

Trial Hearing
Witness: KEN-OTP-P-0508

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap
5 Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Tuesday, 1 April 2014. (The hearing starts in open session at 9.35 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Court officer please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
17 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
18 We are in open session, your Honours.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Appearances, do they remain the same?
21 MS ZAGO: They remain the same for the Prosecution - good morning,
22 your Honours - save for our interpreter, who is not in court today. Thank you.
23 MR NDERITU: Good morning, Mr President, your Honours. The same on our side
24 today. Thank you.
25 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the

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1 same. Thank you.

2 MR FAAL: Good morning, Mr President, your Honours. Honourable William

3 Ruto's team remains the same, save for the addition of a new pro bono legal assistant

4 Peta-Louise Bagott sitting at the back. Thank you, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Witness, welcome back.

7 WITNESS: KEN-OTP-P-0508 (On former oath)

8 THE WITNESS: Thank you, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Zago will continue her examination-in-chief.

10 Please remember the instructions given yesterday. You -- so far you've done very

11 well with remembering particularly the pauses. Keep it that way. Thank you.

12 THE WITNESS: Thank you, sir.

13 QUESTIONED BY MS ZAGO: (Continuing)

14 Q. Good morning, sir.

15 A. Morning.

16 Q. Yesterday you spoke about the Kalenjin youth that attacked locations number 1,

17 5 and 6 from location number 3. And the reference is to page 58 of yesterday's

18 transcripts, lines 7 to 14. Did you recognise any of the Kalenjin youth that you said

19 you saw at that location during the attacks?

20 A. I did not recognise any of the Kalenjin warriors that were burning the houses at

21 that time. The warriors, as I'm made to understand, were transported to my area to

22 come and burn the houses.

23 Q. How were they transported to the area?

24 A. They were transported in lorries.

25 Q. Do you know from where they had been transported in lorries?

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1 A. I am told that they were transported from a centre called Ziwa, in Uasin Gishu
2 County, where the headquarters of the division are situated.

3 Q. How far is Ziwa from location number 3?

4 A. It is far. I don't know exactly how many kilometres, but if the youths could
5 arrive at location number 3 only after 11 a.m. it would mean that the distance was to
6 cover for hours, not minutes. For hours. As I understand the place, I only went
7 there once, but I paid a fare of Kenyan shillings 200 going and 200 back.

8 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, one second. Is everyone's transcript
9 working? Yes, it's not. All right. It looks like there is something wrong with the
10 real-time transcript over here, the Judges.

11 (Pause in proceedings)

12 PRESIDING JUDGE EBOE-OSUJI: So counsels' real-time transcripts are working.
13 So in the absence of any complaints we'll proceed. I think it was only the Judges'
14 transcripts, but we now have things back on track. Thank you.

15 Ms Zago, please proceed.

16 MS ZAGO:

17 Q. Witness, for the record, the transcripts didn't capture the correct spelling,
18 I believe, of the county where Ziwa is located. I'm referring to page 3, line 7. Could
19 you please repeat and spell the county where Ziwa is located?

20 A. Ziwa is located in Uasin Gishu County and it is the divisional headquarter for
21 Eldoret East District.

22 PRESIDING JUDGE EBOE-OSUJI: We do have Uasin Gishu on the records of the
23 case.

24 MS ZAGO: Thank you, your Honour.

25 Q. What is the ethnic composition of Ziwa?

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1 A. The composition of Ziwa population is Kalenjin. The majority are Kalenjin.

2 Q. Have you seen these lorries yourself at any of the locations that you mention?

3 A. At location number 1, on 1 January 2008, a meeting was held there and there
4 were some two lorries, one was beige, the other one was white in colour. These
5 lorries had transported some youths and there were elders accompanying the youth,
6 addressed a meeting there and, thereafter, a house belonging to somebody was burnt,
7 person number 6.

8 Q. Were you there at location number 1 when this meeting was being held?

9 A. I was moving from my houses, which were burnt down, now towards town.
10 (Redacted) without looking side or front. I almost collided with
11 that meeting. I came almost close to that meeting. Because (Redacted) I could
12 not -- I was not seeing what was happening ahead. And when I heard people
13 talking I stopped (Redacted) and I found this meeting, and there were so many people
14 there who were talking in the Kalenjin language.

15 Q. Can you give us an estimate of how many people you saw there?

16 A. It would be between 50 and 100, or more. Let me say between 150 and 100.
17 There were many people.

18 Q. And what were they doing when you saw them?

19 A. It was a meeting, they were being addressed by an elderly man. The youths
20 were seated, others were standing, while they were being addressed by an old man.
21 I was accompanied by (Redacted) when I was passing by and I told (Redacted) not to try to run
22 or doing anything. I advised (Redacted) to move as slow as we were moving so that those
23 in the meeting could not see any change in what we were doing, otherwise we would
24 have been attacked. We moved on slowly, did not make any commotions and we
25 passed the meeting.

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1 Q. You said that the -- the youth were being addressed by an old man.

2 A. Yes.

3 Q. Did you understand what he was saying?

4 A. He was speaking in Kalenjin. I could not understand.

5 Q. You also mentioned a house belonging to a person that was burned. Could
6 you please specify when the house was burnt?

7 A. The house for -- the house for person number 6. When I left the
8 meeting -- when we left the area where they were meeting, me and that (Redacted) who
9 had accompanied me we went ahead. A few kilometres from where we left the
10 meeting, a house belonging to one person number 6 was burnt. It was burning by
11 the time we were passing and it was guarded by the -- the warriors. They had
12 arrows to guard so that those were -- who were burning would not be attacked by
13 anybody. They were guard -- they were guarded. They burnt the house
14 until -- until it was all destroyed. We left the house burning under a guard and we
15 continued with our journey towards police.

16 Q. Which warriors were guarding this house?

17 A. The warriors -- among those transported by these two lorries, some of them
18 were sent to go and burn the house and others were sent to guard those burning so
19 that they are not attacked when burning the houses.

20 Q. Did you know which ethnicity these warriors were?

21 A. These were Kalenjin warriors.

22 Q. And how many did you see at the house of person number 6?

23 A. There were many. There could be 50.

24 Q. Have you ever seen the lorries at any other location that you mentioned, or any
25 other location in those days?

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1 A. I had never seen these lorries before.

2 MS ZAGO: Mr President, might I ask a moment to go in private session and ask a
3 question?

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 (Private session at 9.51 a.m.) * Reclassified as Open session

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Ms Zago, before you do.

9 Witness, (Redacted) who was with you at the time is (Redacted) still alive and in Nairobi as
10 we speak now?

11 THE WITNESS: (Redacted) I met as I was walking towards town is still alive.

12 PRESIDING JUDGE EBOE-OSUJI: All right. The reason I ask you that question is
13 your testimony was in public session and the some specific details of that testimony
14 we would like to redact.

15 The direction is that we will remove from the public broadcast the version of the
16 testimony -- the indication of (Redacted) and also that (Redacted)

17 So the -- we will delete reference to (Redacted)

18 When we go back, if you need to speak again about this event, it is enough to speak
19 about the person you were with at the time roughly. And then also let's not talk
20 anymore about (Redacted). If you need to, because it is important, let us know, we will
21 go into private session and get that information.

22 THE WITNESS: Thank you, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: All right.

24 MS ZAGO:

25 Q. Witness, a moment ago you said that someone told you that the youth had come

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1 in lorries from Ziwa. Who told you?

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MS ZAGO: I'm advised that the transcript is frozen again. It has resumed.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 MR FAAL: No, I was just going to object that this question had been asked several
18 times and the witness has answered, but the witness has already answered again so
19 it's not a problem. Thank you.

20 MS ZAGO: I think we can move to public session, your Honour. Thank you.

21 THE WITNESS: No, before we move, please, I would like to make a clarification.

22 This clarification is that these locations can be (Redacted)

23 (Redacted) sub-location. We are almost -- we are -- yesterday almost

24 got lost in explaining the distances. All these locations are bordering one another.

25 (Redacted) borders (Redacted) to the left and (Redacted) to the right.

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- 1 PRESIDING JUDGE EBOE-OSUJI: All right, let's do this --
- 2 THE WITNESS: Yes.
- 3 PRESIDING JUDGE EBOE-OSUJI: -- in public session, then you can say "Location
- 4 1," "Location 2." Is that what you want to explain?
- 5 THE WITNESS: Yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right. You can do that -- let's do that in
- 7 public session, but then with reference to location numbers.
- 8 THE WITNESS: Okay, your Honour.
- 9 PRESIDING JUDGE EBOE-OSUJI: All right. Public session.
- 10 (Open session at 9.58 a.m.)
- 11 THE COURT OFFICER: We are in open session, your Honours.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 Witness, you may now proceed with the explanation you were in the process of
- 14 making about the distances between the -- between the different locations --
- 15 THE WITNESS: Your Honour --
- 16 PRESIDING JUDGE EBOE-OSUJI: -- referring, of course, to the location numbers.
- 17 THE WITNESS: Thank you, your Honour.
- 18 I was trying to clarify that these locations of location number 1, location number 2,
- 19 location number 5 and 6, these are villages that are bordering each other. (Redacted)
- 20 (Redacted) being -- no, sorry. Sorry.
- 21 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)
- 22 THE WITNESS: Location 1. Yeah, location being at the centre.
- 23 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)
- 24 THE WITNESS: Location 6 being on the western side. Location 5 on the western
- 25 side and location 2 at the northern side. So all these locations are bordering each

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1 other. The distances can never be in miles, it can only be in kilometres. And these
2 distances are used measuring -- or, trying to estimate from where my residence is,
3 otherwise the divisions of these locations are just roads. No divisions, roads,
4 dividing one village from the other. Thank you, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MS ZAGO:

7 Q. Witness, what ethnicity was person number 6?

8 A. Number 6 is a Kikuyu.

9 Q. Now, yesterday afternoon you told the Court that you reported to the police in
10 Eldoret that all your property at location number 1 had been burnt. Were you given
11 a receipt of that report?

12 A. Yes, I reported on 2 January 2008 that my property were burnt on 1
13 January 2008. I was not given a receipt, I was given the OB number, that is -- OB
14 number is occurrence book number.

15 Q. Was there any follow up to that report by the police or any other public
16 administration entities in Kenya?

17 A. When we moved to refugee camps at Eldoret Showgrounds, CID officials were
18 sent there by the Kenyan government. We went to see them. We narrated all the
19 property burnt down and they carried the records with them. But later on when we
20 left the -- the showground refugee camps, when we were at where our villages used
21 to stand, we were told to fill in forms to claim all the property that we lost. We filled
22 in the forms, we forwarded them to the government, but up to now nothing has
23 happened.

24 Q. Yesterday you also said that after you had reported that your property had been
25 burnt that you had started staying at the Eldoret Divisional Police Headquarters.

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1 And I'm referring at page 86, lines 7 -- 6 and 7 of yesterday's transcript. My question
2 is: How long did you stay at the Eldoret Divisional Police Headquarters?

3 A. Me and my family stayed at Eldoret Divisional Headquarters for only two days.
4 The place became too crowded, too unhygienic, diseases outbreak were possible
5 because it was not only me, all people living near Eldoret town moved to the police
6 station to find a refuge there. So the -- it was -- arrangements were made so that
7 these people, because there were too many, they can't -- could not be contained in
8 police station should be transported to Eldoret Showground where they could fit
9 because there were too many. So after these two days we were transported to
10 Eldoret Showground.

11 Q. Who were these other people at the Eldoret Divisional Police Headquarters?

12 A. The other people at Eldoret Divisional Police Headquarters were from various
13 parts of Eldoret town. Some were from areas like Lanas, other areas like Yamumbi
14 and many more other areas. Others from Maili Nne, others from Kimumu, others
15 from -- so many -- all the areas surrounding the Eldoret Town, where houses were
16 burnt, all those people had to go to Divisional Police Headquarters to find somewhere
17 to stay. So we were very many.

18 Q. Did you learn or know the ethnicities of the persons who were at the police
19 headquarters in Eldoret?

20 A. Majority of the persons with whom we were staying at Eldoret Divisional Police
21 Station were Kikuyus.

22 Q. And did you learn why they were there?

23 A. Their houses were burnt down, they did not have anywhere to stay and where
24 they used to live there was no security. They were fearing for their lives.

25 Q. You said that you stayed two days and then you moved to another location, the

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1 showground. Were you alone or with other people when you moved there?

2 A. All people who -- were living at the police station, others at Catholic Cathedral
3 Church, within Eldoret Town. Eldoret Cathedral Church, that is a Catholic church.
4 Those living at the police station were all transported to the showground where they
5 were to stay.

6 Q. How many people were at the showground when you arrived?

7 A. By the time we arrived there, the numbers could not be known because
8 registration of displaced persons had not started. In fact, when we were transported
9 there, we used to sleep in the field. There were no tents. And in these fields the
10 grass had not been cut for several months. Very tall grass. We used to live down
11 the grass. The grass is taller than you and you are asleep. There are snakes, or any
12 other things that can harm you, but we had to sleep there. There were no tents. So
13 the number could not be known because the registration of the refugees had not
14 started.

15 Q. How long did you stay at the showground?

16 A. I stayed -- me and my family plus many more other people stayed at the
17 showground from the day we went there, that would be from 5 January up to 28 May,
18 the year 2008.

19 Q. And where did you go after 28 May 2008? And please refer to the PIS if
20 necessary because we are in public session.

21 A. After several discussions while we were at the showgrounds, between those
22 who were at the showground, the area chiefs and leaders, we agreed to go back to our
23 former homes; therefore, we were transported to where our homes used to be. Me in
24 particular, my family and many of people who live where I live were transported to
25 location number 1.

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1 MS ZAGO: Mr President, with your indulgence can I ask a couple of questions in
2 private session, please?

3 PRESIDING JUDGE EBOE-OSUJI: For how long do you intend to be there? And
4 also how long -- how much longer is your examination-in-chief in general? I know
5 you did indicate that it would be done by 11. Are we still on course with that plan?

6 MS ZAGO: We are, your Honours.

7 PRESIDING JUDGE EBOE-OSUJI: Or is there any chance of making it sooner?

8 MS ZAGO: I'll do my best to wrap it sooner than 11.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you. And how long do you intend to be
10 in private session then?

11 MS ZAGO: No more than a couple of minutes.

12 PRESIDING JUDGE EBOE-OSUJI: Private session, thank you.

13 (Private session at 10.10 a.m.) * Reclassified as Open session

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

15 PRESIDING JUDGE EBOE-OSUJI: Proceed.

16 MS ZAGO:

17 Q. Witness, you mention that there were discussions at the showground before you
18 returned to location number 1. (Redacted)?

19 A. Yes, (Redacted)

20 Q. And what was discussed or agreed?

21 A. Before the discussions nobody would return to these areas -- to these villages
22 because the Kalenjins would not allow us to go back there until they had sat down,
23 discussed among themselves, and then the chiefs were advised by the government to
24 speak to their people, they spoke to their people, and then they come -- they came and
25 spoke to us so that we could agree to go back. Otherwise before they agreed that we

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1 go back we would not go back until they all sat down, agreed that we go back, and

2 we did so. (Redacted)

3 (Redacted). Nobody

4 would return without the agreement that we agree you come back.

5 Q. And once you agreed and you return, how did you organise yourself in (Redacted)

6 (Redacted) once you returned?

7 A. When we were returned from the showground to (Redacted) village we

8 came back (Redacted) we did not have houses. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted) we

18 were promised payment. We had been trying to follow the government to see if we

19 could be compensated, but nothing has happened up to now. There are very many

20 displaced persons in Kenya. In fact, after the census was done, the persons

21 displaced it is roughly 650,000 refugees. Some were integrated, others lived in the

22 camps, others lived with their -- their families, but the -- these ones have not been

23 taken care of. The government has only dealt with those who remained in the camps

24 and they refuse to go back to their farms, because they do not have their farms.

25 Q. Let's focus on location number 1 where you were there. You said that (Redacted)

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1 (Redacted) you were promised payments.

2 A. Yes.

3 Q. Did (Redacted) -- present the data to the government for
4 payment?

5 A. The data was prepared from the showground when we were leaving. So the
6 government has got the -- the data of the people who left the showgrounds and went
7 to do their -- to the -- to location number 1 here.

8 Q. Can you please tell us what the data was about, generally?

9 A. The data was about people who owned houses. In my village, in this area,
10 these locations number 1, number 2, number 5, number 6 we needed (Redacted)houses.

11 Q. Your Honours, I think we can move to public session. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Public session.

13 (Open session at 10.16 a.m.)

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

15 MS ZAGO:

16 Q. Could you please specify the number of houses that you mentioned in private
17 session, to whom did they belong?

18 A. These houses which I have -- I mentioned, (Redacted)houses, which we were required
19 to resettle, people whose houses were burnt, (Redacted)houses belonged to Kikuyus. (Redacted)
20 (Redacted) belonged to a Kalenjin.

21 Q. Were those houses ever rebuilt?

22 A. We were provided with (Redacted)
23 (Redacted) living in location 2. For good neighbourliness we gave them (Redacted)
24 houses and we occupy -- we built the others for -- for our people.

25 Q. Did you personally receive any other compensation for the loss of the property

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1 from any public or private entity?

2 A. These houses were provided by (Redacted) the Kenya Government. Kenya
3 Government only gave us 25,000 shillings to start our lives, which was far too little to
4 start even building a house.

5 MS ZAGO: Your Honours, I apologise, I need to go to private session and then
6 conclude my examination-in-chief. It won't take more than five to seven minutes.
7 Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: Before we do that, the mathematics of the houses.
9 Witness, you said (Redacted) houses were required.

10 THE WITNESS: Yes, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Of the (Redacted)
12 (Redacted); is that it?

13 THE WITNESS: Yes, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: How was that?

15 THE WITNESS: Of the (Redacted) houses burnt down, (Redacted)
16 was burnt down, so he was to be given another house.

17 PRESIDING JUDGE EBOE-OSUJI: And are you in a position to explain how come
18 that one house belonging to a Kalenjin was burnt down?

19 THE WITNESS: I came to know later on that (Redacted)
20 (Redacted) by somebody during the clashes simply because
21 he's a Kalenjin and the other houses were being burnt. They also burnt his so that he
22 could feel what the others were feeling (Redacted)
23 (Redacted)

24 PRESIDING JUDGE EBOE-OSUJI: (Redacted) why those who
25 burnt down his house would want him to feel the way the others were feeling?

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1 THE WITNESS: (Redacted)

2 (Redacted) That is what he told me.

3 PRESIDING JUDGE EBOE-OSUJI: Who were the others who were feeling what he
4 needed to feel?

5 THE WITNESS: The owners of the (Redacted) houses.

6 PRESIDING JUDGE EBOE-OSUJI: Those would be Kikuyus?

7 THE WITNESS: Yeah, those were Kikuyus.

8 PRESIDING JUDGE EBOE-OSUJI: I'm trying to understand why the persons who
9 burnt down a Kalenjin house would want to burn down his house so that he would
10 feel the way Kikuyus, whose houses had been burnt down, were feeling.

11 THE WITNESS: Your Honour, (Redacted) his house was burnt by the Kikuyus or other
12 tribes so that he could feel what the Kikuyus were feeling.

13 PRESIDING JUDGE EBOE-OSUJI: Now I understand. Still on the mathematics,
14 you said that (Redacted) houses were provided.

15 THE WITNESS: Yes, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Would that be (Redacted) out of the (Redacted) that were
17 required?

18 THE WITNESS: Exactly, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: But then you say that (Redacted) of the (Redacted) were given to
20 Kalenjins --

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: -- for good neighbourliness.

23 THE WITNESS: Yes, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Does it mean that in the end the Kikuyus may
25 not really have required (Redacted) houses?

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1 THE WITNESS: The Kikuyus required the (Redacted)houses. We were told we give you
2 these (Redacted), less (Redacted) and then other houses would be brought.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 THE WITNESS: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: We will go into private session. And you may
6 ask any questions also arising from that.

7 MS ZAGO: Thank you, your Honour.

8 (Private session at 10.23 a.m.) * Reclassified as Open session

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

10 MS ZAGO:

11 Q. Witness, you mentioned yesterday a (Redacted)

12 (Redacted)

13 A. Yes.

14 Q. To your knowledge was (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 MS ZAGO: We can go back to public session, your Honour. Thank you.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Before we do, court officer, direction
2 for redaction for purposes of public broadcast: During my questions to the witness
3 in his answer he said that (Redacted). We will delete that reference, the
4 fact that (Redacted) We will delete that from -- if the
5 Prosecution can prepare some deletion to that effect.
6 We'll go back now to public session.

7 THE WITNESS: But before then, please, there is this location number 7, that is
8 (Redacted), I would -- I would like to clarify this:
9 (Redacted) and another (Redacted), these two
10 sub-locations make came (Redacted) location.

11 Now, this (Redacted) with the two sub-locations, sub-location of (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: All right. Let me try to understand what you've
19 just told us. So you mentioned -- did you say (Redacted)?

20 THE WITNESS: Yes. Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: How do you spell that?

22 THE WITNESS: (Redacted) (sic).

23 PRESIDING JUDGE EBOE-OSUJI: And you also mentioned -- did you mention
24 (Redacted)

25 THE WITNESS: Yes, I mentioned. (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: And what did you say is their relation to
2 (Redacted) sub-location?
3 THE WITNESS: (Redacted) sub-location and (Redacted) sub-location make (Redacted)
4 location.
5 PRESIDING JUDGE EBOE-OSUJI: So (Redacted) is the larger territory --
6 THE WITNESS: Is the larger territory.
7 PRESIDING JUDGE EBOE-OSUJI: -- in which we find (Redacted) and --
8 THE WITNESS: (Redacted) --
9 PRESIDING JUDGE EBOE-OSUJI: -- (Redacted).
10 THE WITNESS: -- sub-locations.
11 PRESIDING JUDGE EBOE-OSUJI: All right.
12 THE WITNESS: Yes, your Honour. (Redacted) location is administrated by a chief
13 and the other sub-locations by assistant chiefs assisting him.
14 PRESIDING JUDGE EBOE-OSUJI: All right. And you were saying that (Redacted)
15 (Redacted)
16 THE WITNESS: Yes, it was (Redacted)
17 PRESIDING JUDGE EBOE-OSUJI: Who were the predominant residents of that
18 sub-location?
19 THE WITNESS: Predominantly they are Kikuyus.
20 PRESIDING JUDGE EBOE-OSUJI: All right. But (Redacted)
21 there. And your explanation for that is?
22 THE WITNESS: That the area assistant chief (Redacted)
23 (Redacted)
24 (Redacted)
25 PRESIDING JUDGE EBOE-OSUJI: But that was not the case with (Redacted).

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- 1 THE WITNESS: (Redacted) that is why it was burnt.
- 2 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much. I think that is
- 3 now clear to me in terms of what you said.
- 4 THE WITNESS: Yes, your Honour.
- 5 PRESIDING JUDGE EBOE-OSUJI: All right.
- 6 So, Prosecutor, do you have any questions arising from this?
- 7 MS ZAGO: No, we don't, your Honour.
- 8 PRESIDING JUDGE EBOE-OSUJI: Then we move to public session.
- 9 (Open session at 10.31 a.m.)
- 10 THE COURT OFFICER: We're in open session, your Honours.
- 11 MS ZAGO: I'm happy to announce that we have concluded our
- 12 examination-in-chief and I thank the witness for the assistance. I would like to seek
- 13 an EVD number for the PIS as revised pursuant to your instructions, your Honours,
- 14 yesterday concerning persons number 5A and B. Thank you.
- 15 PRESIDING JUDGE EBOE-OSUJI: That was very well done, Ms Zago. You not
- 16 only kept your promise, but you finished in less time that you had indicated.
- 17 We will admit the PIS as a next in the Prosecution PIS.
- 18 THE COURT OFFICER: Thank you, Mr President.
- 19 This PIS will bear the following number, KEN-PIS-0001-0047, and will be registered as
- 20 confidential.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 22 Witness, before I turn you over to Defence -- sorry. Mr Nderitu, you made an
- 23 application.
- 24 MR NDERITU: Yes, Mr President, I did.
- 25 PRESIDING JUDGE EBOE-OSUJI: Do you still want to ask questions?

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1 MR NDERITU: Yes, I still would.

2 PRESIDING JUDGE EBOE-OSUJI: All right. One second then.

3 MR NDERITU: Thank you.

4 (Trial Chamber confers)

5 PRESIDING JUDGE EBOE-OSUJI: How long do you think your questions might
6 take?

7 MR NDERITU: Mr President, your Honours, I'm hoping that I could get about an
8 hour on the outside.

9 PRESIDING JUDGE EBOE-OSUJI: An hour?

10 MR NDERITU: On the outside. I hope that I can take much shorter than that.

11 I think because there is no simultaneous interpretation, I think I could, and I will try
12 as much as possible, of course, not to ask questions that have already been asked, but
13 sometimes it does become necessary to ask such questions in an introductory manner
14 so that I get to where I'm going.

15 PRESIDING JUDGE EBOE-OSUJI: We will see -- okay, in a minute we will make a
16 ruling on that.

17 But, Witness, before I turn you over to the Victims Counsel, there were some
18 questions I wanted to ask of you. You testified yesterday about an encounter you
19 had at the Huruma roadblock. You were escorting a family member somewhere and
20 you encountered some youth at a roadblock. You said they were Kikuyu youths and
21 they didn't want you to proceed; they rather wanted you to go back and stay where
22 you were and fight there.

23 THE WITNESS: Yes, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: From your understanding of the offence at the
25 time, was that a common occurrence that Kikuyu youth would prevent Kikuyu men

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1 from fleeing and would rather have Kikuyu men stay put and fight?

2 THE WITNESS: It is not usual, your Honour, but it was that I either go back where I
3 came from and defend myself because there is no government to defend ourselves, or
4 I joined them and even the Huruma village because there was no government to
5 defend. So people had resolved that they defend themselves.

6 PRESIDING JUDGE EBOE-OSUJI: I understand that. What I'm trying to
7 understand was whether -- my understanding is -- sorry, my question would be
8 whether there was more than an isolated incident of what happened to you, whether
9 it also happened to other people, that is, Kikuyu youth preventing Kikuyu men from
10 fleeing and, rather, putting pressure on them to defend themselves or defend their
11 location.

12 THE WITNESS: It was very unusual. I never saw it before.

13 PRESIDING JUDGE EBOE-OSUJI: From you -- again, moving away from this to
14 something else, did you testify that some Kikuyus were afraid about -- in 2007 that is,
15 in 2007 some Kikuyus were afraid about a repeat of what happened in 1997?

16 THE WITNESS: Yes, I testified that.

17 PRESIDING JUDGE EBOE-OSUJI: What was that that happened in 1997?

18 THE WITNESS: Some Kikuyus owning businesses around (Redacted)
19 (Redacted) - had their houses burnt, business burnt
20 and their houses burnt.

21 PRESIDING JUDGE EBOE-OSUJI: Were there also personal violence against
22 Kikuyus in that --

23 THE WITNESS: Yes, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: How many times had that sort of thing had
25 happened in the past apart from 1997 and 2007?

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1 THE WITNESS: It was -- it also happened in 1992. There were tribal clashes in
2 1992 which is backed off at an area called Meteitei. That was the first clash we had
3 in Kenya. It occurred around Meteitei in 1992.

4 PRESIDING JUDGE EBOE-OSUJI: Would it be the case that on each of those
5 occasions Kikuyus were involved, either being attacked or fighting back?

6 THE WITNESS: The Kikuyus were involved, the Luhyas were also involved in 1992
7 because that happened at their border with the Kalenjin in a farm called Owiro Farm.
8 That is where it happened. It also happened around Burnt Forest, around Timboroa
9 and other areas, 1992.

10 PRESIDING JUDGE EBOE-OSUJI: So Kikuyus were would you say victims of
11 violence, or were they the aggressors?

12 THE WITNESS: They were victims of violence. They were not aggressors. They
13 were tried to be -- they were being forced to flee from those areas before the elections
14 are held.

15 PRESIDING JUDGE EBOE-OSUJI: Did they also defend themselves to the extent
16 they could?

17 THE WITNESS: They also tried to defend themselves but with crude weapons, and
18 there were not as many as the Kalenjins. Their last resort was to go and camp at
19 either police stations or churches.

20 PRESIDING JUDGE EBOE-OSUJI: Now, to the extent they defended themselves
21 in 2007, I notice that in your testimony you said they were using stones to defend
22 themselves.

23 THE WITNESS: Yes, your Honour. They used stones. Stones are very good for
24 defending because even if one had a gun and 50 people are throwing stones at him,
25 he would not have time to prepare himself with that gun or with the arrow because

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1 the stones were coming so -- from different directions.

2 PRESIDING JUDGE EBOE-OSUJI: That must have been a lot of stones.

3 THE WITNESS: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: Was there any element of co-ordination of that
5 self-defence effort?

6 THE WITNESS: There was a co-ordination because once you throw the stones, they
7 are finished, you need more. So we used to have a group at the back who would
8 come ahead of you with stones and continue throwing while you go back and pick
9 more stones.

10 PRESIDING JUDGE EBOE-OSUJI: Was there an expectation that wherever the
11 attack occurred stones would be readily available to be picked?

12 THE WITNESS: We used to carry them to where we -- the confrontation is taking
13 place. Those who arrived there first have stones, then others will follow with stones,
14 to supply.

15 PRESIDING JUDGE EBOE-OSUJI: Supply?

16 THE WITNESS: Yes, to those who were throwing. Others would assist in throwing.
17 In some areas, like say, Burnt Forest, women used to bring the stones and men used
18 to throw the stones.

19 PRESIDING JUDGE EBOE-OSUJI: Before the -- you said that before the
20 actual -- again, if I got you wrong, correct me. Before the actual violence erupted,
21 after the results of the elections were announced --

22 THE WITNESS: Yes, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: -- was it your testimony that even during the
24 campaign there was a sense of foreboding that there might be violence?

25 THE WITNESS: Yes, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Could that have led to preparation of
2 self-defence in the eventuality of that violence erupting?

3 THE WITNESS: No, your Honour, because it was like rumour that there would be
4 problems. If there were preparations, maybe the Kikuyus would have some
5 weapons, but then they did not have any weapons, even when it happened. They
6 only used the stones, which means they were not prepared. Although they were
7 told something would happen, nobody took the precaution to arm themselves.

8 PRESIDING JUDGE EBOE-OSUJI: But could it be the case that in anticipation of the
9 violence, perhaps efforts might have been made to source out stones to be supplied?

10 THE WITNESS: From the area I come from, your Honour, stones are in plenty.

11 There are very many, very many. Yes. So there is no scarcity of stones where I
12 come from. On top is the hill. With all the hill, so many stones.

13 PRESIDING JUDGE EBOE-OSUJI: Now, about choice of weapons, are you able to
14 assist in understanding the question if violence had occurred in the past, 1992, 1997,
15 and on each occasion Kikuyus, in your testimony, were the victims --

16 THE WITNESS: Yes, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: -- and there was an anticipation of the violence or
18 sense of foreboding in 2007 during the elections that that violence might occur again,
19 are you able to explain why more robust weapons of self-defence than stones were
20 not in use by Kikuyus, according to you?

21 THE WITNESS: We anticipated that the government would protect us, so there was
22 no need of arming ourselves and fighting. But if we -- when we found that we were
23 not being assisted, we had to resort to the crude weapons of stones.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Prosecutor, please feel
25 free to have any -- if you have any questions arising from this, you may ask them now

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1 or in re-examination. It's your choice.

2 MS ZAGO: We would like to be allowed to question the witness if at all in
3 re-examination. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Submissions, Counsel, on the application of
5 Mr Nderitu?

6 MR FAAL: No objection, Mr President.

7 MS BUISMAN: Mr President, we have no objection per se, just have one request for
8 clarification because we are looking at the filing which was submitted on 24 March.
9 Just looking, we have no objection to the questions that the common legal
10 representative intends to ask, but I want to make sure that paragraph 6 is now a moot
11 point, this relates to security. I just want to make sure that that is not part of the
12 questioning.

13 And also about paragraph 7, I don't know if my -- my learned friends can answer,
14 there is a reference to the protocol on the practices to be used, and the reference
15 relates to the right of the common legal representative to speak with the witness
16 victim during the whole duration of the -- of the stay at The Hague. And again, this
17 is part of the protocol, so we have no objection to that, but then it goes on to say that
18 the victim witness will also be in a position to bring out, either through the common
19 legal representative or through direct testimony, any other information he would like
20 the Judges of the Trial Chamber to know about any other situation relevant to his
21 status as victim participated in the proceeding as a result of the crimes.

22 I just want to make sure that that sort of conversation has been taken place before the
23 start of the testimony because we think it's a bit too close otherwise to what they
24 propose to ask. That's all I have. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much.

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- 1 We will grant the request, Mr Nderitu. You may proceed. We would not like
2 repetition. You will have to -- you were here through the testimony of this witness.
3 We know what the witness has testified to. There is nothing wrong, of course, with
4 stating your question in terms of pulling back reference to earlier testimony that a
5 witness has given so that the witness knows the direction of your question. What
6 will not be permitted is for you to open up a line of inquiry to get to that staging
7 post before launching. Right, just bring it in and then state from there. Thank you.
8 MR NDERITU: I am much obliged, Mr President, your Honours. Just for the
9 comfort of the Defence, particularly the Sang Defence, let me mention that the
10 question about security is now a moot point, and let me also mention that with regard
11 to the protocol, in the interest of full disclosure, we did yesterday have a session with
12 the witness after the day's session between 4.30 and 5 p.m. -- actually, between 4.30
13 and 4.50 p.m., and the session was for no more than just familiarising ourselves with
14 the witness and did not at all touch on any of the questions that either had already
15 been put to him or that we anticipated might be put to him by the Prosecution or by
16 ourselves. Thank you.
17 MS BUISMAN: I appreciate it. Thank you.
18 MR NDERITU: Thank you.
19 QUESTIONED BY MR NDERITU:
20 Q. Mr Witness, good morning.
21 A. Morning.
22 Q. Now, I am going to take you through a number of questions and I will want you
23 to inform me at the earliest opportunity if you feel that any question I put to you may
24 disclose your identity. Are we together?
25 A. Yeah, we're together. I'll point out.

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1 MR NDERITU: Thank you. At this point, I first of all would want to ask a few
2 questions in closed session -- in private session. This should take no more than a
3 couple of minutes.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 (Private session at 10.51 a.m.) * Reclassified as Open session

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

7 MR NDERITU:

8 Q. Mr Witness, would you please inform the Court who you lived with in (Redacted)
9 (Redacted) within your own homestead?

10 A. I lived in my homestead with my family; (Redacted) And before
11 the (Redacted) were burnt, I used to have (Redacted)
12 (Redacted)

13 Q. Thank you. And what were the respective ages of your children?

14 A. The respective ages of my children are: My first born child, (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)

18 Q. Thank you, Mr Witness. Did you say that (Redacted)
19 born child?

20 A. My first born child.

21 Q. Your first born child. Thank you for the clarification. Now, Mr Witness, out
22 of these children, were any of them attending school or other academic institution?
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 (Redacted)

2 Q. Thank you, Mr Witness. What was the -- sorry. At the time of the 2007-2008
3 violence, what was the (Redacted)
4 of each of these children?

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, if your question was about
9 dependents, isn't it the case that all the children were (Redacted)
10 (Redacted) if my mathematics is

11 correct? I may be wrong. I am not the best mathematician I must tell you.

12 MR NDERITU: Thank you, Mr President, your Honours. The question is not just
13 about dependents; the question is about other people that were living with him of
14 whom he had special knowledge and who may have in one way or another been
15 affected by the post-election violence.

16 MR FAAL: Mr President, if counsel is allowed to question the witness with regards
17 to other people who may have suffered, then there won't be any end to -- soon at least
18 to this examination because it would be too broad. It would be sufficient if learned
19 counsel limits the questioning to harm suffered by this particular witness. Thank
20 you.

21 PRESIDING JUDGE EBOE-OSUJI: That is a good point, Mr Nderitu. Can we limit
22 the question in that way? Or let me put it this way: Do you have any difficulty
23 with that?

24 MR NDERITU: Thank you, Mr President, for the opportunity. Yes, I do have a bit
25 of a difficulty with that because in the first place it is allowable, if I may use that word,

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1 for the witness to also talk about other people, even on the streets, that may have
2 fallen victim. We have already heard evidence led with regard to (Redacted)
3 for example, and others. We have heard information about (Redacted) And
4 as a result, it is my respectful submission that if we are talking about also the
5 widespread nature of the attack -- of the attacks that the Prosecution witness, who is a
6 dual status witness, may have suffered together with others, this would be relevant
7 information for the purpose of securing the general interest of victims that are
8 participating in the proceedings. Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: Without limiting the present question to the
10 generality of the issue, what was the witness's testimony about (Redacted) again
11 that makes you want to ask questions about (Redacted)?

12 MR NDERITU: Your Honour, I do not intend to ask questions directly regarding
13 (Redacted) but we do have it on the record that there was a distress call from
14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Maybe we misunderstood each other. Was that
16 a distress call or was that a signal to stop burning?

17 MR NDERITU: Sorry, I think I may need to just look at that. Perhaps what I could
18 do, your Honour, may I kindly request that we break here and --

19 PRESIDING JUDGE EBOE-OSUJI: All right. Let's do this, Mr Nderitu: It's time
20 for the morning break. When we come back, limit your questions to the harm
21 suffered by the witness so that we limit it to that. Of course we do understand that
22 you are the representative for victims, and we also know it is a representational
23 exercise, it may be, isn't it? By the time you've asked questions about every other
24 victim who attends as a witness, we may be able to get at what we need to do from
25 that perspective.

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1 If we start expanding the questions so that every witness who comes who's a victim,
2 you will be asking questions about other victims in some sort of organic chain
3 formation, it may expand the inquiry beyond what is fairly manageable. So let us
4 focus on the witness as a victim and take it from there.

5 MR NDERITU: Thank you, Mr President. Just if I could kindly seek a clarification
6 then: That I should not ask, for example, about (Redacted)
7 (Redacted) and what may have become of them? My
8 respectful understanding was that I would be entitled to ask questions even of other
9 victims in -- who may have been affected and in a general way.

10 PRESIDING JUDGE EBOE-OSUJI: Let's ask questions who's side you already see as
11 victims and victimhood. We will try to avoid an at large examination for discovery
12 of the witness because it may get unwieldy -- it will get unwieldy. So if you've
13 isolated victimhood connected to this witness, you can ask questions about that and
14 take it from there. It is -- nothing is cast in stone. We're not putting you in some
15 sort of water-tight compartment, but what we want to also avoid is unending
16 examination for discovery of the witness.

17 MR NDERITU: Thank you. I do appreciate.

18 PRESIDING JUDGE EBOE-OSUJI: We will take our morning break now, Witness.
19 We will adjourn for now and come back at 11.30. You will be escorted from the
20 courtroom.

21 THE WITNESS: Thank you, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Closed session, please.

23 (Closed session at 11.03 a.m.) * Reclassified as Open session

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

25 (The witness stands down)

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- 1 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 2 THE COURT OFFICER: All rise.
- 3 (Recess taken at 11.30 a.m.)
- 4 (Upon resuming in open session at 11.35 a.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 THE COURT OFFICER: We're in open session, your Honour.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Mr Nderitu, please.
- 10 MR NDERITU: Mr President, your Honours, I would wish to just conclude the bit
- 11 that I had intended to conclude in private.
- 12 PRESIDING JUDGE EBOE-OSUJI: Private session then.
- 13 (Private session at 11.36 a.m.) * Reclassified as Open session
- 14 MR NDERITU:
- 15 Q. Mr Witness -- I am sorry.
- 16 THE COURT OFFICER: We're in private session, your Honours.
- 17 MR NDERITU:
- 18 Q. Mr Witness, you did state in your evidence in-chief that you had in addition to
- 19 the house that you lived in (Redacted).
- 20 A. Yeah.
- 21 Q. Now --
- 22 A. Yes, I said.
- 23 Q. Now, I would want you to confirm whether those were also burned and to what
- 24 extent?
- 25 A. (Redacted) were also destroyed to the extent that (Redacted)

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1 (Redacted)

2 Q. Thank you, Mr Witness. And for the sake of clarification, how long had you
3 lived at (Redacted)? Since which year?

4 A. I moved to (Redacted) when I bought that plot. I bought the plot in (Redacted)
5 but I moved there in (Redacted).

6 Q. Thank you, Mr Witness. Now, at the time of the post-election violence, you
7 stated in your evidence that you were (Redacted) What were
8 you doing for an occupation?

9 A. I was a farmer. I was doing farming on my plot. (Redacted)
10 (Redacted)

11 Q. Thank you, Mr Witness. Now, when you talk about (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted) What remained was burnt down.

25 Q. Thank you, Mr Witness. Are you able to estimate the loss that was occasioned

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1 to you as a result of the burning of these (Redacted)?

2 A. The losses are estimated, but I cannot remember them because I put down
3 them -- I put them down on paper and forwarded the paper to the government for
4 compensation, which has not happened up to now.

5 Q. Thank you, Mr Witness. And when you talk about (Redacted)
6 (Redacted)?

7 A. Yes. I had (Redacted)
8 (Redacted)

9 Q. Thank you, Mr Witness. So we are basically saying that you had about (Redacted)
10 (Redacted)?

11 A. Yes, your Honour.

12 Q. Thank you. Now, with regard to the (Redacted)
13 (Redacted)

14 A. These were (Redacted)
15 (Redacted) was the income.

16 Q. Thank you, Mr Witness. So that is (Redacted) shillings per month?

17 A. Yes, your Honour.

18 Q. Thank you. So did your financial status change as a result of the violence?

19 A. My financial situation changed greatly after the violence. I lost all that I owned
20 (Redacted). During my -- my youth age, I worked (Redacted)
21 saved all the matter I could save, bought the land, (Redacted)
22 (Redacted)

23 (Redacted) After losing everything, I became almost nothing.

24 MR NDERITU: Thank you for your answer, Mr Witness. I think we could now go
25 into public session.

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1 PRESIDING JUDGE EBOE-OSUJI: Public session.

2 (Open session at 11.43 a.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Mr Nderitu.

6 MR NDERITU: Thank you, Mr President.

7 Q. Mr Witness, we are now in open session and therefore I would want to just
8 remind you that you should be careful about the giving of any answers that may tend
9 to make your identity known.

10 A. Yes, your Honour.

11 Q. Mr Witness, in your evidence in-chief you spoke of your area having witnessed
12 ethnic clashes in 1997 and that people feared a recurrence?

13 A. Yes.

14 Q. Now, in 1997, between which communities were those clashes?

15 A. The clashes were between the Kalenjin and the Kikuyu living around that area.

16 Q. Thank you, Mr Witness. And you did testify yesterday that you -- I will take
17 that again, Mr Witness.

18 A. Yes.

19 Q. You did testify yesterday that people heard a sound that you called nduru; that
20 is N-D-U-R-U?

21 A. Yes.

22 PRESIDING JUDGE EBOE-OSUJI: We are in open session and we also know we
23 have Protected Information Sheet. So if you need to refer to people and the
24 information of those indicated, their identities in the PIS, please use that --

25 THE WITNESS: Yes.

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1 PRESIDING JUDGE EBOE-OSUJI: -- Mr Nderitu.

2 MR NDERITU: Thank you, Mr President. I will be mindful of that.

3 Q. Now, my question to you, Mr Witness, then is whether in 1997 you had heard a
4 similar sound?

5 MR FAAL: Mr President, we would like to object to this line of questioning. It
6 looks like counsel for the victims is going mainly into the facts, instead of sticking to
7 the outlined plan he had given to the Judges which is to talk about the victimisation
8 the victim went through. With regards to the facts, the Prosecution had done a good
9 job in scintillating what the Judges need to know and we think he's going way over
10 board and the question ought not to be allowed.

11 Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu?

13 MR NDERITU: Thank you, Mr President, your Honours. I beg to differ with my
14 learned colleague. The witness has already indicated - he did so yesterday - that
15 there was fear of recurrence, and the fear of recurrence was within the context of the
16 sounds that were heard and the question then would come within the very specific
17 context of whether those sounds had been the ones that got people to fear that there
18 would have been a recurrence. It's very, very specific to that.

19 PRESIDING JUDGE EBOE-OSUJI: All right, proceed. Let's see how you do.

20 MR NDERITU:

21 Q. Mr Witness, my question to you is whether or not in 1997 you had heard similar
22 sounds to those that you heard in 2007 prior to attacks?

23 A. I did not hear in 1997.

24 Q. Thank you. Now, you did say that on 30 December 2007 you saw two houses
25 in location 2 burning and my question to you is how many houses you recall burning

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1 at that location the following day, if there were any that you recall seeing?

2 A. The following day was 31 December 2007. No house remaining to a Kikuyu
3 was standing. All were burnt on that day, 31 December.

4 Q. Thank you, Mr Witness. Now, when you say no house belonging to Kikuyus
5 was standing on 31 December 2007, at what locations are you referring to? Please
6 name as many locations as you find on the PIS with regard to houses that were
7 burned.

8 A. I'm particularly referring to location number 2.

9 Q. Thank you. Now, what about the other locations; that is to say location 1,
10 location 5, location 6 and generally location 7?

11 A. On 31st houses were burnt in location 1, location 2, location 5 and 6, and by 1
12 January 2008 all houses were burnt and burning was not going on because the houses
13 were all burned.

14 Q. Thank you, Mr Witness. Now, you gave evidence how you got to a roadblock,
15 but you had hidden your identity card and you were allowed to pass after you told
16 those manning the roadblock that you had been robbed of your identity documents.
17 Now, I would want you to tell the Judges what was running in your mind at that time
18 regarding the possibility - your possibility - of not being allowed to pass through the
19 roadblock?

20 MR FAAL: Yet again, Mr President, I object to this line of questioning. Counsel did
21 indicate to the Judges - promised the Judges - that he would not repeat questions, but
22 I can remember that witness was asked, "What did you think would happen?" And
23 he said, "I thought I'd be killed."

24 But the issue is counsel is opening up -- is doubling on what the Prosecution has
25 already done. He's going over the points dealt with by the Prosecution, and if we

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1 continue in that regard we would have double examination-in-chief and that would
2 not help anybody. We will remain here for a -- for much longer than necessary.

3 PRESIDING JUDGE EBOE-OSUJI: But also if we have double examination-in-chief,
4 the Prosecution may also not want that.

5 Now, Mr Nderitu, the objection is that the question you're now -- you now asked was
6 asked and answered and that the answer is in the nature of the witness thought he
7 would be killed. Are you expecting a different answer, or was that not satisfactory?
8 If that does it, then move on to another question.

9 MR NDERITU: Mr President, I do appreciate the concerns of my learned colleague,
10 but let me also say with due respect to him that there are different approaches to the
11 same same question that could be asked and in my submission --

12 PRESIDING JUDGE EBOE-OSUJI: Let's -- let's not take different approaches to the
13 same question. Let's avoid areas that the Prosecution has already covered, because
14 following a different approach may do havoc to what the Prosecution has done in
15 terms of their examination-in-chief. That is one of the considerations amongst many.
16 So if the Prosecution has elicited the information, we need to leave it there. If there
17 is a remainder that you feel you need for purposes of your own submissions in the
18 end, you can zero in on that remainder that needs to come in, rather than open up an
19 area that had already or subject the Prosecution had already covered.

20 MR NDERITU: I'm much obliged.

21 Q. Mr Witness, with regard to your house that was burned, would you describe the
22 house in greater detail please?

23 PRESIDING JUDGE EBOE-OSUJI: Do we need that question? If we do, we're in
24 open session. Do we need to describe the house?

25 MR NDERITU: Thank you, Mr President. Yes, we need to go into closed. I

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1 request that we go into a closed session.

2 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into private session.

3 MR NDERITU: Private session.

4 PRESIDING JUDGE EBOE-OSUJI: Private session. I take it you'll be able to do this
5 in a question, so in a minute or two we'll be back out.

6 MR NDERITU: Yes, in a question or two.

7 PRESIDING JUDGE EBOE-OSUJI: We'll go to private session.

8 (Private session at 11.57 a.m.) * Reclassified as Open session

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

10 MR NDERITU:

11 Q. Yes. Mr Witness, would you please describe fully how your house looked like,
12 how big it was, what material it had been -- had been used to construct it?

13 A. My house was a (Redacted), residential, which
14 was built. On the sides mud was used and then sand and cement to make it look
15 semi-permanent. On top I get the iron sheets, the floor was cemented, the windows
16 were glass windows and that was the nature of the house.

17 Q. Mr Witness, would you give an approximate value to this house, together with
18 all the other (Redacted) that you say were burnt during the violence; your (Redacted)
19 within your compound?

20 A. I'm not able to give the exact value, but in the papers presented to the
21 government I remember outlining item by item and thereby providing the value of
22 that item. It's hard for me to remember each and every item and how much it cost.
23 There were so many items, household goods plus the value of the house, plus the
24 (Redacted). These are too many for me to put in my memory.

25 Q. Thank you, Mr Witness. Now, would you be able to confirm how much time

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1 and money you spent in order to restart yourself after you returned from the
2 showground?

3 A. I did not have any source of income so as to start my life again. I've relied on
4 good wishes, friends and (Redacted) The government
5 gave me just a (Redacted)
6 (Redacted)
7 (Redacted) to get income to enable me pay house rent and
8 properly feed my family. I've not been able to come to my former state. I lost too
9 much. It would take years.

10 Q. I'm sorry about that, Mr Witness. Now, just so that we have it on the record,
11 (Redacted)
12 the kitchen farming that you spoke about yesterday, were those destroyed during the
13 violence, or were you able to harvest them?

14 A. Everything was destroyed, even the vegetables. They came back and pluck off
15 the heads of the vegetables so that they do not grow any more. So everything was
16 destroyed.

17 Q. Thank you, Mr Witness. So, in summary, what would you be seeking from
18 this Court as a participating victim?

19 A. I would be seeking, like any other victim, reparation.

20 MR NDERITU: I thank you, Mr Witness. That is all. Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Nderitu.

22 Who will go first, Ruto Defence or Sang Defence?

23 MR FAAL: Mr President, your Honours, the Ruto Defence team is ready to start, but
24 I can defer to Mr Katwa-Kigen in the event they wish to question the witness at this
25 stage.

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1 PRESIDING JUDGE EBOE-OSUJI: Why don't you start, Mr Faal, if you are ready to
2 go.

3 MR FAAL: Much obliged, Mr President. Allow me two minutes to organise myself
4 and --

5 PRESIDING JUDGE EBOE-OSUJI: We will go back to public session?

6 MR FAAL: Yes, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Public session.

8 (Open session at 12.03 p.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Witness, Mr Nderitu, the counsel for victims, has concluded asking you questions.

12 Now Mr Faal, a lawyer for Mr Ruto, will ask you questions in cross-examination.

13 Mr Faal, how much time do you expect to spend with this witness, knowing of course
14 the scope of his testimony?

15 MR FAAL: I anticipate that by lunch break tomorrow I should be finished. That's
16 what I anticipate. It all depends on how fast we -- we progress today, but I am
17 hoping that certainly tomorrow before lunch break I should be finished.

18 PRESIDING JUDGE EBOE-OSUJI: What was it he testified to that would make you
19 take that much time in cross-examination?

20 MR FAAL: Mr President, we are alive to the fact that this witness did not mention
21 our client at all. We are alive to that fact.

22 PRESIDING JUDGE EBOE-OSUJI: The question is why are you cross-examining
23 him?

24 MR FAAL: As a matter of Defence strategy, we deem it necessary to cross-examine
25 the witness for a few reasons. Some of the issues the witness testified about seemed

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1 to confirm Prosecution theory of the case, and it is essential for the Defence to put an
2 alternative narrative to what has happened. We would not be seeking to show that
3 this witness is a liar, or a witness who is not speaking the truth. No, that would not
4 be our objective. We would be seeking to put an alternative narrative to some of the
5 issues the witness testified about and also to lend greater clarity to the witness's point
6 of view on certain issues.

7 But given the opportunity we would calibrate and reassess our situation as we move
8 along and, if necessary, we can terminate it sooner than we actually plan at the
9 moment.

10 PRESIDING JUDGE EBOE-OSUJI: It can be dangerous to cross-examine a witness
11 who has done you no harm. You know that, but beyond that --

12 MR FAAL: Well, Mr President --

13 PRESIDING JUDGE EBOE-OSUJI: One second. Beyond that, the Prosecution's
14 theory of the case does not hang in the air. It's what you'd be interested in would be
15 parts of it that relate to liability, isn't it, or responsibility of your client?

16 MR FAAL: Well, Mr President, if we can rest assured that the witness has done us
17 no harm, we rest our -- we rest now and not cross-examine the witness at all.

18 PRESIDING JUDGE EBOE-OSUJI: Well, you said he has not mentioned your client.

19 MR FAAL: Well, all I am seeking, Mr President, is the reassurance from the
20 Chamber that the witness has done us no harm. In that case, we would rest.

21 PRESIDING JUDGE EBOE-OSUJI: May I revise. The Witness has not mentioned
22 your client. It's up to you, Mr Faal, but you're not going to spend a whole day.

23 MR FAAL: Mr President, I take the cue from the Bench.

24 PRESIDING JUDGE EBOE-OSUJI: Yes.

25 MR FAAL: I will do as much as possible, reorganise and reduce the

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1 cross-examination. I will do my best endeavour to finish today.

2 PRESIDING JUDGE EBOE-OSUJI: Proceed.

3 MR FAAL: Thank you very much, Mr President.

4 Q. Mr Witness, good afternoon. My name is Essa Faal, I am one of the lawyers for
5 Honourable William Ruto and I will question you on behalf of the Defence team for
6 Mr Ruto. Do you understand?

7 A. Yes, I do.

8 Q. Please listen carefully to the questions that I am ask -- going to ask you. If you
9 do not understand a question, or my rather difficult accent, please let me know and I
10 will repeat the question or clarify it. Do you understand?

11 A. Yes, I do.

12 Q. And also in answering questions please try not to give out information that
13 would disclose your identity. That is very important. Do you understand?

14 A. Yes, I do.

15 MR FAAL: Mr President, your Honours, with your permission I would ask that a
16 PIS form be passed on to the witness. I believe it is already in the binders that have
17 been provided to your Honours and the parties, so I'd just ask the assistance of the
18 court usher to pass it on to the witness.

19 Q. Mr Witness, you can put it aside for the time being. We will come back to it
20 later.

21 For now, Mr Witness, you need to know that the majority of us in this courtroom are
22 not from Kenya, but it is important to understand the geography of some of the areas
23 talked about so that your evidence can be put in its proper context.

24 We think that you would be able to help us understand some of these locations, to
25 know where they are and how they fit into the local government administration of

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1 Kenya in 2007. So at the outset I would be right to say that you would be able to
2 assist us to understand where some of these locations are; is that right?

3 A. Yes.

4 Q. At the time -- excuse me, let me rephrase that. You are aware, are you not, that
5 the village is the lowest level in the hierarchy of local government administration in
6 Kenya?

7 A. Yes, I know.

8 Q. And the village is usually headed by village elders; is that right?

9 A. It's right.

10 Q. The position of a village elder is often not a paid position. They are there to
11 assist the assistant chiefs; is that correct?

12 A. It is.

13 Q. And is it right that a collection of villages would normally form what they call a
14 sub-location?

15 A. Yes, they form a sub-location, a collection of villages.

16 Q. And a sub-location is headed by an assistant chief, isn't it?

17 A. Yes.

18 Q. It is true, is it not, that a collection of sub-locations would form what is called a
19 location?

20 A. It is correct.

21 Q. And a location is often headed by a chief; is that right?

22 A. It is right.

23 Q. Mr Witness, perhaps allow a pause between --

24 A. Okay.

25 Q. -- the question and the answer. Otherwise, we would overlap in speaking.

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1 A. I will observe that.

2 Q. Thank you, Mr Witness. And a collection of locations would form what is
3 called a division; is that right?

4 A. Yes, it is right.

5 Q. And a division is headed by a district officer, isn't it?

6 A. Yes, it is.

7 Q. And, Mr Witness, a collection of divisions would form a district; is that right?

8 A. It is right.

9 Q. And a district is headed by a district commissioner, isn't it, DC?

10 A. Yes, it is headed by a DC, but right now this has changed, okay? You know
11 what the change is.

12 Q. Mr Witness, we are talking about the situation that obtained in 2007 and 2008.

13 A. Okay.

14 Q. Would I be right to say that a district in 2007 and 2008 was headed by a district
15 commissioner called -- often abbreviated as DC?

16 A. Yes.

17 MR FAAL: Now, Mr Witness, let us look at some of the places within the Eldoret
18 area and see where they fit in this organisation of local government administration we
19 just talked about.

20 And for this purpose, Mr President, may I ask that we go briefly into private session?

21 PRESIDING JUDGE EBOE-OSUJI: Before we do, so we all understand each other,
22 when you speak about local government administration you mean everything that
23 comes within the district?

24 MR FAAL: Yes, Mr President. I did not go as far as the province, yes.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. We'll go to private session.

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1 For how long?

2 MR FAAL: About three to four minutes, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Private session then.

4 (Private session at 12.14 p.m.) * Reclassified as Open session

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

6 MR FAAL:

7 Q. Mr Witness, you now have in front of you two PIS documents, one from the
8 Defence and one from the Prosecution, and if you compare the two documents you
9 would notice that we did not include in the Defence document the names or places
10 that have been mentioned in the Prosecution document. Do you -- do you notice
11 that?

12 A. Repeat your question, please.

13 Q. I was saying that you have been provided with a PIS form, this document that
14 I'm holding here, and the one we have provided numbered or listed the people using
15 the alphabet, say person A, person B, and the locations, location A to location H. It is
16 organised differently from the Prosecution document, which mentions the persons
17 and the places in numbers. Do you notice that difference?

18 A. Yes, I can see.

19 Q. You will also notice that the places that have been mentioned in the Prosecution
20 document have not been mentioned in the document provided by the Defence. Do
21 you realise that?

22 A. In the locations I can see.

23 Q. Yes, but also in the names provided?

24 A. The names, yes, I can see.

25 Q. You can see that, okay. So if you need to refer to a name that is contained in

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1 the Prosecution document, please go to that document, and if you want to refer to a
2 name in the Defence document, please go to that one. Are we together?

3 A. Yes, we are together.

4 Q. Thank you very much, Mr Witness. We talked about (Redacted) which is
5 location 1 in the OTP document. Do you remember that?

6 A. Yes, I do.

7 Q. You told the Court that (Redacted) is located in (Redacted) Do
8 you remember that?

9 A. Yes, I do.

10 Q. And some of the villages and neighbourhoods located in (Redacted)
11 include (Redacted) is that
12 right?

13 A. It is right.

14 Q. You would agree with me that the assistant chief for (Redacted) sub-location was
15 (Redacted); is that right?

16 A. That is right.

17 Q. You would also agree with me that (Redacted) sub-location is a part of (Redacted)
18 location, (Redacted); is that correct?

19 A. Yes, it is correct.

20 Q. And, Mr Witness, you would agree with me that these two sub-locations,
21 (Redacted) sub-locations comprised (Redacted) location;
22 is that correct?

23 A. Yes, that is correct.

24 Q. And the assistant chief for (Redacted) -- excuse me, rather. And the assistant
25 chief for (Redacted) sub-location in 2007/2008 was called (Redacted), wasn't

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1 he?

2 A. Yes, it is correct. He was called (Redacted)

3 Q. And (Redacted) is Kalenjin, is he not?

4 A. Yes, he's Kalenjin.

5 Q. And the chief of (Redacted) location in 2007 was called (Redacted); is that
6 correct?

7 A. Yes, it is correct.

8 MR FAAL: And, Mr President, for the purpose of the transcript (Redacted) is spelled
9 (Redacted) --

10 PRESIDING JUDGE EBOE-OSUJI: I think it's been spelled.

11 MR FAAL: Oh, thank you very much, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: There may be a displacement between the (Redacted)
13 (Redacted)

14 MR FAAL: All right, Mr President. We will --

15 PRESIDING JUDGE EBOE-OSUJI: Just look at that and see if you need to correct it.

16 MR FAAL: In fact, Mr President, it is in the PIS we provided. It's person number H
17 and the spelling is (Redacted)

18 Q. And, Mr Witness, you would agree with me that in 2007 and 2008 (Redacted)
19 was in fact in (Redacted) division; is that correct?

20 A. Yes, it was in (Redacted) division.

21 Q. And that the headquarters for (Redacted) division was in (Redacted); is that right?

22 A. Yes, that is right.

23 Q. In essence, Mr Witness, we are saying that (Redacted) was in (Redacted) division;
24 is that right?

25 A. Yes, that is right.

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1 MR FAAL: Mr President, I now want to move on to talk about Huruma and where
2 Huruma is located. I believe this is something we can do in public, but I stand
3 guided by your Honour's decision.

4 PRESIDING JUDGE EBOE-OSUJI: Prosecution, do you see any difficulty?

5 MS ZAGO: Not for the time being, your Honour. Thank you.

6 PRESIDING JUDGE EBOE-OSUJI: We'll go to public session, if that's what you are
7 asking for?

8 MR FAAL: Yes, that's what I'm asking for.

9 PRESIDING JUDGE EBOE-OSUJI: And then we'll see how it goes.

10 MR FAAL: Much obliged.

11 PRESIDING JUDGE EBOE-OSUJI: Public session.

12 (Open session at 12.22 p.m.)

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

14 MR FAAL:

15 Q. Mr Witness, earlier on we have talked about Huruma, so we now want to
16 discuss where Huruma is located. Are we together?

17 A. Yes, we are together.

18 Q. Mr Witness, you would agree with me that Huruma by itself is a sub-location; is
19 that correct?

20 A. Yes, that is correct.

21 Q. Are you aware that the position of assistant chief for Huruma in 2007 and 2008
22 was vacant?

23 A. I don't know that.

24 Q. Very well, Mr Witness, but are you aware that at the present moment the
25 assistant chief for Huruma is a lady called Jennifer Rono?

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1 A. I do not know.

2 PRESIDING JUDGE EBOE-OSUJI: Spelling, Counsel?

3 MR FAAL: Jennifer, J-E-N-N-I-F-E-R, Rono, R-O-N-O.

4 Q. But, Mr Witness, in 2007 and indeed up to this day Huruma sub-location is part
5 of Kapyemit location, isn't it?

6 A. Yes, it is.

7 MR FAAL: Kapyemit is spelled K-A-P-Y-E-M-I-T. Kapyemit location.

8 Q. And in fact Kapyemit location is comprised of two sub-locations, namely
9 Huruma and Kapsoas; is that right?

10 A. Yes, that is right.

11 MR FAAL: And Kapsoas is spelled K-A-P-S-O-A-S. Kapsoas.

12 Q. And tell us, if you know, that the assistant chief of Kapsoas location in 2007 is
13 called Mr Philomen Birech. Do you know that?

14 A. Yes, I've been hearing that.

15 MR FAAL: And Philomen is spelled P-H-I-L-O-M-E-N, Philomen, and Birech is
16 B-I-R-E-C-H.

17 Q. And the chief of Kapyemit location in 2007 was a lady called Ms Rukia Kibet,
18 wasn't it?

19 A. Yes.

20 MR FAAL: And Rukia is spelled R-U-K-I-A and Kibet is K-I-B-E-T.

21 Q. So, Mr Witness, in essence you would agree with me that Kapyemit location
22 had two sub-locations, Huruma and Kapsoas; is that right?

23 A. That is right.

24 Q. And these two sub-locations in Kapyemit are in Turbo division; is that correct?

25 A. Yes, that is correct.

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1 MR FAAL: Turbo is spelled T-U-R-B-O.

2 Q. And the headquarters - the division headquarters - for Turbo division is in
3 Turbo Town; is that correct?

4 A. Yes, it is correct.

5 Q. So, Mr Witness, let's -- we need to get this clear. (Redacted) is
6 geographically and administratively in a completely different location from Huruma;
7 is that right?

8 A. Yes, it is right.

9 Q. I'll now move on to discuss the situation in Kenya before and during the
10 elections of 2007. You would recall, Mr Witness, that the situation before the
11 elections, the environment, it was peaceful, was it not?

12 A. It was peaceful before the elections.

13 Q. In fact, Mr Witness, on voting date, it was also peaceful, and everything was
14 normal. There were no problems, is that right?

15 A. It is not right.

16 Q. Are you saying that the voting day, everything was not normal, there were
17 problems?

18 A. There were no problems, but people had fear. Others were casting their votes
19 and moving from their residential areas towards their homelands.

20 Q. Mr Witness, do you remember giving a statement to the Prosecution?

21 A. Yes, I gave the statement.

22 Q. And when you gave this statement, did you read it yourself, or did you have it
23 read over to you?

24 A. I read it myself.

25 Q. And you were satisfied with the contents of your statement before you signed it,

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1 were you?

2 A. Yes, I was satisfied.

3 Q. And when you arrived at the seat of the Court, you also had a session with the
4 Prosecution, didn't you?

5 A. Yes, I had.

6 Q. And during this session, you were given an opportunity to again read your
7 statement and make corrections. Do you remember that?

8 A. Yes, I remember.

9 Q. You, in fact, made changes to your statement, didn't you?

10 A. No, I did not.

11 Q. You clarified certain points you did not agree with in your statement. Do you
12 recall that?

13 A. I don't remember that.

14 MR FAAL: Afford me one minute, Mr President.

15 Sorry. Sorry about that.

16 Q. Mr Witness, on 26 March 2014 you had a meeting with the Prosecution. Do
17 you recall that?

18 A. Yes, I do.

19 Q. And we are made to understand that after reviewing your statement, you made
20 certain clarifications about the content of your statement. Do you recall that?

21 A. Yes, I do.

22 MR FAAL: And, Mr President, the clarifications are contained in 1C of the binder,
23 tab 1C of the binder. Oh, I made a mistake, Mr President. That's my personal
24 binder. My apologies.

25 Q. And when you made --

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1 PRESIDING JUDGE EBOE-OSUJI: But do we have it anywhere?

2 MR FAAL: I can give the ERN number, Mr President. It is KEN-OTP-0126-0191,
3 and the witness made about 14 or 15 corrections or clarifications in his statement.

4 Q. So, Mr Witness --

5 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, is it in any of our bundles?

6 MR FAAL: It --

7 MS ZAGO: It is not in the Prosecution binder, but I have a spare copy which is
8 marked that I'm happy to assist.

9 PRESIDING JUDGE EBOE-OSUJI: Is it also possible to upload it so we don't use
10 your marked copy?

11 MS ZAGO: I believe it is, your Honour, but I rely on the expertise of the court officer.
12 Thank you.

13 THE COURT OFFICER: If the document is not current in Ringtail it can be uploaded,
14 but after the session when the Prosecution provides with us the electronic copy.
15 Thank you. Yes, we can use the other one.

16 MR FAAL: We can provide a copy or two copies to your Honours.
17 Court usher, please could you help?

18 PRESIDING JUDGE EBOE-OSUJI: Two copies? Perhaps you should give one to
19 the witness and then --

20 MR FAAL: Yes. Mr President, my apologies for speaking while you're talking.
21 We do not intend to go into the content of the clarifications. All we wanted to make
22 sure of is that the witness has indeed looked at his statement and made changes to
23 things that he wished to clarify or things he wished to amend in his statement.
24 That's the purpose really, not to go into the content of the changes.

25 PRESIDING JUDGE EBOE-OSUJI: I see. All right. So at this point we have no

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1 further use for the clarification notes?

2 MR FAAL: Indeed, considering that the witness has agreed that he indeed looked at
3 his statement and made changes.

4 PRESIDING JUDGE EBOE-OSUJI: And made clarifications?

5 MR FAAL: And some changes, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: All right. We will proceed and see.

7 MR FAAL: Thank you, Mr President.

8 Q. So, Mr Witness, in fact, in reality, you were given the opportunity to look at
9 your statement and make some changes; that's right?

10 A. Yes.

11 Q. And let me take you to your statement. It is -- it is KEN-OTP-0088-0554,
12 it is contained in tab 19 of the bundle and perhaps I should provide a copy for the
13 witness so that he can take a look at it.

14 Court usher, would you be helpful? Thank you.

15 Mr Witness, do you recognise that document?

16 A. Yes, I do.

17 Q. Would you confirm to the Court that it is the statement you gave to the
18 Prosecution?

19 A. Yes, it is the statement I gave to the Prosecution.

20 Q. And, in fact, your initial appears on all the pages and you signalled -- you
21 signed rather, excuse me, and you appended your signature to the document; is that
22 right?

23 A. Yes, that is right.

24 Q. And this is the statement you gave. You're satisfied with it?

25 A. Yes, I'm satisfied.

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1 Q. Let me take you to paragraph 19 of the statement. It is contained in

2 KEN-OTP-0088-0057. Have you found that paragraph 19?

3 A. Yes, I have.

4 Q. Would you kindly read it to the Court?

5 A. "I voted on the day of the election. I do not remember the exact date, but I
6 think it was around the 24 to 27 December 2007. Everything was normal and there
7 was no problems."

8 Q. Thank you very much, Mr Witness. You may put it aside. You may put it
9 away. So, Mr Witness, when you spoke to the Prosecution, you told them that
10 everything was normal. There were no problems. That's what you told them,
11 correct?

12 A. Yes, it is correct.

13 Q. Thank you very much, Mr Witness. So during that time there was a general
14 expectation that ODM would win; is that correct?

15 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, are you -- what do you
16 make of your use of paragraph 19 to the witness? Do you want him to clarify
17 something?

18 MR FAAL: I am content with the answer given, Mr President, because the witness
19 had initially said that the opposite was true.

20 PRESIDING JUDGE EBOE-OSUJI: All right.

21 Witness, now you've seen this document and what the counsel read to you, saying
22 everything was normal and there were no problems. The point is you had also
23 testified a moment ago in terms of the transcript time, you say that in answer to the
24 Prosecutor's question that everything -- you said everything was not normal, because
25 there was fear in the air, and people were voting and packing up and leaving. How

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1 do you reconcile the two?

2 THE WITNESS: What I mean by saying that everything was normal, there were no
3 burning of houses. Anybody can fear anything and move away. So people were
4 moving because they're fearing something. That is normal for people, when they
5 fear something, they can move.

6 PRESIDING JUDGE EBOE-OSUJI: So what you're saying is when you say
7 everything was normal, you meant in terms of actual violence?

8 THE WITNESS: Yes, actual violence, there was nothing.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 Move on, Mr Faal.

11 MR FAAL:

12 Q. Mr Witness, there was a general expectation after voting that ODM would win;
13 is that right?

14 A. I do not know that.

15 Q. Prior to the election, there was talk that PNU led by former President Kibaki
16 was planning to rig the election; is that right?

17 A. I do not know about that.

18 Q. Mr Witness, you watch the news on television, don't you?

19 A. I sometimes do, not always.

20 Q. Do you also read the newspapers?

21 A. I do read them when I have money to buy. If I don't have money, I don't read
22 and I don't buy.

23 Q. Have you heard that just a few days before the elections there were rumours
24 that administration officers, that is administration police officers were being used by
25 the Kibaki government to rig the elections? Did you hear that?

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1 A. I did not.

2 Q. Mr Witness, did you hear that in fact in Suba district, administration police
3 officers were attacked and killed because they were suspected of carrying fake ballot
4 papers? Are you aware of that?

5 A. That information never reached me. I'm not aware.

6 Q. You are telling this Court that you never heard that there were suggestions or
7 allegations that the Kibaki government was planning on stealing the vote?

8 A. I have no information concerning that.

9 Q. But have you heard the rumour?

10 A. No, I did not hear.

11 Q. Are you aware, Mr Witness? I mean, you said you watched the tallying of the
12 results. Do you remember saying that?

13 A. I remember saying that when I was in my house with my family and some
14 friends we observed parts and then I left that it -- at that.

15 Q. And are you aware that in the initial days of the tallying Honourable Raila
16 Odinga was leading by about a million votes? Do you remember that?

17 A. I don't remember that.

18 Q. Do you know that on 29 December 2007 the results showed that Raila Odinga
19 was leading by about 300,000 votes? Did you see that?

20 A. I don't remember seeing that.

21 Q. Mr Witness, are you aware of a sense of anxiety amongst the people that the
22 delayed announcement of the results signalled a desire to steal the vote? Are you
23 aware of that?

24 A. I'm not aware of that.

25 Q. But you are aware that the delay in the announcement of the results caused a lot

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1 of tension?

2 A. Yes, I do.

3 Q. And also the drama that was unfolding at the KICC further heightened this
4 tension?

5 A. I did not observe the happenings at KICC.

6 Q. Which -- which channel were you watching, Mr Witness?

7 A. It may be it was taking place when I was not at home. I was outside.

8 Q. Did you see Mr Kivuitu, K-I-V-U-I-T-U? Is that -- I hope that's the correct
9 spelling. Mr Kivuitu, the then chairman of the IEBC, of the electoral commission at
10 the time, did you see him on television addressing the nation about the results?

11 A. Yes, I saw him.

12 Q. And did you see him talking about people cooking up results?

13 A. He talked of so many things, but my interest was in conclusion, who won the
14 election, just that.

15 Q. Did you hear him talk about cooking up results?

16 A. I did not listen to that.

17 MR FAAL: Okay, Mr Witness.

18 With your Honours' permission, I would wish to play a short video clip for the
19 witness and ask him whether he had seen that particular -- that particular broadcast
20 of events that were happening at the KICC. Mr President, this video was played for
21 other witnesses, but considering that this witness is saying that he did not see or hear
22 Kivuitu talk about cooking up results, I would just wish to play it for him to give him
23 the opportunity to again reconsider his answer.

24 PRESIDING JUDGE EBOE-OSUJI: It is something that needs to be taken with
25 extreme caution because, if the witness said he did not see or hear something, how

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1 much you want to feed him information is not just for your own side of the case, but
2 we also want to run this proceeding. I will trust that we're getting somewhere with
3 this. I'll leave it at that for now.

4 MR FAAL: Much obliged. Much obliged.

5 PRESIDING JUDGE EBOE-OSUJI: Let us watch the material.

6 MR FAAL: May I ask that this video be played? It is KEN-D09-0019-0003. It's a
7 document that's been MFI'd before and it's MFI-D-D09-00050. And the transcript is
8 contained in -- excuse me, Mr President. It's contained -- the time stamp is 0108 to
9 0136. Kindly play the video.

10 (Viewing of the video excerpt KEN-D09-0019-0003)

11 MR FAAL:

12 Q. Did you -- do you now recall ever seeing this particular clip aired on television?

13 A. I did not see it.

14 Q. Would you say that it reminds -- that the scenes contained in that clip remind
15 you of what you saw, or similar events you saw, on television during that time?

16 A. Events which interested me was not this conferencing. It was just after the
17 figures to know who was leading and who was following.

18 Q. Mr Witness, where were the figures you were interested in announced?

19 A. Some were announced through the radio, others on television.

20 Q. But you were following events on television, were you not?

21 A. Sometimes, not always. Mostly I relied on the radio, which I had put besides
22 my bed to listen.

23 Q. Mr Witness, are you avoiding to say that you had seen similar events as the one
24 depicted on that video?

25 A. Elsewhere, or on this one?

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1 Q. When you were watching television at home with people and your family, did
2 you see events similar to the ones depicted in this video?

3 A. Yes, I may have seen.

4 Q. Well, and in this video do you recognise Mr Kivuitu?

5 A. Yes, I recognise him.

6 Q. And do you agree that on that clip you heard him talk about cooking up results?

7 A. Yes, I heard him.

8 Q. Thank you very much. And, Mr Witness, you would agree with me that even
9 during this time international observers were also talking about rigging of the
10 elections by PNU? Do you remember that?

11 A. I don't remember.

12 Q. Mr Witness, are you telling this Court that throughout this period, when results
13 were delayed for a number of days, you never heard anyone talk about that PNU was
14 stealing the vote?

15 PRESIDING JUDGE EBOE-OSUJI: That is argumentative now. You need to move
16 on.

17 MR FAAL: May I rephrase, Mr President?

18 Q. Did you hear, or did you not, that PNU was planning or was actually rigging
19 the vote between the dates 20 December -- 27 December to 30 December? You did
20 not hear that?

21 A. I did not hear it.

22 Q. Thank you, Mr Witness. Do you recall that there was a time at around 30
23 December when they actually put a blackout on live TV broadcast? Do you
24 remember that?

25 A. I don't remember because I was not watching the TV.

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1 Q. Mr Witness, you just told the Court earlier that you were watching TV at your
2 home with other people. Do you remember that?

3 A. I remember that, and I said I watched it for a while and then left the people
4 watching and I went outside.

5 Q. So you were not aware at all that there was a blackout on live TV broadcast?

6 A. I'm not aware. The blackout might have come about when I was outside.

7 PRESIDING JUDGE EBOE-OSUJI: Counsel, perhaps you can explain what you
8 mean by blackout.

9 MR FAAL:

10 Q. There was a time, Mr Witness, when all television networks were not allowed to
11 broadcast anything. It was only KBC that was broadcasting. Are you aware of
12 that?

13 A. I'm not aware.

14 Q. Where were you, Mr Witness, when the results - presidential election
15 results - were announced?

16 A. I was in my house.

17 Q. And through which medium did you come to know the results?

18 A. Through the radio.

19 Q. What time of the day was this?

20 A. I don't remember the exact time, but it was sometimes in the evening.

21 Q. And did you see the swearing-in ceremony on television?

22 A. I did not watch it.

23 Q. Do you know when Kibaki was sworn in as president?

24 A. I don't remember exactly when. It may be ways 30 or 31 December.

25 Q. On -- he was sworn in on 30 December. Do you recall now?

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1 A. Yeah, correct. I recall.

2 Q. And do you recall that he was sworn in as president a few hours after he was
3 announced as winner?

4 A. I don't remember that. I only remember hearing that he has won the election,
5 just that.

6 Q. And of course, Mr Witness, soon after that you heard people say that Kibaki had
7 stolen the vote, did you not?

8 A. I heard people say so before the elections were announced (Redacted)
9 (Redacted) - just said Kibaki was
10 stealing the votes. (Redacted)

11 Q. So you in fact heard before the results were announced that the votes were
12 being stolen? Is that your testimony now?

13 A. The testimony is I heard it from (Redacted). Not from people, not from
14 radio, not from TV. (Redacted)

15 Q. Thank you, Mr Witness. And you would agree that the results took a number
16 of people by surprise, would you not?

17 A. I would not.

18 MR FAAL: Mr President, perhaps we could leave it here for now and then we'll
19 proceed after lunch? Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: We will. You'll be wrapping up by the end of
21 today.

22 And we will --

23 MR FAAL: If I must, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Yes, you do.

25 We will be rising for lunch. Witness, we will come back at 2.30 after the lunch break.

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- 1 THE WITNESS: Yes, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: We will go into closed session so that the witness
- 3 may be ushered out of the courtroom.
- 4 (Closed session at 12.58 p.m.) * Reclassified as Open session
- 5 THE COURT OFFICER: We're in closed session, your Honours.
- 6 (The witness stands down)
- 7 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 8 THE COURT OFFICER: All rise.
- 9 (Recess taken at 12.59 p.m.)
- 10 (Upon resuming in open session at 2.35 p.m.)
- 11 THE COURT USHER: All rise.
- 12 Please be seated.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 14 Witness, welcome back.
- 15 Mr Faal.
- 16 All right. Prosecutor.
- 17 MS ZAGO: I'm sorry to interrupt, Mr President. I just wanted for the record to
- 18 reflect that Ms Goh, our case manager, had to step out because she felt unwell and is
- 19 replaced now by Meder Begaliev. Thank you.
- 20 PRESIDING JUDGE EBOE-OSUJI: Noted. Please proceed.
- 21 MR FAAL:
- 22 Q. Good afternoon, Mr Witness.
- 23 A. Good afternoon.
- 24 Q. Welcome back.
- 25 A. Thank you.

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1 Q. And just to remind you that maintain the pause after my question so that we do
2 not overlap in speech. Are we together?

3 A. We are together. I will do that.

4 Q. Thank you very much, Mr Witness.

5 Before the lunch break, we were talking about the eruption of the violence. And,
6 Mr Witness, you would agree with me that ODM supporters were angry at the results
7 that were announced; is that right?

8 A. I'm not sure.

9 Q. But you heard at least one person say that the results were stolen; is that right?

10 A. Yes, I heard (Redacted) say that the results were stolen.

11 Q. At that time there were lots of rumours going around; is that right?

12 A. I'm not aware.

13 Q. Now, did you hear rumours to the effect that Mungikis were coming to attack
14 ODM supporters?

15 A. I did not.

16 Q. Did you hear also that ODM leaders, for instance, Honourable William Ruto
17 and Honourable Raila Odinga were arrested in Nairobi?

18 A. I did not hear that.

19 Q. Mr Witness, in location 1 there were other ethnic communities that lived there,
20 for instance Luhyas, Luos and Tesos?

21 A. I don't know of any Tesos living there. I only know about Luhyas and Luos
22 and Turkanas.

23 Q. Thank you very much, Mr Witness.

24 After the results were announced, the Kikuyus being the majority in that area, they
25 celebrated the results, didn't they?

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1 A. I did not see them celebrate.

2 Q. It's your suggestion that in your location you did not see any Kikuyus celebrate
3 the outcome of the election?

4 A. I would not refer to the location. I would refer to my location number 1 where
5 I stay. I did not see anybody celebrate.

6 Q. Mr Witness, are you aware that some Luhyas and Luos who lived in location 1
7 were in fact threatened by the Kikuyu majority forcing them to leave?

8 A. No, they were not threatened.

9 Q. Are you aware that some Luhyas and Luos had to leave that location?

10 A. Not only the Luhyas and the Luos, even some Kikuyus left of their own free will
11 through fear.

12 Q. Are you aware of any Luhyas and Luos who were compelled to leave?

13 A. No.

14 Q. But are you aware that in other places, for instance, in Huruma, Pilot
15 specifically, Luos and Luhyas were forced to leave by Kikuyus?

16 A. I'm not aware because I live in location number 1, while Huruma is far from
17 where I live.

18 Q. Thank you very much, Mr Witness, for that. You said that Kikuyus were
19 defending themselves during that violence; is that right?

20 A. Yes.

21 Q. Are you aware of any locations or instances where the Kikuyus in fact attacked
22 their neighbours?

23 A. There is no incident where the Kikuyus attacked their neighbours. They only
24 defended their property.

25 Q. Are you aware that in Langas, Kikuyus attacked the Luos, and a number of

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1 them were beheaded and their heads put on sticks and displayed along the streets?

2 A. I'm not aware. I live far from Langas.

3 Q. Are you also aware that in Munyaka, Kikuyus attacked their Kalenjin
4 neighbours and burned their houses?

5 A. I'm not aware.

6 Q. Are you aware that in Huruma, Kikuyus attacked Luos and Luhyas and forcibly
7 expelled them to Kipkenyo?

8 A. I am not aware.

9 Q. Are you aware that in Nakuru and in Naivasha other ethnic groups such as the
10 Luos were also attacked by Kikuyus?

11 A. I heard about that.

12 Q. Thank you very much, Mr Witness. When you --

13 Perhaps on this matter, Mr President, with your leave I would wish to go into private
14 session for about five minutes.

15 PRESIDING JUDGE EBOE-OSUJI: Private session.

16 (Private session at 2.43 p.m.) * Reclassified as Open session

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

18 MR FAAL:

19 Q. Mr Witness, we are now in private session, so you feel free please to mention
20 the names of the individuals concerned that I'm going to raise.

21 A. Yes.

22 Q. You testified that on the night the results were announced, (Redacted)
23 (Redacted) made the nduru to signal arsonists to start burning houses. Do you
24 remember that?

25 A. Yes, I do.

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1 Q. Are you familiar with (Redacted)?

2 A. I know some of them, although not all.

3 Q. Do you know the person who made the nduru?

4 A. I was later told by the neighbours, but I don't remember their name.

5 Q. So you did not have any firsthand knowledge of the fact that this particular
6 individual made the nduru; is that right?

7 A. I was told that she's the one who made the nduru by those who live near that
8 home.

9 Q. Are you aware that on (Redacted) was
10 (Redacted)?

11 A. I'm not aware.

12 Q. Are you also aware that on that night, (Redacted) had to
13 leave their home (Redacted)? Are you aware of that?

14 A. I'm not aware of that.

15 Q. Are you aware that on that night, (Redacted)
16 (Redacted)?

17 A. I'm not aware of that.

18 Q. Are you aware, Mr Witness, that in fact (Redacted)
19 (Redacted) because (Redacted) was
20 burned down; are you aware of that?

21 A. I'm not aware of that.

22 Q. Thank you, Mr Witness. Earlier on you talked about a Kalenjin who was
23 killed.

24 Perhaps on this I can move into public session, and please do not mention the location
25 where this event occurred.

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1 Public session, if you may, Mr President?

2 PRESIDING JUDGE EBOE-OSUJI: Public session.

3 (Open session at 2.46 p.m.)

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

5 MR FAAL:

6 Q. Mr Witness, earlier on you talked about a Kalenjin who was killed at location C
7 on the Defence PIS, location C. Do you remember that? It should be on the
8 Defence PIS.

9 A. Location C, yes, I can see that.

10 Q. You can see that?

11 A. Yes.

12 Q. Thank you very much. Do you remember that event?

13 A. Yes, I do.

14 Q. You said you were present, were you not?

15 A. I was present.

16 Q. And you told the Court that this person was killed by stoning; is that right?

17 A. Yes, it is right.

18 Q. We say that the person who was killed in that location is person D, person D,
19 and he was a -- perhaps I should hold on the person's profession until we go into
20 private session. But we say that the person who was killed on that occasion is
21 person D. Do you by any chance know this name?

22 A. I don't know the names.

23 Q. Mr Witness, we have enquired about this killing, and if the records reflect that
24 this person was killed by sharp cuts and not -- does not -- excuse me. We have
25 evidence that this person was killed by sharp cuts. What do you say to that?

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1 A. What I saw was stone throwing to the person. I did not see the pangas.

2 Q. In fact, what do you say to the suggestion that this person was in fact shot at the
3 back before he was killed by panga -- panga cuts?

4 A. That is not true.

5 Q. In fact, Mr Witness, what is not true is that the Kikuyus were armed only with
6 stones. The Kikuyus also had pangas.

7 A. I did not see any in location 1 with panga.

8 Q. In fact, not only did they have pangas, two people in location 1 also had G3
9 rifles. What do you say to that?

10 A. I'm not aware of that.

11 Q. Are you aware of the Mungiki, Mr Witness?

12 A. I'm not aware of Mungiki.

13 Q. You want to tell this Court that you do not know or you've never heard of the
14 organization called Mungiki?

15 PRESIDING JUDGE EBOE-OSUJI: Those are two different questions.

16 MR FAAL: I will rephrase, Mr President.

17 Q. Have you ever heard of the organisation called the Mungiki?

18 A. Yes, I have.

19 Q. You know it's a Kikuyu organisation, it's a Kikuyu militia group, don't you?

20 A. I've been hearing that.

21 Q. And in fact they were in your location, they were in location number 1 on 31
22 December and were fighting alongside the Kikuyus.

23 A. I did not see them.

24 Q. In fact, the Kikuyus had guns, and it was said that these guns were stored at
25 Nyathiru Hotel. Did you hear that?

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1 A. I did not hear that.

2 MR FAAL: Thank you, Mr Witness.

3 Mr President, on this issue I would like to go to private session.

4 PRESIDING JUDGE EBOE-OSUJI: For how long? I would like counsel when they
5 request for private session to indicate how long they will stay so I don't have to keep
6 asking for that. The reason for that is that the members of the public don't want to
7 say they are wondering when we are going to emerge. So if they give them an idea,
8 then they will know what's going on.

9 MR FAAL: Okay. Thank you, Mr President, for that guidance. I would be no
10 more than five minutes in private session and I would conclude hopefully in the next
11 15 minutes.

12 PRESIDING JUDGE EBOE-OSUJI: Good news. We will go into private session.

13 (Private session at 2.52 p.m.) * Reclassified as Open session

14 MR FAAL: Mr Witness, you --

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

16 MR FAAL: Yes. Perhaps for the record, Mr President, let me spell Nyathiru.

17 N-Y-A-T-H-I-R-U.

18 Q. Mr Witness, you talked about (Redacted)

19 (Redacted) Do you remember that?

20 A. Yes, I remember that.

21 Q. And you told this Court that Kalenjin warriors were being (Redacted); do
22 you remember that?

23 A. Yes, I said that.

24 Q. Can you help the Court understand where were you when you saw these
25 Kalenjin youths or warriors being (Redacted)?

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- 1 A. I was at location number 1. That is at (Redacted)
- 2 Q. But being at location number 1, you would be (Redacted) wouldn't you?
- 3 A. Yes, I would be (Redacted)
- 4 Q. And where (Redacted) would you place (Redacted) home? Would it be on the
- 5 (Redacted)?
- 6 A. Between the (Redacted)
- 7 Q. Mr Witness, if you were showed a photograph, would -- of (Redacted) residence,
- 8 you would be able to tell us exactly where you're talking about.
- 9 Perhaps could you kindly put up the screen KEN-D09-0032-0015, please?
- 10 PRESIDING JUDGE EBOE-OSUJI: Tab? Do we have it in tab in the bundle?
- 11 MR FAAL: Yes, Mr President. Tab 18.
- 12 THE COURT OFFICER: Can you please confirm whether this document is
- 13 confidential or not?
- 14 MR FAAL: Yes, and we are in private session I suppose.
- 15 Q. Yes, Mr Witness, you have seen a photograph on the screen. Do you recognise
- 16 this place?
- 17 A. Yes, I do.
- 18 Q. And where is this place?
- 19 A. This is (Redacted)
- 20 (Redacted)
- 21 Q. Okay. So from this picture are you able to tell us where (Redacted) lived,
- 22 (Redacted) lived?
- 23 A. The (Redacted) lives here in these houses.
- 24 Q. (Redacted)
- 25 A. (Redacted)

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1 Q. Is that (Redacted) obvious from this photograph?

2 A. Yes, from where you can see (Redacted) you go beyond. (Redacted)

3 Q. And the location of this particular house you are seeing is also (Redacted); is that
4 right?

5 A. Yes, it is right.

6 Q. And in being in (Redacted)

7 (Redacted)?

8 A. Yes, I would be (Redacted).

9 Q. But you would agree with me that being in (Redacted)

10 (Redacted) it's not possible at all to see (Redacted)

11 (Redacted)?

12 A. Yes, and it is not possible to see (Redacted) but

13 what I was talking about is this house. This is where people were (Redacted)

14 (Redacted)

15 Q. But you would agree with me that (Redacted) that lives here is in fact a

16 Kikuyu, wouldn't you?

17 A. You are right. (Redacted) a Kikuyu.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. And in fact, Mr Witness, a lot of Luhyas and Luos who were forced by the

22 Kikuyus to leave (Redacted) went to seek refuge at (Redacted) home. What do

23 you say to that?

24 PRESIDING JUDGE EBOE-OSUJI: Do not answer the question. You need to

25 rephrase. You spliced in too many propositions, including one that the witness

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1 specifically disputed.

2 MR FAAL: Thank you very much, Mr President, for the guidance.

3 Q. Are you aware, Mr Witness, that Luos and Luhyas went to seek refuge at
4 (Redacted) home? Tell the Court if you are not aware.

5 A. I'm not aware.

6 Q. And, Mr Witness, could you have been mistaken to see people gathered at
7 (Redacted) house; people who were there to seek refuge and you mistake them for
8 warriors? Is that possible?

9 A. It is not possible. I'm sure those people were (Redacted) from there
10 because, besides me seeing people gathered there, there are also people who lived
11 down these houses who are residents of (Redacted). These people
12 wanted to find out who these people are; those people who were (Redacted) there. I got
13 the information that those people (Redacted) there are the Kalenjin warriors. They are
14 not the people you are talking about as refugees. There were no refugees there.

15 Q. Did you in fact see them eating there with your own eyes?

16 A. I have said I saw from far. (Redacted)
17 (Redacted) where the houses are situated, and they confirmed to me that the people
18 were (Redacted) from that house.

19 Q. But you did not see them (Redacted) from that house, did you?

20 A. I did not go there to see, but I could see from far many people gathered there.
21 After torching the houses, they went there (Redacted). They went there. They did not
22 go elsewhere. After burning, they went back to these houses.

23 Q. But you did not see anybody (Redacted)?

24 PRESIDING JUDGE EBOE-OSUJI: Pauses, both sides.

25 MR FAAL: Thank you very much.

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1 PRESIDING JUDGE EBOE-OSUJI: Both counsel and the witness, we need to observe
2 the pauses.

3 THE WITNESS: Okay.

4 MR FAAL: Thank you very much, Mr President.

5 Q. You did not see any Kalenjin warrior (Redacted) at (Redacted) house?

6 A. I have said I saw it when I was far and I had to tell those who live nearby to go
7 and confirm what was happening, because they did not (Redacted) for one day. I saw them
8 there for at least two days. I saw them there two days.

9 Q. Mr Witness, earlier on, page 83 of the transcript and line 16, you said, "I did
10 not go there to see, but I see from ..." -- "... I see from far many people gathered there.
11 After torching the houses, they ran there," so obviously you did not see anybody
12 (Redacted) there?

13 A. Do I need to repeat that? I saw it when I was far and (Redacted)
14 (Redacted) what these people
15 were doing at (Redacted) house and they said that they were (Redacted), people living
16 in that village.

17 Q. Mr Witness, I put it to you that (Redacted) in fact helped a lot of Kikuyus who
18 were living in that area and had no hand in the attack that was going on at the time?

19 A. I don't know of that.

20 MR FAAL: Thank you, Mr Witness.

21 We could now go into -- we can now go into public session, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Public session.

23 (Open session at 3.03 p.m.)

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

25 MR FAAL:

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1 Q. Mr Witness, you talked about burning of houses earlier and you mentioned that
2 a particular number of Kikuyu houses were burned. Do you remember that?

3 A. Yes, I do.

4 Q. Do you know that Kalenjin houses, Luhya houses and Luo houses were also
5 burned around the country?

6 A. Yes, I do.

7 Q. In fact, Mr Witness, people from all ethnic groups suffered as a result of the
8 violence; is that right?

9 A. The majority who suffered were the Kikuyus. This is according to where I live.
10 I cannot know about the whole country.

11 Q. In fact where you live only one Kikuyu died; is that right?

12 A. Where I live only one Kikuyu died. I don't know how many died at Huruma
13 and other areas.

14 Q. And also a Kalenjin died there; is that right?

15 A. Yes.

16 Q. And this Kalenjin was going about his private business when he was attacked
17 by Kikuyus; is that not correct?

18 A. It is not right.

19 Q. Mr Witness, are you trying to diminish Kikuyu involvement and Kikuyu role in
20 this violence?

21 A. I am not trying to.

22 Q. And, Mr Witness, when you went to Eldoret police station you said the majority
23 there were Kikuyus. Do you remember that?

24 A. Yes, I said that.

25 Q. There were people from other ethnic groups at the police stations, were there

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1 not?

2 A. I don't remember of any.

3 PRESIDING JUDGE EBOE-OSUJI: Pause, Witness.

4 MR FAAL:

5 Q. Mr Witness, earlier on you said the majority of the people at the police station
6 were Kikuyus. Do you remember saying that?

7 A. Yes, I do remember.

8 Q. Is it your testimony now that you do not remember any non-Kikuyu being at
9 the police station?

10 A. I could not know every tribe at the police station. I would rather say the
11 majority of those people I saw were not other tribes, but Kikuyus.

12 Q. Good. And in fact at the showground there were also people from other tribes,
13 were there not?

14 A. A negligible number of them were there.

15 Q. But there were people from other tribes; is that right?

16 A. Yes.

17 Q. Before getting to the police station you went through some roadblocks, didn't
18 you?

19 A. Yes, I did.

20 Q. And you talked about a particular roadblock which had a signboard reading
21 "ODM zone". Do you remember that?

22 A. I remember that, but it was not a signpost. It was written on the road, the
23 tarmac.

24 Q. Thank you for that clarification. And this signpost was manned by youths
25 who were armed with crude weapons; is that right?

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1 A. Yes, that is right.

2 Q. And these youths were from different ethnic groups; is that right?

3 A. Yes, that is right.

4 Q. There were Kalenjins, there were Luos and there were Luhyas?

5 A. That is right.

6 Q. And from that roadblock you went on to Huruma. There was also another
7 roadblock; is that right?

8 A. That is right.

9 Q. And this roadblock was manned by Kikuyu youths; is that right?

10 A. That is right.

11 Q. And these Kikuyu youths were doing almost exactly the same thing as the other
12 youths at the other roadblock?

13 A. These ones were different in that they had not put any sign declaring that zone
14 belonging to any political party.

15 Q. The question is they were doing exactly the same thing as the others?

16 A. They were not doing exactly the same thing.

17 Q. Mr Witness, you are biased in favour of Kikuyus, aren't you?

18 A. I am not.

19 MR FAAL: This brings me to the end of this cross-examination and thank you for
20 answering my questions. Thank you, Mr Witness.

21 THE WITNESS: Thank you too.

22 MR FAAL: Before I leave, perhaps Mr President let me ask that the Defence PIS be
23 put in evidence as well as -- as well as the photograph that I had. Yes, the
24 photograph be also put in evidence as well as the video that we played.

25 PRESIDING JUDGE EBOE-OSUJI: Isn't your video already in evidence?

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1 MR FAAL: It was MFI'd. We would want it to be exhibited this time around, if
2 your Honours please.

3 MS ZAGO: Thank you, your Honour. With respect to the PIS from the Defence
4 and the picture at tab 18, the Prosecution has no objections. However, concerning
5 the video, which I understand has already been MFI'd, the Prosecution has an
6 objection to the video being given an EVD number at this stage based on the fact that
7 it was shown to the witness and the witness confirmed that he had not seen the shot
8 and that particular still from the video. Therefore, we oppose that the video be
9 EVD'd through this witness.

10 Thank you.

11 MR FAAL: Thank you, Mr President. We think that there is sufficient indicia for
12 admissibility for the video to be given an exhibit number. The witness has identified
13 Kiviutu and he has confirmed, if my understanding is right, that this was an event
14 during the announcement of the results because he's seen similar incidents. He's
15 also confirmed that Kiviutu was talking about the election results, about people
16 cooking up results, and that should be sufficient to have the video admitted into
17 evidence.

18 Thank you, Mr President.

19 (Trial Chamber confers)

20 PRESIDING JUDGE EBOE-OSUJI: The video will remain MFI.

21 MR FAAL: As your Honours please.

22 PRESIDING JUDGE EBOE-OSUJI: We will mark -- we will admit, of course, the PIS
23 and the photograph as the next in the Prosecution (sic) exhibit.

24 THE COURT OFFICER: Thank you, Mr President. The PIS will bear the following
25 number, KEN-PIS-0001-0050, and will be registered as confidential. The photograph

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- 1 KEN-D09-0032-0015 will bear the following number, EVD-T-D09-00186, and will also
2 be known as Ruto Defence exhibit number 186. This document will also be
3 registered as confidential.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 5 Witness, Mr Sang's (sic) lawyer, Mr Faal, has finished asking you questions in
6 cross-examination.
- 7 Mr Kigen-Katwa, you're up next?
- 8 MR KIGEN-KATWA: Yes, Mr President, and I do not propose to ask any questions.
- 9 PRESIDING JUDGE EBOE-OSUJI: And Mr Sang's lawyer does not have any
10 questions for you.
- 11 Mr Kigen-Katwa, thank you very much.
- 12 Prosecutor, do you have re-examination?
- 13 MS ZAGO: We do not, Mr President. Thank you.
- 14 PRESIDING JUDGE EBOE-OSUJI: With that we come to the end of this witness's
15 testimony.
- 16 Witness, we thank you very much for coming. You've answered questions in a
17 succinct and straightforward manner, and we appreciate your assistance in that
18 regard.
- 19 THE WITNESS: Thank you, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: The Chamber will of course weigh the value at
21 the right time. Thank you.
- 22 THE WITNESS: Thank you, your Honour.
- 23 PRESIDING JUDGE EBOE-OSUJI: And safe travels back.
- 24 THE WITNESS: Thank you, your Honour.
- 25 PRESIDING JUDGE EBOE-OSUJI: The blinds will come down and the witness will

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1 be escorted from the courtroom.

2 Let me revise that, court officer, before we do that so that -- Witness, no more

3 questions will be asked of you, but if you can remain there for now and listen perhaps

4 to arguments of lawyers if there are any.

5 Mr Steynberg, where are we next?

6 MR STEYNBERG: Your Honours, the following witness as per the schedule is in

7 The Hague and available to testify this session. I am informed by the VWU,

8 however, that there are still a number of processes which they need to complete

9 before the witness will be available to testify, including the witness familiarisation,

10 the assessment -- security assessment for in-court protective measures and a

11 vulnerability assessment, which they will start -- are starting today but will need

12 tomorrow to complete. I am advised that as far as VWU are concerned, the witness

13 will only be available to commence testimony on Thursday morning.

14 I had proposed to -- that we might deal with the in-court protective measures address

15 tomorrow, but I recall from a previous -- and I'm seeing the faces of my learned

16 friend's -- I recall from a previous occasion that they were reluctant to come in

17 specifically for that purpose on a day which might be otherwise put to better use.

18 But I'm -- subject to the VWU being ready with their assessment, I'm in the Court's

19 hands as to whether you would want to use tomorrow to at least get that out of the

20 way.

21 PRESIDING JUDGE EBOE-OSUJI: Well, let's -- so what you're saying is that your

22 next witness will be up on Thursday?

23 MR STEYNBERG: That is correct, your Honours.

24 PRESIDING JUDGE EBOE-OSUJI: We will leave it at that and convene again at 9.30

25 on Thursday then.

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1 MR STEYNBERG: I'm grateful, your Honours.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Kigen-Katwa?

3 MR KIGEN-KATWA: Yes, Mr President. At the rate at which we are moving, it
4 would seem like we will finish the witnesses much earlier than -- the two witnesses
5 particularly much earlier than the time schedule for this session. We are also aware
6 that the Prosecution had indicated that they have two additional witnesses who were
7 there as backup. We were wondering what your directions may be, Mr President, as
8 to whether those other backup witnesses could be taken in this session if we finish
9 earlier than the time allocated for this period.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

11 MR STEYNBERG: Your Honours, yes, the two backup witnesses -- and I'm mindful
12 that we're in public session so I prefer not to discuss identities, but the expert witness
13 certainly, as I'm presently advised, would be available. I'm advised that with the
14 other witnesses there may be some logistical difficulties getting the witness here at
15 what will now be fairly short notice. That witness was, in fact, a backup in
16 case -- primarily in case the following witness did not appear.

17 But the expert witness should be in a position to come, and I'm in the Court's hands.
18 If that is the Court's direction, I will make the necessary arrangements.

19 MR FAAL: Mr President, while -- just before you consider your ruling on this
20 matter --

21 PRESIDING JUDGE EBOE-OSUJI: Yes, I forgot about you. Sorry.

22 MR FAAL: We would wish to indicate that perhaps if the expert is coming in this
23 session, he should not come earlier than Monday because we would have to prepare
24 for that. Thank you.

25 MR STEYNBERG: Sorry. May I seek some clarification as to which -- we have two

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1 Mondays left in the session, which Monday my learned friend is referring to.

2 MR FAAL: I mean I am expecting that the next witness would not testify -- would
3 not be on the stand beyond -- beyond this coming Monday, so in that case, I mean, we
4 should be able to start with him on Monday. But considering also the nature of the
5 testimony, the witness could even finish testifying on Friday, and there may be room
6 for the possibility to call the expert. That's why we wanted the expert to start at least
7 on Monday at the earliest, this coming Monday I mean.

8 MR STEYNBERG: Your Honours, I would -- I would be surprised if we proceeded
9 so rapidly, but I certainly did not propose that we would start with the expert's
10 evidence before next week. In fact, the Prosecution will still need some time to
11 consult with the witness, and the earliest occasion we could do that would be over
12 this weekend. I would -- and bearing in mind we still have a week and a half left,
13 and I very much doubt that this witness will take more than a few days.

14 PRESIDING JUDGE EBOE-OSUJI: So your point is that Mr Faal's concern does not
15 arise?

16 MR STEYNBERG: No, it does not arise. I would expect that we could start as late
17 as even Wednesday next week and still come to be finished this witness.

18 MR FAAL: We have no objection to the expert coming next week after Monday.

19 PRESIDING JUDGE EBOE-OSUJI: Your point being -- your concern is that as long
20 as the expert witness doesn't step in before Monday, you will be fine, is that it?

21 MR FAAL: Yes, that was my position, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa.

23 MR KIGEN-KATWA: Yes. Could I just pray that the Prosecution keep a close
24 watch on the movement of the testimony so that we do not have a wasted day like
25 tomorrow in terms of the next witness closing her testimony and then the period

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1 required to bring the next witness.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Well, let's leave it at that. I think
3 what we wanted to know is when the next witness will be testifying, and now we
4 have that information. We will leave it at that.

5 Witness, thank you again for bearing with us.

6 We will now bring the blinds down and escort the witness and then the Court will
7 rise.

8 (Closed session at 3.20 p.m.) * Reclassified as Open session

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

10 (The witness is excused)

11 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

12 THE COURT OFFICER: All rise.

13 (The hearing ends in closed session at 3.21 p.m.) Reclassified as Open session

14 RECLASSIFICATION REPORT

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