTI: For the record the spellings -- the spellings I have, but I'll be corrected if I
10 am wrong, Mr President, are I-L-U-L-A for Ilula, and C-H-E-P-K-A-N-G-A.

11 PRESIDING JUDGE EBOE-OSUJI: How much longer do we remain in private session?

12 MR PUGLIATTI: I'm aware that this has taken slightly longer than I had initially anticipated.
13 There's just perhaps three or four questions just to situate those places, those locations, and to
14 just garner a little more of the witness's knowledge of them, and then we can move into public
15 session, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Do we need to do all that in private session, or can
17 the -- first I don't know whether we need to keep Ilula within private session and Chepkanga.
18 There's a lot that has been said in private session that should be in public session that I don't
19 see the need to be said in private session. So if you can zero in with as much precision as
20 possible to what you want said in private session, put those on the record and then go out and
21 discuss them.

22 MR PUGLIATTI: In fact, your Honour is quite correct. And with the precise zeroed-in
23 questions, we should be able to wrap up this topic publicly.

24 PRESIDING JUDGE EBOE-OSUJI: So we can go to public session?

25 MR PUGLIATTI: With the Court's leave, yes.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Public session.

2 (Open session at 3.28 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Witness, we're back in the public zone now. You see
5 your light has turned back to red. The lawyer would ask you questions -- follow up
6 questions. Please listen -- again, you've been listening, of course, but particularly listen
7 carefully to his questions and just answer those questions. Give the answers in as few words
8 as possible. Thank you.

9 MR PUGLIATTI:

10 Q. Witness, you mentioned a moment ago Ilula. Can you tell the Court how far away is
11 Ilula from Kimumu?

12 A. It's quite a difference -- quite a distance, rather, between the two places.

13 Q. It does not have to be exact. Do you have a rough idea of how far away it is?

14 A. I would estimate the distance as somewhere between 15 and 20 kilometres.

15 Q. And is there a road that connects Ilula to Kimumu?

16 A. Yes, there is a road which goes through a school -- or, by a school.

17 PRESIDING JUDGE EBOE-OSUJI: All right.

18 THE WITNESS: (Interpretation) That school is called (Redacted).

19 PRESIDING JUDGE EBOE-OSUJI: All right. Again, as I said, we just listen to the question
20 and answer just that. For instance, the lawyer asked you, and I know it's late in the day, and
21 even us sometimes we forget, the judges and the lawyers as well, to follow these rules.

22 The lawyer asked you whether there was a road that connects Ilula to Kimumu.

23 That is a question that can easily be answered by yes or no. If there is a road that

24 connects, say yes. If there is no road that connects, just say no. It's up to him now

25 to ask you the next question if he needs further clarification, he would again ask you a

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 question to help you clarify if need be. Thank you.

2 So we've got your answer now to be that there is a road that connects Ilula to

3 Kimumu, is that it?

4 THE WITNESS: (No interpretation)

5 MR PUGLIATTI:

6 Q. So, Witness, the road, what is the name of that road that connects Ilula to Kimumu, just
7 the name of the road?

8 MR PUGLIATTI: I'm being advised by my learned friends that there has been a
9 disconnection once again of the microphones.

10 PRESIDING JUDGE EBOE-OSUJI: Can you hear me, Mr Pugliatti? You cannot hear me
11 over the microphone? All right.

12 Interpreters, can you hear me?

13 THE INTERPRETER: We can hear you.

14 PRESIDING JUDGE EBOE-OSUJI: And I can also -- I heard the feedback from the
15 interpreter.

16 Mr Pugliatti, can you try again?

17 MR PUGLIATTI: One two, one two.

18 PRESIDING JUDGE EBOE-OSUJI: Yes, we can hear you now.

19 MR PUGLIATTI:

20 Q. Witness, you may not have heard me. What I was asking was for the name and
21 nothing more, just the name of the road that connects Ilula to Kimumu?

22 A. Ainabtich.

23 Q. And as regards Chepkanga now, can you tell the Court the distance approximately from
24 Chepkanga to Kimumu?

25 A. It is between 15 and 20 kilometres.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 Q. And likewise, is there a road that links Chepkanga to Kimumu?

2 A. Yes, it is known as Iten Road.

3 Q. Now, Witness, my last question, are Ilula and Chepkanga in the direction of Eldoret or
4 away from Eldoret?

5 A. It is towards Eldoret. Not too far from Eldoret town.

6 Q. Now, Witness, without saying any names, you told the Court a few moments ago that
7 you had heard that Ilula and Chepkanga had been burnt. Can you just explain in a little
8 more detail what you mean by that?

9 PRESIDING JUDGE EBOE-OSUJI: Before you answer, if you need to refer to anybody, and if
10 the name of that person is in the sheet of paper, only mention the name by -- sorry, only
11 mention the number indicated against the name. So as person number 1, or 10, or just
12 something like that. Just the number. Thank you.

13 THE WITNESS: (Interpretation) On the 29th, that is what I heard, that some ladies had
14 come from casual work at Ilula. And I had been calling other persons to inform them that
15 Ilula and Chepkanga had been -- in fact that burning had started in those areas.

16 Q. Could you tell the Court how you heard this? And again, use the sheet if necessary.
17 Don't say any names. But how did you hear that there had been burning in Ilula and
18 Chepkanga?

19 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, are you able to make that question more
20 precise so we can control the discussion better?

21 MR PUGLIATTI: The short answer, Mr President, not -- not terribly. I don't want to put
22 words in the witness's mouth. I'd like the witness to testify in her own words, of course,
23 but -- it's something which -- I'm expressing this caution because we're in public session --

24 PRESIDING JUDGE EBOE-OSUJI: Yes.

25 MR PUGLIATTI: -- and I don't want names which I'm unaware of to perhaps potentially

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 emerge in open court. The freest reign we would have in this discreet topic would be in
2 private session. And I would -- in asking for that, I would only need a couple of minutes,
3 because I'm intending to move on quite soon.

4 PRESIDING JUDGE EBOE-OSUJI: All right, let's go --

5 MR PUGLIATTI: And that is a precautionary request.

6 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into private session. You say for
7 how long?

8 MR PUGLIATTI: I'm aware I said before, but two or three minutes.

9 PRESIDING JUDGE EBOE-OSUJI: Private session. Let's hope to do it in two minutes or
10 less.

11 (Private session at 3.38 p.m.) Reclassified into open session

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

13 MR PUGLIATTI: I'm grateful, Mr President.

14 Q. Witness, we've entered private session temporarily, so you can speak a little more freely.
15 Could you explain how you came to hear that Ilula and Chepkanga were -- had been burnt?

16 A. There was some ladies, some women (Redacted)
17 (Redacted) that Ilula and Chepkanga -- that in those localities burning had started.
18 Those women (Redacted) burning had
19 begun in Ilula and Chepkanga.

20 Q. And did they say what had been burning in those locations?

21 A. It is the houses of the Kikuyu that were being torched.

22 Q. And my last question on this topic: Did they tell you who had been torching the
23 Kikuyu houses?

24 A. They said that the Kalenjin had begun to burn down houses belonging to Kikuyus in
25 Chepkanga and Ilula.

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

1 MR PUGLIATTI: Mr President, I'm grateful for the use of that private session. I believe we
2 can re-enter public session with the Court's leave?.

3 PRESIDING JUDGE EBOE-OSUJI: Public session.

4 (Open session at 3.42 p.m.)

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

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Pugliatti, a moment ago when you said
7 something to the effect -- in your last question I was almost jumping for joy. How are we
8 doing? That wasn't now. ,It was a while back.

9 MR PUGLIATTI: Progress has been, as expected, it's been steady and good today. We
10 remain on course. We hope to finish our examination-in-chief tomorrow.

11 PRESIDING JUDGE EBOE-OSUJI: At what time approximately?

12 MR PUGLIATTI: There are still some rather substantive matters to canvas with this witness.
13 But we're hoping by the lunch time session or, worst case, spilling over somewhat, but
14 perhaps not entirely into the last session.

15 PRESIDING JUDGE EBOE-OSUJI: Let's try and finish it before the lunch time session. Try
16 and do your best.

17 MR PUGLIATTI: We'll do our absolute best, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. Proceed, please.

19 MR PUGLIATTI:

20 Q. Now, Witness, you had told court earlier, I'm still talking about 29 December, that you
21 returned to your house. Did you spend that night in your house? Just answer that
22 question.

23 A. Yes.

24 Q. Okay. I'd now like to move on to the next day and ask you about the 30 December
25 2007, which was the day that Kibaki was declared president. Do you recall that day?

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 A. Yes, I do.

2 Q. At what time approximately was the declaration made on the 30th of December?

3 A. The announcement was made at around 4 p.m. or 5 p.m. It is at that time that it was
4 announced that Mwai Kibaki had won the election.

5 Q. And before it was announced, what was the atmosphere in your area on that day before
6 the announcement was made?

7 A. There was great tension in the air.

8 Q. Could you explain a little bit more about that tension?

9 A. On the 30 December 2007, I got up and went to (Redacted) --

10 PRESIDING JUDGE EBOE-OSUJI: All right. One second.

11 THE WITNESS: (Interpretation) -- whose name is (Redacted).

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

13 (Private session at 3.46 p.m.) Reclassified into open session

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

15 PRESIDING JUDGE EBOE-OSUJI: That will be deleted. Interpreters, I will crave your

16 indulgence as well. I know your professional responsibility calls for you to interpret

17 everything that has been said, but as this thing is a matter of interpretation I do not always

18 hear the witness -- understand what the witness is saying in Swahili, but sometimes I can

19 follow the train of the answer and worry that it may lead to revelation of identifying

20 information that has just happened. And whenever I intervene, please stop interpretation

21 even though the answer may still be there. We will recover it if need be, but when I

22 intervene mid-answer please stop because it's out of a worry that something revealing can be

23 said in public session and, as in this case, there is no way of stopping once the train had

24 departed from this side. Again, that's no criticism at all. I'm saying this is a new way we

25 should do this thing to avoid further difficulty.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 Now, we're in private session. We will proceed in private session and see.

2 MR PUGLIATTI: I'm very grateful, Mr President.

3 Q. Witness, we're in private session now. I'd ask you to just explain with a little more
4 detail about the tension that you had mentioned in your area leading up to the announcement
5 of Mr Kibaki as the president.

6 A. On that day, on 30 December 2007, I got up and went back to the same location; that is at
7 the person at number 6. When I got there we continued to watch TV, and it is then that I saw
8 the former prime minister, Raila Odinga, on TV and saying the following, "If I am not
9 declared the winner, the Mediterranean Sea and the Red Sea will be full of blood," and then
10 there was crying and when I saw that I went home.

11 I went to the person at number 10's place and told that person, (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted) So I immediately went to that location. I went to (Redacted).

16 When I got to location number 7, I saw person number 2, number 3, number 5,
17 number 1, number 12, and they were beating up person number 8, so I went back to
18 my house. When I got to my house, I found (Redacted). (Redacted) was at
19 home. So I went into the house, (Redacted).

20 I felt that I needed to go and back to the person number 9. When I got to person
21 number 9's, that person told me, (Redacted)

22 (Redacted)

23 (Redacted).

24 When we got to person number 13 we spent an entire day without food, but this lady
25 gave us something to eat. My (Redacted) and myself were given something to eat by

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 this person.

2 Before we began to eat, (Redacted), who is at number 16, came in with somebody else

3 who is at number 14. They arrived at the place where we were and told me that

4 (Redacted)

5 (Redacted).

6 So I took (Redacted) and we went downwards to a place where we couldn't be seen.

7 So we went there and met a number of people, such as number 9, and then a convoy

8 was formed including somebody who was of Kisii ethnicity.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, I did signal the witness sort of with a hand
10 movement to pause and she has, because I wanted there to be a break.

11 MR PUGLIATTI: That was a good moment to.

12 PRESIDING JUDGE EBOE-OSUJI: And then you may continue. She was getting to the
13 point where they were shown the way to leave from.

14 And by the way, for purposes of cross-examination if need be, although the testimony
15 of the witness concerning Mr Ruto hitting Mr Kivuitu, as well as the testimony about
16 Red Sea full of blood, were given in private session. Cross-examination may be done
17 with precision in public session.

18 MR PUGLIATTI: And just before I commence, for the purpose of the transcript, and I'll say
19 no more, the Prosecution queries the number that was stated at page 83, line 4, of the real-time
20 transcript.

21 Q. So, Witness, you said quite a lot just then and I'll go back and ask you a few questions
22 regarding some of those things you just described. I'd like to take you back to location
23 number 7, where you said you witnessed somebody being beaten. You mentioned person
24 number 5, and I believe this is the first time that you've mentioned this person today and so
25 I'll ask you a few questions about him.

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

1 First of all, can you tell the Court that person's ethnicity?

2 A. He's Kalenjin.

3 Q. Do you know his -- do you know his full name?

4 A. No, I do not know his full names, but I know that (Redacted).

5 Q. Do you know how (Redacted)

6 A. I just know that (Redacted), but I do not know the nature of that relationship.

7 Q. And at the time how old was he?

8 A. (Redacted).

9 Q. Now, the person they were beating, person number 8, could you tell the Court, if you
10 know, what his ethnicity was?

11 A. He was Kikuyu.

12 Q. And the people who were beating him, were they holding anything?

13 A. They had rungu in their hands.

14 Q. And, Witness, this is my last question for today. Do you know what happened to that
15 person; person number 8?

16 A. The person at number 8 was beaten up and I thought that he had died following that
17 beating, but that person did not die on that day. He went back, but subsequently died.

18 MR PUGLIATTI: Mr President, that was the Prosecution's last question on that topic.
19 I don't know if this would be a good moment?

20 PRESIDING JUDGE EBOE-OSUJI: It will be a good moment to adjourn for the day.

21 Witness, we have come to the end of our proceedings for today. You will join us
22 again tomorrow at 9.30. In the meantime, please do not discuss with your -- your
23 testimony. Do not discuss your testimony with anyone overnight. Thank you.

24 The blinds will come down for the witness to be ushered out of the courtroom.

25 MS LAWRIE: Mr President, just while that's happening, if it assists the Court, just to give an

Trial Hearing
Witness: KEN-OTP-P-0469

(Private Session)

ICC-01/09-01/11

- 1 estimate in terms of time frames for the Defence. If my learned friend finishes by 11
- 2 tomorrow, we will endeavour to finish by the end of the day and the witness can be released.
- 3 However, if they do go into the second session, we can't give that undertaking.
- 4 PRESIDING JUDGE EBOE-OSUJI: Do you speak for both Defence?
- 5 MS LAWRIE: I believe I do, yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: Mr Buisman -- Ms Buisman?
- 7 MS BUISMAN: Yes, I confirm.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 (Closed session at 4.01.p.m.) Reclassified into open session
- 10 THE COURT OFFICER: (No interpretation)
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 12 THE COURT OFFICER: (Interpretation) We're in closed session, Mr President.
- 13 PRESIDING JUDGE EBOE-OSUJI: Please usher the witness.
- 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 4.02 p.m.) Reclassified into 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.