

Trial Hearing
Witness: KEN-OTP-P-0613

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 18 June 2014
10 (The hearing starts in open session at 9.37 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, call the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 And we are in open session, your Honours.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances.
22 MR STEYNBERG: Good morning, your Honours. For the Prosecution this
23 morning, Anton Steynberg and with me Lucio Garcia, Lara Renton, Regina Weiss,
24 Peter Schotsman, interpreter, and Grace Goh, case manager.
25 MR NARANTSETSEG: Good morning, Mr President, your Honours. On our side

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1 our remain -- our team remains the same. Thank you.

2 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the
3 same. Thank you.

4 MR KHAN: Mr President, your Honours, good morning. Mr Ruto, who's not
5 present is represented by David Hooper QC, Dato' Shyamala Alagendra, Ms
6 Leigh Lawrie, Ms Shalini Jayaraj, Ms Grace Sullivan and myself, Karim Khan.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will -- we are going
8 to, in a moment, address the matter of Witness 613. For that reason, we will now go
9 into private session to speak to the matter of the Prosecutor's request for protective
10 measures for Witness 613. We will go into private session now.

11 *(Private session at 9.39 a.m.) Reclassified as open session

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And when I say we
14 speak to the matter of Witness 613, the first ruling to make on the matter of protective
15 measures, and that's without prejudice to other things that will be discussed, is the

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 With that out of the way, Prosecutor, your request for protective measures.

21 MR STEYNBERG: Thank you, your Honours. My learned friend, Mr Garcia, will
22 speak to this.

23 PRESIDING JUDGE EBOE-OSUJI: Briefly, Mr Garcia.

24 MR GARCIA: Good morning, your Honours. The Prosecution has nothing to add
25 on -- on top of the submissions that were made in its filing on this matter.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you were rising?

2 MR KIGEN-KATWA: Your Honours, on our part, we do not oppose the application
3 for protective measures considering what is in the face of what the VWU and the OTP
4 say. We should be understood to be saying that we do not necessarily agree or
5 admit what he said, but we do not oppose on the face of what they have filed.

6 MS ALAGENDRA: Good morning, Mr President, your Honours.

7 Your Honour, in principle, we don't object to the protective measures sought, but
8 there are some matters which we would like to place on record with regards to this
9 witness.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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16 (Redacted)

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11 Your Honour, there is another issue concerning this witness and that is the question
12 of should she even be testifying? But that is a matter, your Honour, that we would
13 like to raise as a separate motion once you rule on this motion, your Honour, if we
14 may.

15 PRESIDING JUDGE EBOE-OSUJI: But, Ms Alagendra, what you're saying is that in
16 principle you do not oppose the application, but you just wanted to place on the
17 record the observations you've just made?

18 MS ALAGENDRA: That's correct, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR NARANTSETSEG: Thank you, Mr President, your Honours. On our side we
21 support the Prosecution's application based on the protection analysis conducted by
22 the VWU. In our respective submission the protective measures requested by the
23 Prosecution are justified, in proportion, at the same time necessary, your Honour.
24 Therefore, we support the Prosecution's application. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

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1 MR GARCIA: Your Honours, I understand that the Defence doesn't oppose the
2 Prosecution application. That's the same for the Kigen-Katwa Defence. But just on
3 the remarks that were made by my colleague, I think it -- I think my colleague should
4 not be making those type of remarks about a witness who is coming to testify.
5 Defence counsel will have the chance to cross-examine and demonstrate whatever it is
6 that they are suggesting to the Court, which is quite serious.

7 (Redacted)

8 (Redacted)

9 (Redacted)

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12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 I'll say no more on that topic.

23 PRESIDING JUDGE EBOE-OSUJI: The point being effectively that both sides
24 disagree on the reason that the witness is in a precarious security situation. We will
25 leave it at that.

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1 (The Trial Chamber confers)

2 PRESIDING JUDGE EBOE-OSUJI: I will begin the ruling in private session and then
3 go into open session to complete it.

4 While we're in private session it needs to be observed that the Chamber has heard
5 submissions from both sides and heard what Ms Alagendra put on the record, as well
6 as the Prosecutor's response to it.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 So the -- on that basis, we will now go into public session to complete the ruling.

12 (Open session at 9.48 a.m.)

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

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 The Prosecution made an application for protection of Witness 613, the next witness,
16 requesting the usual protection measures of distortion, voice, and face distortion
17 during testimony, use of pseudonym and limited, to the extent necessary, private
18 sessions during the testimony of the witness for purposes of those aspects of the
19 testimony that might reveal the identity of the witness.

20 The VWU supported that application by the Prosecution, (Redacted)

21 (Redacted). That also militates in favour of

22 granting the requested measures urge the VWU.

23 The Chamber has heard submissions from both counsel for the Defence who do not,
24 in principle, oppose the request, but they have put on record their observations on the
25 matter.

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1 For that reason, the Chamber will grant the requested measures, so the witness will
2 testify with the usual menu of in-court protection measures. That is the rule of the
3 the Chamber.

4 The blinds will now come down and the witness will be brought into the courtroom.
5 Before we do that, Ms Alagendra is on her feet.

6 You -- do you want us to hear you in public or private session?

7 MS ALAGENDRA: In private, your Honour, to be more prudent.

8 PRESIDING JUDGE EBOE-OSUJI: We will go into private session then.

9 *(Private session at 9.50 a.m.) Reclassified as open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra.

12 MS ALAGENDRA: Thank you, your Honour.

13 Your Honours, I said earlier the very real question, your Honour, is: Should this
14 witness even be testifying? (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 This witness, your Honour, has been called to provide hearsay evidence (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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13 (Redacted). But what is even more dangerous, your Honour, is that our objection is
14 not that she is going to give hearsay evidence; (Redacted)
15 (Redacted). That, your Honour, is the
16 most unreliable evidence. (Redacted)
17 (Redacted)
18 (Redacted). And on that
19 basis, your Honour, we say that this is going to cast substantial doubt on the utility of
20 this witness's evidence from the outset and it is highly prejudicial to the Defence.
21 And, your Honour, our submission is that her evidence should either be excluded in
22 total or should be limited to only matters which she has seen and heard herself
23 (Redacted). This is essentially our request,
24 your Honour.
25 (Redacted)

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20 And on the question of excluding the testimony of this witness, I -- this is the first that
21 the Prosecution hears of this. We're basically ambushed. I know that my colleague,
22 Mr Steynberg, has been in talks with Mr Khan since Monday and never did Mr Khan
23 ever indicate that there be any issue on this matter. If not, we would have prepared
24 ourselves. And we would have appreciated courtesy on that matter because we
25 often speak to Mr Khan and indicate to him what we intend to raise in court. We

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1 would appreciate the same for us. That's -- that's one point.

2 This witness will not only come and give hearsay evidence - and I know that

3 Ms Alagendra has spoken about that - the witness will also come and give vital direct

4 evidence, your Honour. So let's not -- let's not confuse matters. The witness will

5 come and most of her evidence, 75 per cent of it, I'd say, to give a percentage, will be

6 direct evidence.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 And one other matter: The fact that a witness comes and testifies as to hearsay

11 evidence, the fact that -- the fact that she will be testifying and will give a certain

12 amount of hearsay, which we believe is reliable, goes to the weight of that evidence,

13 and, obviously, the Defence will have the opportunity to contest the admissibility of

14 that.

15 I know that the Chamber has indicated that there are to be limits to hearsay evidence

16 and I'll bear that in mind when I attempt to elicit certain types of evidence from the

17 witness.

18 So those basically are my submissions, unless the Chamber would like to hear me on

19 another matter regarding this late application by the Defence.

20 MS ALAGENDRA: Your Honours, if I may, very briefly. Firstly, your Honour --

21 PRESIDING JUDGE EBOE-OSUJI: Specifically on the matter that all along there had

22 not been any indication from the Defence that the Defence would be objecting to the

23 testimony of this witness to begin with.

24 (Redacted)

25 (Redacted)

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22 (Redacted)

23 MS ALAGENDRA: Your Honour, I do apologise in advance if my learned friend
24 feels ambushed, but we took this position only recently because we received
25 (Redacted) and we had an opportunity to review it only now and this

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1 is why we raised the objection.
2 (Redacted)
3 (Redacted)
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5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 PRESIDING JUDGE EBOE-OSUJI: Are you done?
12 MS ALAGENDRA: I can stop here for now.
13 PRESIDING JUDGE EBOE-OSUJI: Yes, thanks.
14 (The Trial Chamber confers)
15 PRESIDING JUDGE EBOE-OSUJI: All right. The -- the ruling of the Chamber is
16 this: With the two things involved, in light of the divergence of views by both sides
17 on the facts, the Chamber will leave it up to the Defence, leave it up, we're not
18 directing you to move in that way, but you're free to file any formal papers on that
19 specific issue (Redacted)
20 (Redacted)
21 And then the Prosecution would respond once any such application is filed. The
22 Prosecution would respond in the usual course. That is not a matter that can be
23 sorted out right now.
24 In the meantime, the witness will take the stand and testify as scheduled. That's the
25 ruling.

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11 (Redacted). If indeed it's true, a filing may not be
12 necessary. (Redacted)
13 (Redacted)
14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you understand what Ms Alagendra
15 is saying?
16 MR GARCIA: Indeed, and --
17 PRESIDING JUDGE EBOE-OSUJI: If you -- if you disclosed the information on that
18 then they will leave the matter as it is and accept your position. What do you say?
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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13 (Redacted)
14 (Redacted)
15 PRESIDING JUDGE EBOE-OSUJI: Okay, let's leave it at this now so we move on to
16 what we need to do for today.
17 Both sides will meet and try and resolve this matter of the disclosure and whether or
18 not an application needs to be filed on this matter. So we will no longer hear about
19 it.
20 If there's a need later on, after your discussions, there's a need to revisit the matter,
21 then you can bring it back later. Thanks.
22 That's the end of that discussion for now. We will bring in the witness.
23 *(Closed session at 10.15 a.m.) Reclassified as open session
24 THE COURT OFFICER: We're in closed session, your Honours.
25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, while the witness is coming in, has

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1 the advisory -- 66(3) and 74(1) advisory been given to the witness?

2 MR GARCIA: Yes, indeed, your Honours.

3 PRESIDING JUDGE EBOE-OSUJI: Okay.

4 MR GARCIA: Both advisements have been given to the witness. Just one
5 additional matter that maybe the Chamber might want to take a look at is that when
6 we spoke -- when I spoke to the witness for the witness preparation meeting, the
7 witness spoke to us in English. She's able to speak in English from what
8 I understand, perfectly able to understand and speak. But I've received an e-mail
9 from VWU I think indicating that now maybe she'll be testifying in Swahili.

10 So maybe, I'm not sure, maybe the Chamber can confer with the witness, but maybe
11 it's best if she does speak in English, and if there are any difficulties, we can resort to
12 the interpreters.

13 (The witness enters the courtroom)

14 MS ALAGENDRA: I apologise for rising again. There is just one issue which I
15 possibly should have raised before the witness came in. But just to alert your
16 Honours that previously with the last witness, your Honours permitted us to view a
17 video of the proofing session, and what we saw, your Honour --

18 PRESIDING JUDGE EBOE-OSUJI: All right. Let's not discuss with the witness on
19 the stand this matter.

20 MS ALAGENDRA: If I can say it briefly, your Honour, is that it may be advisable
21 for the Chamber to perhaps advise the witness on Article 74(1). That's briefly the
22 submission, and the reasons, we can provide it.

23 PRESIDING JUDGE EBOE-OSUJI: The Prosecution say they've done that, so let's
24 leave it at that.

25 MS ALAGENDRA: Though, your Honour, just to say that the way it was done from
26 what we saw in the proofing video, it was not in accordance with what would have

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1 possibly been required by your Honours.

2 PRESIDING JUDGE EBOE-OSUJI: We will take the witness's oath. Go into private
3 session, private session

4 *(Private session at 10.18 a.m.) Reclassified as open session

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

6 PRESIDING JUDGE EBOE-OSUJI: We will go into public session in a moment, but
7 first of all, I want to verify something in private session.

8 WITNESS: KEN-OTP-P-0613

9 Witness, would you be able to testify in English?

10 THE WITNESS: (Interpretation) I can do that. Yes, I can do that.

11 PRESIDING JUDGE EBOE-OSUJI: Good. So we will try and conduct your
12 testimony in English, and if at any time it becomes difficult and we need the
13 assistance of interpreters, then there are Swahili interpreters who are on standby who
14 can assist at that stage, all right? Thank you.

15 Let's now go into public session so the witness may take her oath.

16 (Open session at 10.20 a.m.)

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

18 THE WITNESS: Solemnly declare that I will speak the truth, the whole truth and
19 nothing but the truth.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you, Witness. Thank you for joining us,
21 and welcome. When I welcome witnesses, I always remind them that this is their
22 courtroom, and so this is your courtroom as well. We want you to feel comfortable
23 while you are here with us trying to assist us with doing our work.

24 And in doing our work, you will have to bear with us while questions are asked of
25 you, that is how the work is done, questions from the Prosecution, who would ask

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1 you questions in examination-in-chief. After they finish, the Defence counsel will
2 ask you questions on behalf of their clients, Mr Ruto and Mr Sang. They will ask
3 you questions in cross-examination. And after that, the Prosecution may have
4 follow-up questions arising from the Defence counsel's questions of you, and we call
5 that re-examination, if the Prosecution feel that there are some questions, they may
6 also ask you after the Defence counsel are done. So, in all of that, there are lots of
7 questions, and we hope you can bear with us in answering them.
8 And in doing that, it's important that you try not to worry about if the questions that
9 the lawyers are asking you are pointless or repetitive or unfair, because part of the
10 work of the judges -- and we take that work seriously -- is to make sure that witnesses
11 who come to court are not treated unfairly through questions lawyers may ask them.
12 We also try to make sure that we don't waste our time by lawyers asking you
13 pointless questions.
14 So whenever a question is asked of you, please concentrate on the substantive answer
15 you can give to that question, unless we tell you not to answer the question.
16 Now, it is very important that you listen very carefully to the questions being asked
17 and make sure you understand each question as it is asked. And concentrate on that
18 question, understand it, and then think about your answer and give just that answer
19 and stop there.
20 There is no need for you to feel a need to add on to the answer you've given because
21 you feel you've not said enough. First think about it. If you understand the
22 question, it will be easier for you to give a succinct answer to just that question and
23 then stop and wait for the next question.
24 There is something that may happen, we hope it doesn't happen to you, and that is
25 there is something we call the pause, you will be observing it, but what also happens

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1 is, because the lawyers know that they have to observe this pause between the
2 completion of your answer before they ask you the next question, some witnesses
3 might think that the reason the lawyer hasn't asked the next question immediately is
4 because the lawyer has not got the answer he or she wants from the witness, and then
5 the witness continues to answer.
6 No. The lawyers stop for a reason, because they have to wait for about 5 seconds
7 after you complete your answer before they can ask you the next question. So please
8 keep that in mind. I will also be talking to you some more about that pause. I will
9 also want you to give it yourself.
10 But in the meantime, try not to guess at an answer. Understand the question,
11 understand what it is about and then answer it. Do not give us guesswork. If you
12 must guess, let us know that that is guesswork, but it is better for you not to guess at
13 your answer.
14 The Court has given you protection measures. That means your name is not being
15 used. You are being identified as Witness 613. Your image is not also being shown
16 to the public. People who watch you on television would only see a pixilated image.
17 It doesn't show your face. Your voice as well is not being directly broadcast to the
18 public. It is being distorted all with a view to protecting your identity from the
19 public.
20 We're also going to be going into private sessions and public session from time to
21 time. Right now we are in public session. And you know that because there is a
22 button in front of you, yes, you're looking at that set of two buttons, red and green.
23 Right now the button is lit up red. When it is red, it means we are in public session,
24 means be careful. You know, red means be cautious.
25 Green is when we are in private session. It then means it's okay, we're in private

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1 session, and then you can talk about information that may even contain your identity
2 or your name when -- but only when we are in private session. So be careful and
3 watch out for the red and green buttons. Again, red means we're in public, be
4 careful. Green, we're in private, you can relax and testify with your identity and not
5 worry about it.

6 Now, I return to the pause I talked about earlier. There are people who assist us
7 with our work, members of the team who are interpreters up there and court
8 reporters over there as well. So as you can see, they're behind sealed compartments,
9 so they cannot hear you directly. They can only hear you through the microphone.

10 So that makes it important that no two people must be speaking at the same time,
11 because if that happens, they will not be able to do their work of recording what you
12 say. So at all times only one person may speak on the microphone.

13 It then becomes important that two people do not overlap. And that's why the
14 Prosecutor will wait for you to finish your answer, and then the Prosecutor waits for
15 about 5 seconds, you count in your mind one, two, three, four, five, before asking you
16 the next question.

17 I will also require you to do the same thing, do not speak while the Prosecutor or the
18 Defence counsel are speaking. So when they are finished, try to count up to five in
19 your mind before starting, the reason is it has enough room for the interpretation to
20 finish, because there is interpretation that's going on while you are talking, to finish,
21 and then the next person can start speaking. So we call it the 5 second pause. Keep
22 that in mind, please.

23 And speak at a moderate pace when you speak. Do not speak too fast, also not too
24 slowly, but at a pace that will allow somebody who is typing what you are saying to
25 be able to do that comfortably.

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1 So with those in mind, I thank you once again, and welcome to the courtroom. And
2 from time to time I may need to remind you of some of these instructions. But for
3 now we can proceed. Thank you. Mr Garcia.

4 QUESTIONED BY MR GARCIA:

5 Q. Good morning, Witness.

6 A. Good morning.

7 MR GARCIA: Your Honours, I'd like to go in private session for 10 to 15 minutes.

8 PRESIDING JUDGE EBOE-OSUJI: Private session then.

9 *(Private session at 10.30 a.m.) Reclassified as open session

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

11 MR GARCIA:

12 Q. With the help of the court officer, can a PIS document be given to the witness,
13 please? Now, Witness, I'd like you -- this is a document you've already seen before.

14 I'd like you to look at the back page, the last page on the back. Turn it over
15 completely. Thank you. It's a page that indicates "CV personal information." Do
16 you see that page?

17 A. Yes.

18 Q. Now, I understand that you've had a chance to look over the information during
19 the preparation session, is that correct?

20 A. Yes.

21 Q. Now, from what I see here, your ethnicity is Kalenjin and basically you're
22 Nande ethnicity, is that correct?

23 A. Correct.

24 Q. The languages that you speak are English, Nande and Kiswahili, is that correct?

25 A. Yes.

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1 Q. Now, in terms of personal background, it says here that (Redacted)

2 (Redacted)

3 (Redacted), is that correct?

4 A. Correct.

5 PRESIDING JUDGE EBOE-OSUJI: Witness, the pause, remember? You need to

6 pause a little before answering. Thank you.

7 MR GARCIA:

8 Q. I'll take a pause as well, Witness, because I notice that I'm going a little fast

9 myself.

10 Now, (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. It also says that you have no affiliation with any political party at the moment,
10 and that you're a (Redacted)

11 A. Correct.

12 Q. Now, I don't propose to go through your education, but I trust that you've had a
13 chance to look at the indication, the information that's in your -- in the education part.
14 Is that information correct?

15 A. Correct.

16 Q. And in regards to your, in regards to your work experience, I just want to be
17 sure of one point, (Redacted)
18 (Redacted)
19 (Redacted), is that correct?

20 A. Correct.

21 Q. Thank you for that, Witness.

22 MR GARCIA: Your Honours, I'm going to, following the end of her testimony
23 in-chief, I'm going to ask for this, the document to be tendered into evidence. I'll not
24 do it for the moment. And we can go into, I'd also request that we go into public,
25 into public session.

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1 Q. But just, just before, I've spoken to the witness regarding the usage of this PIS,
2 and I just want to remind the witness that sometimes if we are in public session, the
3 light before you will be red, and you want to indicate some location or a person, you
4 have the locations and the persons inside this document, and you can always indicate,
5 give the number of these places as we had spoken about during the preparation
6 session. And obviously if you feel there is anything that you're ready to testify about
7 in public but -- or you have any concerns about, then always you can indicate that to
8 the Chamber, and the Chamber will take the necessary steps.

9 So I'm going to be asking, right now I'm asking the Chamber to go into public session
10 so we can give information which we believe is not identifying that you can testify
11 about.

12 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

13 (Open session at 10.38 a.m.)

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

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MR GARCIA:

17 Q. Now, Witness, just to start, I'd like to ask you some questions regarding the time
18 before the elections in Kenya in 2007. I'd like to know if you were -- if you attended
19 any rallies during that period before the elections in 2007 in Kenya, political rallies of
20 any sort?

21 A. Yes. I attended a rally. It was in Moi's Bridge, Soy constituency.

22 Q. Witness, I'd ask you just to speak a little louder.

23 I understand that you attended a rally in Moi's Bridge and the -- and just for the
24 record, page 25, line 25, it's Soy constituency, is that correct, Witness? And take a
25 couple of seconds before you do answer, because I understand that the interpreters

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1 are struggling.

2 A. Correct.

3 Q. Do you recall, Witness, approximately in which month this rally took place?

4 A. It was around November 2007.

5 Q. And if you're able to recall, Witness, do you remember if this was early in
6 November, in the middle of November, or late November 2007?

7 A. I can't remember. It was earlier November or late October, but I can't
8 remember the exactly date.

9 Q. Witness, I think I understood, I understood what you said, but I'm going to ask
10 you once again just to speak a little louder so we can all hear you quite clearly.

11 I know that you're able to speak a little louder, and that will be best for everyone.

12 Could you tell the Court what type of a rally was this? Who -- for what political
13 party exactly?

14 A. It was a PNU rally and political, it was political rally.

15 Q. Do you recall, Witness, if there were any politicians present at this rally?

16 A. Yes, there was. There was the guest of honour was Martha Karua.

17 Q. Were there any other politicians that you remember who were there on that day
18 apart from Martha Karua?

19 A. They were there, but I cannot remember all of them.

20 Q. Do you recall, Witness, how many people were present at this political rally?

21 A. I can't give the exact number, but I can approximately like 800, 500 there.

22 Q. And did anything happen during this political rally?

23 A. Yes.

24 Q. Tell us what happened.

25 A. I arrived at that place a bit later, late. I was not there when the rally was

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1 started actually. What happened, as I was entering to the rally, I managed to see
2 Kalenjin youth ODM supporters entering the ground with stones. They were
3 disrupting the rally. And I'm saying Kalenjin youths because I heard them talking in
4 Kalenjin.

5 So everything was disrupted, and everyone run away.

6 Q. Now, you say, Witness, that the ODM supporters were in the ground with
7 stones. Did anything happen with these stones?

8 A. They throw it. But I cannot say they hurt people, because even me, I was
9 running. So I didn't have the time to see and to wait to see what was happening
10 or -- because they might hit me also, so I was just running away.

11 Q. Could you tell us, Witness, approximately how many of these Kalenjin youth
12 ODM supporters were there, were disrupting the rally?

13 A. I can't -- I cannot say how much, because what made me actually to understand
14 it was a Kalenjin ODM supporters, as I was running, I heard them when they were
15 telling each other "let's pass this way" and the other one "pass this way."
16 So it was by other people, but the difference which they had, it was some stones in
17 their hands, but others didn't have.

18 Q. Now, Witness, was it unusual at that time prior to the election period for PNU
19 political rallies to be disrupted in this manner or in any other way?

20 A. No.

21 Q. I understand you say 'No.' But can you explain to us, give us more
22 information on this?

23 A. Repeat the question.

24 PRESIDING JUDGE EBOE-OSUJI: I think the witness's answer was responsive. It's
25 for you to ask her the next question with direction you want her to answer.

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1 MR GARCIA:

2 Q. Were there any other occasions, Witness, on which -- during which PNU
3 political rallies were disrupted in any which way?

4 A. No. There was one in Turbo town. And the guest of honour was our
5 president now, Honourable Uhuru Kenyatta. And as we were waiting for him to
6 attend the rally, we managed to see Kalenjin youths surrounding the ground. So we
7 feared to continue with the rally. But Uhuru Kenyatta didn't turn up on that day.

8 Q. Now I have a couple of questions, Witness. Do you remember when this
9 political rally would have taken place, in what month?

10 A. It was November, but I can't -- I'm not able to give the date. I can't recall it
11 now. It was November 2007.

12 Q. Would you able -- would you be able to tell us, Witness, whether this political
13 rally occurred before or after the rally you just mentioned before?

14 A. After the rally which I mentioned before.

15 Q. Now, you mentioned, Witness, that there were Kalenjin youth. Would you be
16 able to give us approximate number of how many of these Kalenjin youth were there
17 on that day?

18 A. As I said, I cannot give the number. The reason is Turbo town is buildings.
19 Some are coming from the other buildings and the other one are coming from
20 building, the other building, and some was facing where I was, so I cannot give the
21 number, because I was not able to see the others which were in the other end.

22 Q. Thank you for that, Witness. Without being able to give us a precise number,
23 would you be able to tell the Court whether there were more or less than a hundred
24 Kalenjin youth that came on that day to disrupt the rally?

25 A. It was approximately a hundred. But as, as I told you before, that it's hard to

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1 count in that situation, because when something like that you see it's moving like,
2 you -- you -- you fear.

3 Q. Now, Witness, can you tell the Court, what was the ethnicity of the people who
4 were attending this rally in Turbo town?

5 A. It was Kikuyus and some of the Kalenjin. There were Luos. And even others,
6 even other supporters from the other parties. It's not -- it was not only -- they
7 normally, I saw them, they used to come even if they were not PNU, it were there.

8 Q. And what was the main ethnic group that was attending this rally among all
9 these ethnic groups that you've mentioned?

10 A. Kikuyus.

11 Q. Now, you stated that the Kalenjin youth surrounded the place where the rally
12 was going on, is that correct?

13 A. Correct.

14 Q. What did you fear at that point?

15 A. I fear because I was, I was thinking they might hit us.

16 Q. Now, Witness, can you explain to the Court why you had this fear that the
17 Kalenjin youths might hit you?

18 A. (Redacted)

19 Q. And what was the problem of (Redacted) there with the Kalenjin
20 youth?

21 A. (Redacted) in our constituency.

22 Q. And when you're referring to your constituency, what constituency is that?

23 A. Eldoret North.

24 Q. Now, in that period prior to the 2007 elections, Witness, was it possible for the
25 PNU to organise political rallies in Eldoret North?

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1 A. I don't know in other part, but in Turbo division, they didn't organise another
2 one again.

3 Q. Why didn't they organise another political rally again, the PNU in Turbo
4 division?

5 A. Because the other one in Soy was disrupted, and the other one in Turbo was also
6 disrupted, so they saw no need for it.

7 Q. Now, Witness, I understand it was prior to the elections in 2007. Did you
8 yourself have the chance to attend any ODM political rallies in your region at that
9 time?

10 A. I didn't attend any. But I attend one only in Sugoi, Honourable Ruto's home.
11 That was the only one I attend.

12 Q. I understand about attending a rally at Mr Ruto's home. But before that, prior
13 to the 2007 elections, I'm speaking about political rallies in Turbo division, public
14 political rallies of the ODM, did you attend any of those?

15 A. No.

16 Q. Can you tell the Court why you didn't attend any public political rallies of the
17 ODM prior to the 2007 elections?

18 A. Because (Redacted) with the one at Moi's Bridge, and things was not good, and
19 then (Redacted) again the other one in Turbo town, and the same. So I saw that it
20 was not safe to attend.

21 Q. What was the attitude, Witness, of Kalenjin ODM supporters towards PNU
22 supporters at that time?

23 A. They were harsh.

24 Q. Can you explain that further, Witness? How were they harsh? Can you give
25 us some examples?

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1 A. For example, if you met with them or you asked them something, they start
2 shouting to you, or they can mention words like "The first stop-over will be Othaya."
3 So we managed to see that it was not safe.

4 Q. Now, Witness, I'm just trying to clarify what you said. I'm going to ask you
5 again to speak louder and more clear in the microphone that's before you, maybe just
6 advance a little.
7 I'm reading here that "shouting -- they were shouting to you or they can mention
8 words like," and understood Othaya there, O-T-H-A-Y-A. What is it that you
9 wanted to say that they were shouting to you in regards or they would shout in
10 regards to Othaya? Can you say that clearly in the microphone and a little bit louder,
11 please?

12 A. What I mean is they could shout that PNU supporters, the stop-over will be
13 Othya. Othya is in central Nyeri, and that is the home of Kibaki.

14 PRESIDING JUDGE EBOE-OSUJI: I take it, Mr Garcia, you will want corrected at
15 line 25 of page 31.

16 MR GARCIA: Yes, there are a couple of words I'd like to clear, but I'm mindful of
17 the time as well. I'm not sure --

18 PRESIDING JUDGE EBOE-OSUJI: Yes, yes.

19 MR GARCIA: -- if we should take the break before, or I can try and -- because there
20 are a couple of words, "stop-over," I think the witness can maybe explain what she
21 means by that.

22 PRESIDING JUDGE EBOE-OSUJI: For now, let's first of all say that after the word
23 "observe " or does that include "observe" all the way to the full stop there should come
24 in Othaya, is that it?

25 MR GARCIA: Indeed, the witness mentioned Othaya, and it's at lines page 32, line 9.

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1 And I think that's with "PNU supporters." And then there is another word that I've
2 not understood.

3 Q. Witness, you mentioned, "What I mean is they could shout that PNU supporters
4 stop-over," and then I imagine going to Othaya. But what did you mean by
5 "stop-over?" Is that the word you used?

6 A. Yeah. The first, the first stage will be Othaya.

7 Q. So if I understand you correctly for the Court, that for PNU supporters, the first
8 stopping stage would be Othaya, is that what you are saying?

9 A. Yes, correct.

10 Q. And Othaya is in Nyeri, is that correct?

11 A. Yes.

12 Q. All right. So Othaya is spelled O-T-H-A-Y-A, and Nyeri, Witness will correct
13 me if I am wrong, N-Y-E-R-I. Is that correct, Witness?

14 A. Not Othaya, Othya, Othya.

15 Q. Othya, and how would you spell Othya, Witness?

16 A. O -- I want to have a pen and a paper.

17 MR GARCIA: If the Court officer --

18 PRESIDING JUDGE EBOE-OSUJI: Would it be -- one second. Is it O-T-H-A-Y-A?

19 THE WITNESS: Othaya, yes, correct.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We'll leave it at that. We'll take our
21 break and come back at 11.30. Blinds down first and witness to be escorted from the
22 courtroom.

23 *(Closed session at 11.02 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: Court will rise.
- 2 THE COURT OFFICER: All rise.
- 3 (Recess taken at 11.03 a.m.)
- 4 (Upon resuming in open session at 11.36 a.m.)
- 5 THE COURT USHER: All rise.
- 6 Please be seated.
- 7 THE COURT OFFICER: We are in open session, your Honours.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Witness, welcome back. We're in open session. And, you know, there are some
- 10 people when they speak they speak so loudly that we have to turn down the volume
- 11 on our microphone, but you don't have any risk of that, so I would encourage you to
- 12 speak a little louder than you have done so far. Do you understand?
- 13 THE WITNESS: I will.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 15 Mr Garcia, please.
- 16 MR GARCIA:
- 17 Q. Now, Witness, when we left off, before the break, you were explaining to us that
- 18 it had been said to PNU supporters that the fastest or first stage would be Othaya.
- 19 Could you explain to the Court what that meant. What did that mean to you?
- 20 A. It was like (Redacted) you will go to Kibaki's home.
- 21 Q. I understand that you said "You will go to Kibaki's home"; is that correct?
- 22 A. Yes.
- 23 Q. And am I correct in saying that Othaya, is that in the Central Province?
- 24 A. Yes, it is in Nyeri.
- 25 Q. And when it was said to the PNU supporters or shouted to them that the fastest

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1 first stage would be Othaya, Central Province, how did you feel about that
2 about -- what exactly did they mean about sending people or going to Othaya? Can
3 you give us more explanations?

4 A. As -- as -- it was -- you ask a question about why I didn't attend rallies, so I was
5 informing you the reason why I didn't attend rallies. It is because ODM supporters
6 was harsh, they can throw words, like, stopover will be Othaya, and so the reason is I
7 didn't attend rallies it is because (Redacted) because of -- they might do something (Redacted).
8 So I think I was responding the question of why I didn't attend rallies.

9 PRESIDING JUDGE EBOE-OSUJI: Witness, you said that shows people who were
10 disrupting the rally had said things like the first stopover would be Othaya, and the
11 lawyer's question is did you understand that reference to mean anything when they
12 say the first stopover would be Othaya? Did that mean anything to you by saying
13 the first stopover would be Othaya?

14 THE WITNESS: Yes. Actually, by that time I saw it -- it was like threatening PNU
15 supporters.

16 PRESIDING JUDGE EBOE-OSUJI: In what way? Why would that be a threat?

17 THE WITNESS: In -- I was thinking -- in me I was thinking that maybe they were
18 doing that so that they make PNU supporters not do any rallies or to continue
19 supporting PNU.

20 PRESIDING JUDGE EBOE-OSUJI: Is there any other thing, any other manner in
21 which you could have understood that reference to Othaya to be a threat, apart from
22 what you've just told us?

23 THE WITNESS: Yes. It was a threat because at the end of -- at the end of it, the
24 PNU supporters was chased to go to Turbo police station, actually, which we did
25 name Othaya.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 Mr Garcia, you can proceed.

3 MR GARCIA:

4 Q. Now, Witness, you've said that --

5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, if you still want to explore that area,
6 that's up to you.

7 MR GARCIA: Thank you, your Honour.

8 Q. Now, Witness, just -- just one -- couple of last questions on this whole issue of
9 going back to Othaya. You said that Othaya is the -- is that the -- the -- what is the
10 importance of Othaya to Kikuyu people?

11 A. It was like -- they meant because you are supporting Kibaki, so you will be there
12 where Kibaki is.

13 Q. Okay. So we're to -- we're to understand, Witness, that Mr Kibaki is from the
14 Central Province; is that correct?

15 A. Correct.

16 Q. And now, when it was told to PNU supporters that (Redacted) would be going, the
17 first stage would be Othaya, did you understand this to mean that somebody would
18 transport (Redacted) there? Can you give us a little bit of how you -- how you understood
19 this.

20 MS ALAGENDRA: Your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Clearly leading.

22 MR GARCIA: I will -- I will rephrase the question.

23 Q. Now, Witness, how -- how is it that you understood this going to Othaya that
24 the first stage would be Othaya? How did you understand this at the time?

25 A. At that time I didn't know that it was something which is coming up. I

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1 understood it was a language of political -- politics.

2 Q. And afterwards, what did you understand?

3 A. What was saying was true, they end up in police station whereas that is Othaya.

4 Q. Okay. Witness I'm going to ask you as the Judge has indicated, just -- you're

5 able to speak -- just speak a little louder, approach yourself -- approach a little bit

6 more to the microphone. And just before the break, actually, you were

7 speaking -- you were speaking fine. Speak louder so everyone can hear you clear in

8 the Court and that will be -- that will help things out.

9 So you're saying that you understood because, from what I see that -- there

10 was -- they ended up in police -- in police station whereas that is Othaya. Are we

11 still speaking about the PNU supporters ending up in police stations?

12 A. Yes, PNU supporters was -- they went to police station Turbo and they

13 nickname it their Othaya.

14 Q. Now, just so we're clear and for the record, you say PNU supporters they went

15 to the police station, Turbo police station; is that correct?

16 A. Correct.

17 Q. And you say that the nickname is their Othaya. Is their Othaya, can you just

18 clear that up for us? What do you mean by that?

19 PRESIDING JUDGE EBOE-OSUJI: I thought she said they nicknamed it as their

20 Othaya. Is that what you said?

21 THE WITNESS: Correct.

22 MR GARCIA:

23 Q. Thank you for that clarification. Now, just so I can understand this better, is

24 this happening before or after the elections 2007?

25 A. Repeat the question.

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1 Q. The fact that the -- that PNU supporters were being told that the first or fastest
2 stage would be Othaya, was this said before or after the 2007 elections?

3 A. That was before election.

4 Q. And do you remember in which month approximately, if you're --

5 A. It was during campaign time, around October, November. It is between
6 November -- between October and November.

7 Q. Now, before I move on to another -- another subject, Witness, I just want to
8 come back with a couple of questions regarding that first rally that you attended, the
9 one in Moi's Bridge -- at Moi's Bridge in Soy constituency. Could you tell us what
10 ethnic groups were participating in that first rally at Moi's Bridge? What ethnic
11 groups were there attending the rally?

12 A. Moi's Bridge is a metropolitan, it's mixture of Luhyas, Kalenjin, Kikuyus. So
13 there were so many tribes, not only Kalenjin.

14 Q. All right. But my question is specifically more specific: The people that were
15 attending that rally at Moi's Bridge, what ethnic group did they belong to?

16 A. It was Kalenjin.

17 Q. Were there other ethnic groups that were there present attending the rally at
18 Moi's Bridge?

19 A. Okay. It was Kalenjin, Kikuyus.

20 Q. And can you tell the Court what was the main ethnic group that was there
21 attending the rally at Moi's Bridge?

22 A. It was Kikuyus.

23 Q. Thank you for those clarifications, Witness.

24 Now I'd like to change subject. I was asking you prior to the break if you had
25 attended any ODM political rallies and you mentioned that you had attended an

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1 ODM political rally at Honourable Ruto's house, Mr Ruto's house, in Sugoi; is that
2 correct?

3 A. Correct.

4 Q. Now, Witness, can you explain to the Court how you came to know about the
5 fact that there would be a rally, a political rally, at Mr Ruto's house in Sugoi? And
6 please keep in mind that you have a PIS document before you, there are person's
7 names on the second page and on the third. So if you need to refer to any of those
8 people, just refer to them by the number.

9 A. I heard from number 4 that there will -- there will be a meeting for womens at
10 Sugoi's, William Ruto's home.

11 Q. And this person that you've indicated, number 4, can you tell us from what
12 location she is? And I'd ask you to also look at your document before you and look
13 at the locations that are listed. There are eight of them. If one of those are --

14 A. She lives in location 5.

15 Q. Now, Witness, are you able to remember when this political rally would have
16 happened at Mr Ruto's house in Sugoi, the month and the year?

17 A. It was 14 November 200, but if I recall it is 14, but I am not sure of the date
18 exactly.

19 Q. All right. Now, Witness, just to be clear you said 14 November 200. What's
20 the year exactly?

21 A. 2007. Sorry.

22 Q. Thank you, Witness. Now, can you tell us, explain to us what happened at this
23 political rally at Sugoi?

24 PRESIDING JUDGE EBOE-OSUJI: Before do that, maybe this would be a convenient
25 place to ascertain the number of people who were there as you have done with the

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1 other rallies. It would also help to reassure us that there is no risk of identification.

2 MR GARCIA: Indeed, your Honour. We've -- we've already verified, but I can ask
3 the question.

4 Q. Witness, could you tell us approximately how many people attended this
5 political rally at Mr Ruto's house in Sugoi?

6 A. It was more than one thousand because it was the whole constituency. It was
7 not only Turbo. It was the whole constituency, women's meeting.

8 Q. Now, Witness, can you explain to the Court what exactly happened at the
9 political rally at Mr Ruto's house in Sugoi?

10 A. I went there in the morning. It was morning. I travel with a (Redacted)
11 When I reach at the gate, there was vehicles transporting people to Ruto's home. At
12 the gate there was a book. You register your name, location and you enter to
13 the -- to the compound. In the compound there is a small house near the gate. You
14 get snacks there, sodas, you have it outside there and then you go -- at the other part
15 of the house there were two tents, small one and a big one. So that was the place
16 we -- the rally was.

17 PRESIDING JUDGE EBOE-OSUJI: Private session for a second.

18 *(Private session at 11.54 a.m.) Reclassified as open session

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

20 PRESIDING JUDGE EBOE-OSUJI: We will delete the reference to (Redacted) in the
21 delayed broadcast.

22 We will go back to -- before we do that, Witness, the reason why I made that ruling is
23 (Redacted)

24 (Redacted) and then we don't want that sort of information to be in the public domain
25 for your own purposes. That's why.

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1 So be careful. Just listen to the question the lawyer is asking you and just try to
2 answer just that, what happened at the rally. I notice that you've now been
3 describing to us the process by which you got to the rally. I do not know if that was
4 what the lawyer wanted, but if it isn't, Lawyer, you also need to intervene so that we
5 don't have these sort of occurrences happening. We will now go back to --

6 MR GARCIA: If I may, since we are in private session, I have one -- a couple of
7 additional questions that we can deal now in private session and then I'll go back.
8 And, indeed, I'll just ask questions regarding what indeed -- what the -- the witness
9 saw there on that day and not other specific details.

10 PRESIDING JUDGE EBOE-OSUJI: So always listen to the question. And it may be
11 that you may have in mind the story you want to tell, it's normal for witnesses to have
12 in mind the story they want to tell, but it's also very important to listen to what
13 question specifically you're asked and then answer just that question. By the time
14 you are done, you will find that perhaps the story you have in mind to tell would
15 have already come out in different ways by the questions being asked of you. Thank
16 you.

17 MR GARCIA:

18 Q. Now, Witness, you indicated and in response to one of my questions that when
19 you arrived there you register your name and location. Now, just on that specific
20 point, is it you personally who wrote into a book, or a ledger, or a register your name
21 and your location where you were coming from on that day?

22 A. Yes, it was me. Everyone was writing his name there. And if someone
23 doesn't know how to write, there was a -- people there assisting them to register the
24 names and the location.

25 Q. Now, Madam Witness, I'm going to ask to go back into public session and the

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1 questions that I'm going to ask are simply on what you observed on that day. Try
2 not to give any other details that might identify you.

3 MR GARCIA: Your Honours, if we can go into public session, please.

4 PRESIDING JUDGE EBOE-OSUJI: Public session.

5 (Open session at 11.58 a.m.)

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

7 MR GARCIA:

8 Q. Now, Witness, you said that at Mr Ruto's house in Sugoi there were two tents.

9 Can you explain what those tents were for?

10 A. It was for guests. It was for guest.

11 Q. All right. Did all the guests go into the same tent or the tents divided? Were
12 there different type of people going to different tents?

13 A. It was divided. It was two tents. A small one was for Ruto and other guests,
14 and the other one was for women, but the -- that -- the main tent actually it was not
15 enough for the guests. Some were sitting outside.

16 Q. Now, you say that one of the tents was for Mr Ruto and his guests. Can you
17 explain to us who were the guests of Mr Ruto on that day?

18 A. It was local MPs, local -- local leaders.

19 Q. Now, you say local leaders --

20 A. It's like councillor, MPs, women representatives --

21 Q. And these --

22 A. -- and other guests.

23 Q. I'm sorry, continue your answer if you have to finish it.

24 A. And other guests.

25 Q. Now, in regards to these local leaders, these local MPs, can you tell us of what

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1 ethnicity they were?

2 A. Most of them were Kalenjin because it was from the constituency Eldoret North.

3 But there were some from outside the constituency also, other tribes.

4 Q. Would you be able to tell the Court, Witness, what party they supported, these
5 guests that were there, or what party they were from.

6 MS ALAGENDRA: Your Honour, perhaps before we go to that if we could find out
7 what were the other ethnicities.

8 MR GARCIA: Your Honour, I can get to that. Obviously the Defence can ask that
9 question when their turn comes. I have a variety of questions that I want to get
10 through obviously in examination-in-chief, but I can return to that in a couple of
11 minutes. I just want to get this item cleared up. If the Court desires, I can ask that
12 question obviously.

13 PRESIDING JUDGE EBOE-OSUJI: You can take it in your stride. If this is a
14 convenient time to ask it you might as well.

15 MR GARCIA: We can clear it up right now, actually.

16 Q. Witness, you said that the -- you said in response to my question as to what
17 ethnicity these leaders were and MPs, you said there were -- there were some from
18 outside the constituency also, other tribes. Can you give us more details on that?
19 What other tribes were represented there?

20 A. It was Luos, Luhyas, and there was -- I -- I can't -- because there was so many
21 people, I'm not -- I can't say that this -- because I didn't hear them talking this is this
22 tribe, but mostly which I interact with them was Luhyas and Luos and Kalenjin.

23 Q. Now, Witness, before I was interrupted I asked you the question if you would
24 be able to tell the Court what party they supported, or if they were for any -- from any
25 particular party these local leaders and these MPs that you saw there on that day.

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1 A. They were supporting ODM.

2 Q. Now, Witness, from what you remember of what occurred on that day, did
3 anyone speak during this political rally?

4 A. Yes. There was a master of ceremony. He was giving each leader -- I don't
5 know how many leaders talked actually, but they were giving a representative from
6 any location at least to say something, but the last person to speak was Honourable
7 Ruto.

8 Q. All right. You said that many leaders would have spoken first, do you
9 remember what -- what they were saying?

10 A. Yes. If I can remember, they were asking to vote for ODM candidates.

11 Q. Now these local leaders that spoke first, we understand from your testimony
12 that Mr Ruto would have spoken last, do you remember -- do you remember the
13 names of these -- of any of these people that spoke on that day?

14 A. No. I cannot remember.

15 Q. Now, you said Mr Ruto spoke last. Do you remember what he would have
16 said during that rally?

17 A. What I can remember, he ask the media people to come nearby because he
18 wanted to talk, and they release them to go so that we can continue with the rally.

19 Q. Do you remember if Mr Ruto said anything else?

20 A. I can't remember what he says, but after -- because I saw the media people there.
21 It was Citizen, NTV, but I didn't see the people who was having those -- I managed to
22 see the microphones only. It was written KTN, NTV, Kass FM, all that, but the
23 people I -- I don't know, I didn't see the faces of the people which were actually.

24 Q. All right. So I understand that you -- you saw the microphones with the -- the
25 names of the stations on them, but you're not able to tell us who was there from

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1 these -- from these stations.

2 Now, Witness, I've asked you, and I just want this to be clear on the record, without
3 knowing specifically what Mr Ruto would have said, do you remember what the
4 general sense of what he was saying to you was on that day, to the people that were
5 gathered there?

6 A. Before the media left or after?

7 Q. Before and after.

8 A. Before, he was -- it was about development in our constituency and, of course,
9 asking people to vote for ODM.

10 Q. And after the media people left?

11 A. After the media left, also, he ask people to support ODM, to vote for
12 Raila Odinga and other candidates in ODM --

13 Q. Do you recall --

14 A. -- because they were going to -- to do the developments actually in the country
15 after taking the government.

16 Q. Now, Witness, do you recall in what language Mr Ruto was expressing himself
17 when he was saying these things to the people gathered there?

18 A. The first one he used Kiswahili. The last one he used Kalenjin.

19 Q. Now, Witness, I asked you before if you recognised any of the -- or, if you'd be
20 able to give us the names of any of the people, any of the leaders that spoke on that
21 day. Now, putting aside that question, did you recognise anyone else apart from
22 Mr Ruto on that day, whether it be leader or MP amongst the people there that
23 were -- that were present at this rally?

24 A. Yes. Councillors, and I can mention the name from the location (Redacted)
25 (Redacted). The other locations I knew them. Farouk was there, Kibet. And

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1 other people I have forgotten the names.

2 Q. Now, Witness, you mentioned a Mr Farouk Kibet. Can you tell us of what
3 ethnicity this person was?

4 A. A Kalenjin.

5 Q. Can you tell us what political party this person, Mr Kibet, supported at the
6 time?

7 A. ODM.

8 Q. Do you know where this Mr Farouk Kibet came from, from what region?

9 A. From Ngenyilel.

10 MR GARCIA: I imagine that there's going to be, maybe, a problem spelling, but the
11 spelling is N-Y-E-N-Y-E-L.

12 A. Ngenyilel, yeah, it's N-G-E-N-Y-I-L-E-L.

13 Q. Thank you for that, Witness. Now, can you tell us where this place is
14 Ngenyilel, what -- what division or what location?

15 A. It is in Turbo division.

16 Q. Now, this Mr Farouk Kibet, apart from seeing him on that particular day, had
17 you ever seen him before?

18 A. Yes.

19 Q. Can you explain to the -- can you explain to the Court how you came to know
20 that this person was Farouk Kibet?

21 PRESIDING JUDGE EBOE-OSUJI: Before you answer that question, private session
22 for a brief moment.

23 *(Private session at 12.12 p.m.) Reclassified as open session

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

25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, look at lines 2 to 3. Is there any

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1 difficulty there? In fact, lines 2 to 4 of the previous page, page 37.

2 MR GARCIA: There shouldn't be any difficulty, your Honour. If need be what I'll
3 do is I'll go into private session when I do deal with this particular question, but there
4 were many leaders present at this rally so there shouldn't be any issue.

5 PRESIDING JUDGE EBOE-OSUJI: The point is the witness saying that reference to
6 (Redacted)

7 (Redacted) You see no problem?

8 MR GARCIA: It's not the -- from what I understand, (Redacted), your
9 Honour.

10 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

11 MR GARCIA: (Redacted), I don't see -- I don't see there any problem. And
12 I can deal with that in -- in a private session if need be.

13 PRESIDING JUDGE EBOE-OSUJI: We are in private session.

14 MR GARCIA: This -- this should be fine. I don't see any problem --

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MR GARCIA: -- deriving from that.

17 PRESIDING JUDGE EBOE-OSUJI: Fair enough. I just -- if there is you will be
18 looking out for that sort of thing.

19 MR GARCIA: Indeed, yes.

20 PRESIDING JUDGE EBOE-OSUJI: And you also want to ask the witness questions
21 about where people come from, Mr Farouk comes from. Again, be careful.

22 We will go into public session.

23 (Open session at 12.14 p.m.)

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

25 MR GARCIA:

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1 Q. Now, Witness, just listen very carefully to my question. I'm going to ask it
2 again, maybe be more precise even if necessary, but Mr Farouk Kibet you stated
3 you've seen him before. Can you explain what you've seen him do in the past?

4 A. He has been always working with Honourable Ruto. Wherever he has the
5 rallies, he normally -- when he's not attending, he can send Farouk to -- or, any other
6 activities in the -- in the constituency. So he was always there. Whether
7 Honourable Ruto is there or he's absent, he's there to represent him.

8 Q. And in representing him, what would he do exactly? Can you give us
9 explanation?

10 A. Like if he's a guest of honour and he's not able to attend that harambee,
11 Honourable Ruto -- Farouk can represent him, or any activity like bursaries and other
12 things.

13 Q. I'm sorry, Witness, just that the transcript hasn't -- interpreters haven't caught
14 what you said, the last thing. Mr Farouk can represent him or any activity like
15 about -- a something and other things. What exactly did you say?

16 PRESIDING JUDGE EBOE-OSUJI: She said "bursaries".

17 MR GARCIA:

18 Q. Is it bursaries, Witness?

19 A. Yes.

20 Q. All right. And just so we can be clear on this matter, Witness, would
21 this -- this -- this what you can remember about Mr Farouk Kibet and -- representing
22 Mr Ruto, this -- this happened before the elections in 2007 or afterwards?

23 A. Since I see Mr Ruto in politics, I have been seeing Farouk.

24 MR GARCIA: Now, your Honours, if we could just briefly go into private session, a
25 minute or two.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 12.18 p.m.) Reclassified as open session

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

4 MR GARCIA:

5 Q. Now, Witness, now, at the end of this political rally at Mr Ruto's house in Sugoi,
6 did you receive anything?

7 A. Yes. (Redacted)-- everyone was supposed to get 400
8 shillings. (Redacted)

9 (Redacted). But

10 the money which was given to everyone was 400 shillings and I -- I get -- we get that
11 from our area councillor.

12 Q. And can you give us the name of your area councillor?

13 A. (Redacted)

14 MR GARCIA: Now, just a correction for the transcript, (Redacted)
15 (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

17 MR GARCIA: That's correct, your Honour. Your Honours, we can go back into
18 public briefly, but then I'll be asking to go back into private for about 15 minutes.

19 PRESIDING JUDGE EBOE-OSUJI: Public session.

20 (Open session at 12.20 p.m.)

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

22 MR GARCIA:

23 Q. Now, Witness, last question in regards to this political rally at Mr Ruto's house
24 in Sugoi, how many hours in all did it last?

25 A. As because we are trying to share the money, it took time, but after the speech

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1 of the Honourable Ruto, he left and we were there with our area councillors.

2 MR GARCIA: Your Honours I'd ask that we go into private session for about 10 to
3 15 minutes.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

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

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

7 MR GARCIA:

8 Q. Now, Witness, you've just spoken to us about this, this public rally at Mr Ruto's
9 house in Sugoi. Were you aware of any other meetings or rallies being held there?

10 A. Yes, there was two rallies, for youth and elders.

11 Q. Now, I'd like for us to start, Witness, with this rally regarding youth. Would
12 you be able to tell the Court when approximately this rally would have been held?

13 A. It was early November 2007.

14 Q. And can you tell us, Witness, how you came to learn about the fact that there
15 was a meeting -- pardon me -- a rally for youth at Mr Ruto's house in Sugoi?

16 A. I came to learn from number 1 and number 3.

17 Q. Now, before I go on to other questions, can you explain to us, explain to the
18 Court who number 1 is. Is this -- can you tell us first of what ethnicity this person is?

19 A. He's a Kalenjin and he's a village elder (Redacted)

20 Q. Now, you're saying that he's a village elder. Can you tell us if persons -- how
21 persons become village elders? Is this simply somebody who was an older person or
22 did he have any position within the village, any position of authority?

23 A. Yeah, he's like having authority in that village.

24 (Redacted)

25 (Redacted)

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1 A. Yes.

2 Q. And can you explain just so that we understand what kind of authority this
3 person would have, person number 1 (Redacted)

4 A. Repeat the question.

5 Q. Yes. Just so that we can understand better, when you say that he has authority
6 or he had authority (Redacted) what kind of -- what capacity or what functions
7 did he have in the village?

8 A. Okay. He's like a representing chief in the village.

9 Q. And what does a representing chief do in a village?

10 A. If there is anything in that village, he's the one to report to the chief. And if
11 there is anything to do in that village, chief will call him to do the work exactly or he
12 can get any information, because village elders knows everyone in that village better
13 than chief because location is big, so he's responsible in that village to know who is
14 there, who, who.

15 Q. So from what I understand from what you're saying is he represents the chief in
16 the village?

17 A. Yes.

18 Q. (Redacted) village?

19 A. Yes.

20 Q. Now, can you explain to us the circumstances in which you would have found
21 out through him that there was going to be a rally with youth at Mr Ruto's house in
22 Sugoi?

23 A. It was an open thing. It was not something which will hide, because the first
24 one was youth, and then the second one was women, and then the third one was
25 elders.

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1 Q. Now, you say "It was an open thing." What do you mean by that?

2 A. It was an open -- it was like they were inviting the whole constituency, so
3 everyone knows about it, because if they go to the chief and they tell the village elder:
4 Tell the youths from your village to attend a rally in Ruto's home Sugoi.

5 Q. Now, this person, number 1, could you tell the Court what kind of relationship
6 you had with this person? Was this person a friend of yours, not a friend of yours,
7 an acquaintance? Can you give us details in that regard?

8 A. He's (Redacted). We are not enemies and we are not friends. I see him as
9 (Redacted), and in case of anything, (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)

13 Q. Now, you stated initially that you had learnt it from the fact that there had
14 been -- that there was going to be a youth meeting from number 1 and number 3.
15 But specifically from number 1, what exactly did he say in this regard? Do you
16 remember the -- what he told you?

17 A. I can't remember all, but what I know is, what I know is that he told me that the
18 youths are supposed to attend the meeting at Ruto's home. And also I had number 3
19 told me that number 2 has inform him about the rally.

20 Q. Okay. We'll get to number 3 in just a couple of minutes. But before we get
21 there, you say that he told you, what you can recall is that he told you that the youth
22 are supposed to attend the meeting at Ruto's home. Did he give you any additional
23 information --

24 A. No.

25 Q. -- as to why they were meeting or any other information?

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1 A. No.

2 Q. Do you remember how much time before this meeting did number 1 tell you
3 this?

4 A. Repeat it again.

5 Q. My question is simply do you remember how much time before the meeting
6 occurred did number 1 tell you this? Was it weeks, days, days, weeks, a month?

7 A. (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

9 (Redacted)

10 THE WITNESS: (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MR GARCIA:

16 Q. Now, Witness, let's move to person number 3 on your document. You stated
17 that you also came to know about this rally through this person. Can you explain to
18 us who was this person? (Redacted)

19 A. (Redacted)

20 Q. And how old is he approximately? How old was he then at the time?

21 A. (Redacted)

22 Q. And what did the person number 3 tell you exactly regarding this meeting?

23 A. He told me that number 2 has ask him to attend the meeting in Ruto's home,
24 Sугоi.

25 Q. Do you remember when person number 3 would have told you that?

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1 A. I can't remember, but I -- I knew those are the people I got the message from
2 that there will be a meeting in Ruto's home.

3 Q. Did the person, number 3, give you at that time any additional information as to
4 what the rally or meeting would be about at Ruto's home?

5 A. No.

6 Q. Now, in regards to person number 2, can you tell us, first of all, of what
7 ethnicity this person is?

8 A. He's a Kalenjin.

9 Q. Do you remember, Witness, what party this person supported at the time?

10 A. ODM.

11 Q. And can you tell us, Witness, what this person did? Did he have -- did he
12 occupy any specific position within the community?

13 A. Yes. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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- 1 (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 Q. Now, Witness, I'd like to go back to this meeting of youth in -- at Mr Ruto's
- 22 house in Sugoi. (Redacted)
- 23 (Redacted)
- 24 A. (Redacted)
- 25 Q. Now, Witness, did you ever find out what happened or what was said during

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1 the meeting of youth at Mr Ruto's house in Sugoi?

2 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, does anything turn on the
3 characterisation of the gathering either as a rally or a meeting?

4 MR GARCIA: I understand from the witness's testimony that she initially referred
5 to it as a rally. Now she's speaking about a meeting. I think through the details
6 that she will give of the people that were united there, what they were discussing, it
7 will be clear for the Chamber.

8 PRESIDING JUDGE EBOE-OSUJI: I do not know whether it was the witness who
9 introduced the terminology of "meeting" or it was you, but the record will speak to
10 that. I just wanted to verify whether in your mind there's any significance to how
11 the gathering is characterized. But you move on, please.

12 MR GARCIA:

13 Q. Now, Witness, I'll just go back to my -- to my question. Did you ever find out
14 what happened at this rally or meeting that would have occurred at Mr Ruto's house
15 in Sugoi with the youths?

16 A. No. I didn't find out or I've forgotten what was -- because I assume it was a
17 meeting. It was for ask the youth to vote for ODM and other activities in ODM.
18 But I didn't -- I don't remember exactly what -- if I write in my statement that, I
19 cannot.

20 Q. Witness, I'm just not sure I understand that last part. You say "I don't
21 remember exactly if I write in my statement that I cannot." Can you just clear that
22 up? Just do you remember if anyone ever told you about what happened at that
23 meeting, what would have been said or not today?

24 A. As now, I cannot remember.

25 Q. Now, Witness, when you did meet the investigators and for the first time I think

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1 and you gave a statement, do you remember if during the first meeting with the
2 investigators or the second meeting with the investigators you would have given any
3 details as to what would have happened or what somebody might have told you
4 about what happened at this meeting or rally with the youth at Mr Ruto's house in
5 Sugoi?

6 A. As I told you, maybe it is in my statement, but for now I have forgotten.
7 I don't remember.

8 Q. Now, Witness, just to be clear on this on this matter, do you remember if
9 (Redacted) ever spoke to you about this meeting or rally
10 at Mr Ruto's house in Sugoi?

11 A. As I told you, for now I'm not remember -- I can't remember. Maybe I can ask
12 the Court to read for me that statement.

13 Q. Just to be clear on this, on this matter, Witness, I understand that you gave a
14 statement to the OTP on the (Redacted)
15 (Redacted) on the matters concerning the
16 post-election violence.

17 In the first statement that you gave to the OTP, do you remember having given
18 information about what would have been stated, who would have been -- who would
19 have attended this meeting of youth at Mr Ruto's house in Sugoi, do you recall that,
20 or you don't recall that today?

21 A. I don't recall that today.

22 MR GARCIA: Your Honour, I'd like to have permission, leave from the Court to
23 refresh the witness's memory on this particular point. It's a very important point for
24 the Prosecution. Witness has clearly stated while testifying that she doesn't
25 remember what she would have said to the Prosecution in this regard. I'm referring

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1 to statement 0087-0315 and more specifically paragraph 25 of that statement, it's
2 at 0320.

3 PRESIDING JUDGE EBOE-OSUJI: Before we do that, Witness, when was the last
4 time you saw your statement to the Prosecution?

5 THE WITNESS: I think it was three to five days ago.

6 PRESIDING JUDGE EBOE-OSUJI: Did the Prosecution review the contents of that
7 statement with you or did you have occasion to read over your statement?

8 THE WITNESS: I read it.

9 PRESIDING JUDGE EBOE-OSUJI: And you say you don't now remember what you
10 said in the statement, what the statement says about whether or not you had a
11 discussion about what (Redacted) may or may not have said about the gathering at
12 Mr Ruto's house? I'm not doubting you. I just want to establish on the record
13 whether that's the situation. Did you understand or should I repeat?

14 THE WITNESS: Repeat it, please.

15 PRESIDING JUDGE EBOE-OSUJI: All right. I'm saying are you saying as you sit in
16 the witness seat now you do not recall what you may have said in the statement about
17 (Redacted) may or may not have told you about the meeting or rally?

18 THE WITNESS: Okay, I can remember a little bit. (Redacted) the people who were
19 attended there is -- (Redacted) I can't remember now, is Farouk Kibet and
20 others. I cannot remember exactly.

21 MS ALAGENDRA: Could I make an observation, your Honour? Is it perhaps the
22 Witness could be advised in fairness to her that she's not here as a memory exercise to
23 remember what she said in her statement, but instead to narrate the truth to the Court
24 as to what happened so she doesn't have to trouble herself trying to remember what's
25 in the statement as opposed to remembering the truth. That could make it easier for

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1 her to testify.

2 PRESIDING JUDGE EBOE-OSUJI: The point noted on the record. But there are
3 procedures that the Prosecution has applied to show the statement to the witness.

4 Then that's where we are for now. During your cross-examination you may well
5 explore other areas. But the Prosecution has put an application on the table, and
6 there's a procedure we need to follow for addressing the Prosecutor's application.

7 Mr Garcia, do you want to in light of the last item or matter the witness was on the
8 record take it from there, or do you still want to show the witness the passage?

9 MR GARCIA: Your Honour, I can -- I can take it from here, but it doesn't preclude
10 me necessarily from asking -- to refresh the witness's memory on something which is
11 clearly outlined in her -- in her statement. I'm just thinking about efficiency sake,
12 what would be more efficient, but I can certainly ask a couple of questions and see
13 if -- if at this point the witness's memory is revived a bit and she can give us some
14 information. If not, I'll go back to my initial application.

15 Q. Now, Madam Witness, it's clear obviously that this is not a memory exercise,
16 and that's why I'm asking you obviously if you can remember, and I noticed that you
17 just mentioned the name of Kibet. What do you remember exactly regarding -- and
18 I'll go back to my first question.

19 Did you ever learn about what happened at this meeting with the youth at Mr Ruto's
20 house in Sugoi? Did anyone ever tell you about or talk to you about that --

21 A. No.

22 Q. -- afterwards?

23 A. No. It's only I came to learn that there was a meeting for youth, women and
24 elders.

25 Q. Now, Witness, I just -- I just want to go back on what you stated before. You

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1 said that you couldn't remember what had been -- what you had told the Prosecution
2 in your statement. Is there things that you've forgotten about or that you're -- you're
3 not remembering at this stage?

4 A. This is a person I have been talking to so many things with him, actually,

5 (Redacted)

6 (Redacted)

7 (Redacted), so many information, but about this -- this -- this -- this meeting, actually,

8 I can -- I cannot remember exactly what was there, but according to me is there are

9 people which -- I think I remember people which attended there was Farouk and

10 others which I am not remembering the names.

11 MR GARCIA: Your Honour, given the -- the witness's latest response, what I'd like

12 to ask, I'd like to renew my application for refreshing the witness's memory. At the

13 end of the day, it'll be a question of what the weight is of the evidence of the witness,

14 but I'd like to get to the bottom of this and see -- and just have the witness read out

15 paragraphs -- read paragraphs 24 and 25 to herself of her statement. And it's

16 KEN-OTP-0087-0315 at 0320 so that -- to see whether this indeed revives her memory

17 in regards to what she would have told the Prosecution.

18 She did meet with the Prosecution for a clarification session, but I understand that

19 these -- this statement was taken (Redacted). So I think that we do satisfy

20 the criteria for refreshing memory of a witness. This is a Prosecution witness, and at

21 the end of the day, the weight of the evidence, that will be for the Trial Chamber,

22 professional Judges, to determine based on the witness's behaviour and responses to

23 my subsequent questions after she has had a chance to look at the paragraphs.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

25 MS ALAGENDRA: Your Honour, in fairness to the witness, solely for that reason,

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1 my learned friend can read to her what's in her statement.

2 PRESIDING JUDGE EBOE-OSUJI: So you do not object?

3 MS ALAGENDRA: It's fine, your Honour, yes.

4 PRESIDING JUDGE EBOE-OSUJI: And Mr Kigen-Katwa?

5 MR KIGEN-KATWA: I will not object, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Mr Garcia, please proceed.

8 MR GARCIA:

9 Q. Now, Witness, I'm going to read to you, in a couple of seconds, excerpts from
10 paragraph 24 and 25 of a statement. (Redacted)

11 (Redacted)

12 (Redacted)

13 Now, I notice on the bottom of each page, am I correct in saying, Witness, that you
14 put your initials on the bottom of each page?

15 Would it be possible to have -- I'm going to actually ask the help of the court officer
16 just to give the -- the witness a copy of the statement.

17 MS ALAGENDRA: Your Honour, if I may make things a little bit easier, we accept
18 it's her statement, and perhaps my learned friend can just read to Madam Witness
19 what he wants her to confirm and she can accept or --

20 MR GARCIA: Your --

21 MS ALAGENDRA: We also accept it's her signature, your Honour.

22 MR GARCIA: Your Honour, I -- if I may, I understand Defence's -- and I -- that's
23 very -- that's very helpful, but still I would like to just remind the witness of the fact
24 that she has initialised the pages and what is she -- the document that she signed at
25 the time in all fairness to the witness. I think that must be put to the witness.

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1 Thank you very much for the -- for the proposal, but I'd like to do it this way, if
2 possible.

3 Q. Now, Witness, just to get back to this -- this statement. This is a
4 statement -- and I'm referring for the record to 0087-0315, a 12-page statement on
5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Is that your signature right next to your name and printed?

9 A. Yes.

10 Q. And that is your handwriting?

11 A. Yes.

12 Q. All right. So the witness -- there's a -- this was a statement that was taken to
13 you from at that point, and I understand that you've -- you took the time to initialise
14 each and every one of those pages in the statement; is that correct, page 3, 4, 5, 6, 7, 8,
15 9, 10 and 11?

16 MS ALAGENDRA: Your Honour, I don't think it's necessary for the witness to be
17 troubled to go through each and every page. We accept it's her statement, we accept
18 it's her signature, and your Honours can actually observe for yourself what's going
19 on.

20 MR GARCIA: I don't -- I don't believe I understand the objection of Defence counsel,
21 but I'd just like to go through with this -- this procedure. It's quite important
22 actually, and it's -- I think Defence counsel has raised the question of fairness to the
23 witness. We have to be fair to the witness, just remind her of the context in which
24 she took this statement and the procedure and then I'll read out the paragraphs.
25 That is the correct way of doing things.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Let's do this: We'll adjourn now for
2 lunch break, but first let's not leave. I want the witness excused from the courtroom
3 and then we will have one minute or two on this matter.

4 Witness, we will now adjourn and return, you will rejoin us for -- for lunch. This is
5 the usual time when we take our lunch break so we will let you go have your own
6 lunch too and then we will come back at 2.30.

7 But for now let's bring down the blinds and escort the witness, but the lawyers will
8 remain behind for a little discussion.

9 *(Closed session at 1.00 p.m.) Reclassified as open session

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

11 (The witness stands down)

12 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, the point is Defence is saying that
13 they can -- they admit that this is the witness's statement in terms of the formality.
14 Why do we again have to go through the formality of what you would ordinarily be
15 required to establish if there was any prospect of a dispute about it? Why are we
16 doing that?

17 MR GARCIA: Your Honour, I understand there's been an admission -- concession
18 from the Defence on that point, but in my practice in the question of refreshing the
19 memory of a witness, it's fair to the witness to put them back in the context in which
20 they gave the statement initially, remind them of what they did, the things they
21 signed, et cetera. It takes about a minute or two.

22 In my submissions it's the correct procedure, and the witness should not be simply
23 read paragraphs without given context on the dates on which she took the -- the
24 statement was taken from her, whether or not she acknowledged that the content of
25 the statement was true or not. This is important to put to the witness. It only takes

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1 a matter of minutes, and in my submissions, it's only fair to the witness.

2 PRESIDING JUDGE EBOE-OSUJI: Why is it fair? I hear you about -- it's in the

3 interest of course in being fair to the witness, but why is it fair? I think Defence

4 counsel are saying they're being fair and you're saying you're being fair. I want to

5 know why you are being -- why you think that's a fair point.

6 MR GARCIA: Your Honour, my submission is simply I think it's the correct

7 procedure to put back -- put the witness back in the context in which she gave this

8 statement. I don't see why we should not do that. I think it's -- the question -- the

9 question is why is it fair? It's always when you're questioning a witness, you always

10 have to give them the context in which they made a statement and that's how it's fair.

11 The fact that the Defence is simply admitting to it is not sufficient in my belief. The

12 witness will understand. She can acknowledge the fact that she signed the statement

13 at a certain time, that she acknowledged the information in it was true at the time.

14 And with that in mind, the questions are asked and she can reread her statement.

15 It's simply a matter of procedure, a correct procedure I submit to the Court.

16 PRESIDING JUDGE EBOE-OSUJI: So it's a matter of procedure. Is there any

17 undue advantage you think Defence counsel might derive from the procedure that

18 they are suggesting you follow?

19 MR GARCIA: No, and that's simply not my contention at all. I'm -- I'm grateful for

20 the concession and the admission. However, I would still like to go about it the way

21 that I think is the correct way of going about this -- these matters.

22 PRESIDING JUDGE EBOE-OSUJI: All right. The Chamber will rise and we'll

23 return at 2.30.

24 MS ALAGENDRA: Your Honour, if I may just -- one minute. Your Honour, from

25 what we observed from this side of the courtroom - and I apologise in advance for

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1 having to make such a submission your Honour - is that my learned friend, from
2 what we observed, knew perfectly well that giving the state -- the statement to the
3 witness and asking her to go through each page and watching what she was doing
4 while she was quickly reading her statement.

5 PRESIDING JUDGE EBOE-OSUJI: Well, that's speculative, but we will rise.

6 THE COURT USHER: All rise.

7 (Recess taken at 1.05 p.m.)

8 (Upon resuming in open session at 2.37 p.m.)

9 THE COURT USHER: All rise.

10 Please be seated.

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

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

13 Witness, welcome back. So the -- Mr Garcia will continue asking you questions in
14 examination-in-chief.

15 Mr Garcia, shall we go back into private?

16 MR GARCIA: Indeed, your Honours. I believe we were in closed session when
17 we --

18 PRESIDING JUDGE EBOE-OSUJI: Yes.

19 MR GARCIA: -- left off.

20 PRESIDING JUDGE EBOE-OSUJI: We will go to private session now.

21 *(Private session at 2.38 p.m.) Reclassified as open session

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

23 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Garcia, on -- where we left the
24 matter before -- immediately before lunch break, the Chamber does not want to
25 discourage parties from co-operating where parties see a need to waive certain

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1 formalities so that we can move more quickly and more efficiently. We always
2 encourage such offers to be made, but the party who -- in whose territory we are at
3 that point, they then offer to proceed in a different way, the Chamber will make an
4 appropriate ruling on that.

5 In relation to the specific matter at hand, we notice that you've already taken the
6 witness through the front page, is that it, 315, so that the witness identified that?

7 MR GARCIA: Yes, indeed, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Let's not take the witness through
9 every page, but go to the page where the statement or the information you're
10 interested in is located and have the witness verify her initial, if there is initial there,
11 and then you go to the last page, the comprehensive signing off page and have the
12 witness do it there as well, so -- and then you get to your point.

13 MR GARCIA: As it pleases the Court.

14 If I could have the help of the court officer just to give the witness's statement back to
15 her.

16 Q. Now, Witness, if you look at the page that's opened before you, it's page
17 number 6, am I correct in stating that your initials are at the bottom of that page, page
18 number 6?

19 A. Correct.

20 Q. And, Witness, if you turn to the end of the statement, at the back totally, it's
21 page 12, am I correct in stating that that's your signature as well with the date,
22 (Redacted)

23 A. Correct.

24 Q. Thank you, Witness.

25 Now, Witness, I'd like for you to read paragraph 25 on page 6, the page that I initially

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1 had you look at. I'd like you to read that for yourself, take the time that you need,
2 paragraph 25.

3 Now, Witness, have you had a chance to read the paragraph, 25?

4 A. Yes.

5 Q. Now, after having read that paragraph, does it refresh your memory in any
6 which way?

7 A. Yes.

8 Q. All right. Now, I'll ask you the question again that I'd asked you previously:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. As I told you earlier -- as I told the Court earlier, that the meeting, it was earlier
23 November 2007. And they were arranged that the first meeting it was youth, and
24 then the second one was women, and then the third one was elders.

25 Q. All right. Thank you. We've understood that, Witness. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 A. As I -- in my statement it was -- actually, it was for the whole constituency.

9 You -- from the whole constituency. But the people which were there, it was local
10 leaders, Farouk and Honourable Ruto, of course, and ODM supporters.

11 Q. Now, you've mentioned Honourable Ruto. You've mentioned as well Farouk.
12 Is this Farouk Kibet?

13 A. Yes, Farouk Kibet.

14 Q. And apart from these two people, Mr Ruto and Farouk Kibet, were there other
15 (Redacted) would have participated in this meeting?

16 A. Yeah, number 2.

17 Q. Now, Witness, (Redacted) how this meeting at Mr Ruto's house in
18 Sugoi with the youth, how that proceeded, how it went about?

19 A. (Redacted), it was only to support the whole team.

20 PRESIDING JUDGE EBOE-OSUJI: You said number 2 was there. Number 2, was
21 that the person you said was (Redacted)

22 THE WITNESS: Yes.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Now, Witness, you've had a chance to read through the paragraph 25.

7 MS ALAGENDRA: Your Honour, if I can object to this, your Honour. The witness

8 has read the statement and she's answered the questions. The answer is no is no,

9 your Honour. She should not be badgered into trying to repeat what's exactly written

10 in this statement. It is her recollection. She's read the statement and she's testifying

11 on oath.

12 PRESIDING JUDGE EBOE-OSUJI: What's your question, Mr Garcia?

13 MR GARCIA:

14 Q. Simply, Witness, do you remember if you spoke, when you spoke to the OTP, if

15 you gave them any information regarding what anyone would have said during this

16 meeting?

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. No.

22 Q. I'm referring to paragraph 25 in your statement.

23 A. As I told you about what they will say there, (Redacted)

24 (Redacted)

25 (Redacted) Let's forget about the content for the moment of what they would have said,

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1 but the people who would have spoken during this meeting.

2 A. No.

3 Q. And when you gave your statement initially to the OTP, did you give any
4 information regarding (Redacted) what people
5 would have said during this meeting at paragraph 25?

6 MS ALAGENDRA: Your Honour, again, I repeat my objection.

7 PRESIDING JUDGE EBOE-OSUJI: I think hasn't the witness answered that
8 question?

9 MR GARCIA: I can move on, your Honour. But the question was whether the
10 witness recalls having given information to the OTP investigators regarding things
11 that might have been stated at this meeting at the time as we can see in paragraph 25.
12 That was the question to the witness.

13 PRESIDING JUDGE EBOE-OSUJI: The witness may answer.

14 MR GARCIA:

15 Q. Witness, I'm going to ask it again. Paragraph 25 of your statement to the
16 Prosecution, to the OTP, did you mention in that paragraph what anyone would have
17 said during that meeting (Redacted)

18 A. Can you repeat the question?

19 Q. Witness, in paragraph 25, the statement that you gave to the OTP, did you or
20 did you not mention to the OTP words that would have been stated by someone
21 during that meeting?

22 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait, wait, wait.

23 Witness, you've read this statement, the paragraph 25. Is there anything else you
24 recall that somebody may have told you about a meeting? That's the question
25 counsel is asking you, apart from saying you did not speak about what happened.

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1 THE WITNESS: I don't remember, Mr President.

2 MR GARCIA:

3 Q. Witness, I just want to let you know that we're in private session right now.

4 MS ALAGENDRA: Your Honour, in fact, in fairness, this portion of the evidence
5 can be given in public. The second issue, your Honour, I think that the witness also
6 should be given some respect and not be forced-fed her statement. She's testifying
7 on oath and she's perhaps doing it very responsibly.

8 MR GARCIA: Your Honour, I don't understand that objection at all. I don't think
9 that the Prosecution is in any way badgering the witness. I'm very conscious of
10 the -- of respecting the witness. Now, I don't -- if that was an objection, I truly don't
11 understand the objection.

12 PRESIDING JUDGE EBOE-OSUJI: The point Ms Alagendra is making is you need to
13 remind the witness that we're in private session, why that was considered necessary
14 to do at that point in time.

15 MR GARCIA: Your Honour, the -- the point that I was trying to make with the
16 witness is that she should feel free to say whatever she has on her mind because we
17 are in private session. That's simply the point.

18 PRESIDING JUDGE EBOE-OSUJI: The implication meaning she wasn't doing that
19 all along. That's what she means by -- Ms Alagendra means some respect for the
20 witness.

21 MR GARCIA:

22 Q. Now, Witness, before we were speaking about this meeting on the -- regarding
23 the youth at Mr Ruto's house in Sugoi, you also mentioned the fact that there would
24 have been another meeting later on; is that correct?

25 A. No, not later on. It was -- or, as I was told, there was a meeting with leaders in

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1 the house and then later on, but it was the same day, the same place. But before they
2 meet the other supporters, what I understand they met with leaders first.

3 Q. All right. Just to be clear, this -- we're still speaking about the meetings with
4 the youth at Mr Ruto's house in Sugoi; is that correct?

5 A. Correct.

6 Q. And just so we can understand clearly what you've stated, you say that there
7 was a meeting with the leaders in the house, and then the same day, the same place,
8 but before they met the other supporters. Now, the meeting with the leaders in the
9 house, did you have any other information as to who attended this?

10 A. No, I don't have.

11 Q. And then you say that afterwards there was a meeting with the -- the supporters.
12 Can you give us more information on that?

13 A. After having the meeting with the leaders from the constituency, then
14 they -- they continue with the meeting with the supporters now.

15 Q. And when you're speaking about supporters, you're referring to whom?

16 A. ODM supporters. I mean youth.

17 Q. And when you say that after having the meeting with the leaders, who -- who
18 was having the meeting with the leaders first of all?

19 A. Honourable Ruto.

20 Q. And, Witness, after the meeting with the supporters, do you have any other
21 information of what happened after that?

22 A. No, I don't have.

23 MR GARCIA: I'd ask the court officer, please remove the statement that's before the
24 witness.

25 Q. Now, Witness, you've spoken to us about a meeting with the youth. You've

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1 also spoken to us about a meeting with women at Mr Ruto's house in Sugoi. Was
2 there another meeting later on?

3 A. Yes.

4 Q. And do you remember when this meeting would have been held?

5 A. I think it was late November because that was the last meeting I had to know.

6 Q. Are we still speaking about 2007?

7 A. Correct.

8 Q. And can you explain to the Court briefly what was this meeting for?

9 A. According to me, it was for ODM to prepare their supporters to vote. That is
10 what was according to me.

11 Q. How did you find out about this meeting?

12 A. As I told you earlier, for women, I came to know -- I heard from number 4; and
13 then for youth, I heard from number 1 and number 3; and for elders, I heard from
14 number 1.

15 Q. What exactly did number 1 tell you in regards to this meeting that was going to
16 be held?

17 A. He is just -- he informed me that there was -- that there will be a meeting for
18 elders, nothing much.

19 Q. Just so we can understand this even better, when you say "for elders", who are
20 these people? Are they the elders of the community? Can you give us more
21 information?

22 A. When I -- when I say "elders", it mean those people who not are youths any
23 more.

24 Q. And that would put them within which age group?

25 A. Like, 45 and 50s.

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1 Q. And when you say "elders", what ethnic group?

2 A. Kalenjin. (Redacted) Kalenjin and, as I told you, Eldoret North
3 there are so many tribes like Luos, Luhyas, there were some who -- supporters for and
4 they were there also, so it was not Kalenjin alone which were there.

5 Q. Did you obtain any information as to what was said during this meeting of the
6 elders?

7 A. I don't have.

8 Q. And just so that it can be clear in the record, can you tell us where this meeting
9 was held, the meeting for the elders?

10 A. Sugoi, at Honourable Ruto's home.

11 Q. Now, Witness, I've asked you a certain amount of questions on meetings going
12 on at Mr Ruto's house in Sugoi. Would it be able for you -- would you be able to
13 describe to us what the house looks like, Mr Ruto's house in Sugoi, just briefly?

14 A. Yes, a big compound. And when you enter into gate, there is a small house
15 and then there is a one house which is -- appear like, I can't describe somehow. But
16 it is one house. But, of course, he has a lot of rooms. And he -- he has -- he has a
17 big compound.

18 MR GARCIA: I'd like the court officer to show the image of photo

19 KEN-D09-0028-0197 on the screen.

20 MS ALAGENDRA: Your Honours, just to note that these photographs were shown
21 to the witness during her proofing, and we have no objections to it being shown or to
22 accept that she's recognised the house.

23 PRESIDING JUDGE EBOE-OSUJI: So you do not object --

24 MS ALAGENDRA: No.

25 PRESIDING JUDGE EBOE-OSUJI: -- to the image being shown to the witness?

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1 MS ALAGENDRA: No. It's defence evidence, your Honour, and it was already
2 shown to the witness during proofing. So we have no difficulty with all of the
3 photographs being shown to her even in print to save time. And we accept that's
4 Mr Ruto's house.

5 MR GARCIA: Your Honour, if there is an admission from Defence counsel that
6 indeed the witness would recognise this or identify it as the house, Mr Ruto's house in
7 Sugoi that she visited once, then we can just simply tender the photos into the record,
8 and I'll not have to ask any questions in that regard. I think that was the purpose of
9 Defence counsel's intervention.

10 MS ALAGENDRA: That's not quite the point. The fact was that she was shown the
11 photographs and she recognised the house as Mr Ruto's house. To that extent, we
12 accept that she's recognised the house in the photos.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Let's pull out the photo anyway and
14 take it in stages.

15 But we note your position, Ms Alagendra.

16 MR GARCIA: Yes. So the photo --

17 PRESIDING JUDGE EBOE-OSUJI: And Mr Kigen-Katwa, I take it you have no issue
18 on this one, do you?

19 MR KIGEN-KATWA: I don't have any issue with it, Mr President.

20 MR GARCIA: So it is the -- in the Court binder, it's under 4, Tab 4L. So there are
21 four photographs in that small package.

22 Q. Now, Witness, you see the photo on the screen. Would you be able to tell the
23 Court what is depicted in that photo?

24 A. Yes, this is the house of the Deputy President William Ruto.

25 Q. All right. And just to be clear, is this the house in Sugoi that you mentioned?

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1 A. Yes.

2 Q. Thank you for those responses.

3 MR GARCIA: Your Honour, I'd like to have this photo tendered into evidence.

4 PRESIDING JUDGE EBOE-OSUJI: Any objection? Is it already --

5 MR GARCIA: It is already in evidence. That won't be necessary. Don't mind that.

6 PRESIDING JUDGE EBOE-OSUJI: That's what I thought, but --

7 MR GARCIA: It's already in evidence.

8 PRESIDING JUDGE EBOE-OSUJI: That's okay. What exhibit number is it?

9 MR GARCIA: It is KEN-D09-0028-0197.

10 PRESIDING JUDGE EBOE-OSUJI: That's the ERN number. Is that the exhibit
11 number?

12 MS ALAGENDRA: It is Defence Exhibit 96, if I'm not mistaken.

13 PRESIDING JUDGE EBOE-OSUJI: Defence Exhibit 96?

14 MS ALAGENDRA: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Okay.

16 MR GARCIA:

17 Q. Now, Witness, I'd like to ask you some questions on -- on certain days, and the
18 first question is regarding election day, 27 December 2007. Now, could you explain
19 to the Court exactly what you were doing on that day?

20 A. On 27 December 2007, I wake up very early in the morning. I went to polling
21 station, (Redacted). As I was there, I reached there safe, and we
22 continue with the -- the people came for voting. And then later on in the -- (Redacted)
23 finished the -- (Redacted) announced the results around 9 p.m.

24 And since Turbo town, most of -- most of the people which were living there was
25 Kikuyus. So Kibaki was leading and Ruto was following or as an MP and the

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- 1 councillor Mutai.
- 2 And then they were supposed now to take the boxes to tallying centre. And then
- 3 they went. (Redacted)-- it was late in the evening.
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted) Me, I
- 10 went back to home.
- 11 Q. And the polling station that you --
- 12 MS ALAGENDRA: Your Honour, if I can just correct the record, I think that --
- 13 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 14 MS ALAGENDRA: (Redacted)
- 15 THE WITNESS: Okay. Sorry. Thank you, yeah.
- 16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 17 THE WITNESS: Yes.
- 18 MR GARCIA: I'm grateful.
- 19 Q. Now, Witness, the polling station, could you tell us where that was located by
- 20 using your PIS form in front of you?
- 21 PRESIDING JUDGE EBOE-OSUJI: Do we remain in private session?
- 22 MR GARCIA: Actually, we can do that -- we can do that in public, your Honour.
- 23 PRESIDING JUDGE EBOE-OSUJI: Public session then.
- 24 (Open session at 15.12 p.m.)
- 25 THE COURT OFFICER: We are in open session, your Honours.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MR GARCIA:

3 Q. Now, Witness, using your PIS form that's in front of you, would you be able to
4 tell us the location of the polling station that you were at?

5 A. I was in (Redacted) which is in Turbo town.

6 MR GARCIA: Could I ask your Honour that we go into --

7 PRESIDING JUDGE EBOE-OSUJI: Yes. I don't think any damage has been done,
8 but we'll go into private session briefly.

9 *(Private session at 15.13 p.m.) Reclassified as open session

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

11 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

12 (Redacted)

13 Witness, we will -- you will use only the numbers on the PIS. The reason I say that
14 no -- that damage may not have been done is because in the public we haven't said
15 (Redacted) but it's safer to just use the reference to the -- in
16 the PIS.

17 THE WITNESS: Thank you.

18 MR GARCIA: Your Honours, if I may just ask that we continue for five more
19 minutes in private session. I'll start out the next day with it.

20 Q. Now, Witness, I'd like you to tell us briefly what you did on 28 December 2007.
21 Where were you on that day, in the morning?

22 A. In the morning of 28 December 2007, I wake up in the morning and I left to
23 Eldoret town, to tallying centre (Redacted). As I reach there, it
24 was announcing that Honourable Ruto has win the election, and in that hall there was
25 a KANU candidate in the hall, and he'd stood up, he wanted to congratulate

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1 Honourable Ruto, and Farouk Kibet came and wanted to -- to have a fight with him,
2 but Honourable Ruto stopped him. So when I saw that, I was so scared and there
3 what -- there was a lot of tense, so I decide to left the place and go back to Turbo.
4 As I was going to look for a vehicle to go back to Turbo, there was a pickup coming
5 from tallying centre and I heard a song which was saying -- it was saying "Kwa heri,
6 Kibaki," in Swahili it means "Bye bye, Kibaki. We will give you a bus which will
7 take you to Othaya." And for me I felt it was not Kibaki alone, (Redacted)
8 (Redacted). And as I was going, I noticed that the shops
9 in Eldoret town was closed.

10 Q. Now, Witness, just -- just one question to start off. How many people were in
11 the tallying centre when you were there and you observed this incident?

12 A. I can't give the number because there was some outside, some inside the hall,
13 some have moving out, some were entering, so I can't give you the exactly number.

14 Q. Would you be able to tell us whether there were more or less than a hundred
15 people on that day when you were there?

16 A. Of course there are more because it was all over. Tallying centre is not small.

17 MR GARCIA: We can go into public session, your Honour, and I can ask any other
18 questions for clarifications purposes simply.

19 PRESIDING JUDGE EBOE-OSUJI: So you're done now with (Redacted)
20 (Redacted)

21 MR GARCIA: Indeed, your Honour, yes.

22 PRESIDING JUDGE EBOE-OSUJI: We will then go back to public session.
23 (Open session at 15.18 p.m.)

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

25 PRESIDING JUDGE EBOE-OSUJI: Witness, we're back in the public session, and the

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1 red light is on.

2 MR GARCIA: Just for the record, just a correction, at page 42, line 11, it's a KANU
3 candidate. It's K-A-N-U candidate, just for the record.

4 Q. Now, Witness, you stated that you were a witness to an incident between
5 Farouk Kibet and a KANU person who was wanting to congratulate
6 Honourable Ruto. Can you just give us a little bit more details on what happened
7 exactly.

8 A. It was in the hall and after finishing counting the votes, and then it was the time
9 to announce the -- the winner and it was, of course, pres -- deputy president, at that
10 time it was MP, member of parliament. So after announcing, so the KANU
11 candidate stood up and they wanted to congratulate him, and Farouk Kibet came in
12 between and wanted to fight the KANU candidate and then Ruto stopped.

13 Q. Can you tell us what was the atmosphere like in the tallying centre on that day?

14 A. It was tense.

15 Q. Now, you also stated that afterwards you left the premises and you -- and you
16 heard a song that was sang "bye, Kibaki," which is Kibaki -- or "kwa heri, Kibaki",
17 that's correct?

18 A. Correct.

19 Q. And can you tell us -- can you give us some information -- more information in
20 this regard. Where was this music coming from or this song? Who was playing it?

21 A. It was speakers from the car.

22 Q. And can you tell this Court how you understood this song or what you
23 understood it to mean at the time?

24 PRESIDING JUDGE EBOE-OSUJI: Beyond what she already said?

25 MR GARCIA: Indeed, your Honour, yes.

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1 PRESIDING JUDGE EBOE-OSUJI: What I mean is there was an interpretation that
2 the witness gave. You're saying there's more to it than that?

3 MR GARCIA: I'll ask another question, actually, your Honour.

4 Q. Now, Witness, when you say it was -- you're -- you were talking about the song,
5 you're saying it was saying "kwa heri, Kibaki" in Swahili "bye, Kibaki." Do you
6 know what was the ethnicity of the people in the car that were playing this song or
7 can you give us more information in that regard?

8 A. I don't know because I told you I heard from the speakers from the car, so I can't
9 say who was singing this. I don't know.

10 MR GARCIA: I'd like to go into private session for about 10 minutes, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Private session.

12 *(Private session at 15.23 p.m.) Reclassified as open session

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

14 MR GARCIA:

15 Q. Now, Witness, I'd like to ask you some questions on what would have
16 happened on the 29 December, the day after. Can you tell us if anything happened
17 to you on that particular day, the 29 December -- pardon me -- 29 December 2007?

18 A. As I left Eldoret town, I went back to Turbo. On my way I met number 7, on
19 my way home. And this person is not an enemy. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 I don't know.

24 But he told me in a -- in a respectful way. He didn't harass me. He was just saying,
25 yeah.

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1 Q. Now, when this person number 7 tells you this, (Redacted)

2 (Redacted) did you -- what did you understand by this question,

3 obviously apart from what literally he was saying, he was asking you? Did you

4 understand anything else from this question?

5 A. No, I didn't understand, because what I thought it was like maybe he thinks that

6 (Redacted)

7 Q. Now, just before I continue, this issue of (Redacted)

8 (Redacted)

9 (Redacted)

10 A. (Redacted)

11 Q. Now, when the person at number 7 asked you about this, where did this

12 happen? Do you remember? What place exactly?

13 A. (Redacted)

14 (Redacted)

15 Q. Did anyone else speak to you on that day, Witness?

16 A. (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR GARCIA: Your Honours, I am planning to move on to another subject. I'm not
3 sure if the Chamber had any questions in regards to this.

4 PRESIDING JUDGE EBOE-OSUJI: Do you want to move on to this other subject in
5 public or private session?

6 MR GARCIA: I would ask that we go in -- we stay -- we remain in private for five
7 minutes and then I'll be able to lead a good chunk of information of evidence in
8 public.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Before we do that then, Witness, this
10 exchange, this conversation you had with person number 7 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: I'm trying to establish how the conversation went.
18 Can you tell us again how it went.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 THE WITNESS: So it was, like, talking, not even something serious, so it
17 was -- I was just thinking, okay -- but actually, it's supposed to be that way, if
18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: Is supposed to be that way according to whom?
20 According to what?

21 THE WITNESS: Okay. Okay.

22 PRESIDING JUDGE EBOE-OSUJI: See what I'm trying to understand is whether this
23 is what everybody in the community would understand the situation to be, or this is
24 something you, yourself, came up with as an answer to the question.

25 THE WITNESS: No, it is understandable in the community that someone go against

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1 the rule of what he has -- the community has passed, it should be this way that person
2 is, like, outcast because he's not following actually what it is supposed to be.

3 PRESIDING JUDGE EBOE-OSUJI: You said it is -- was the understanding. Among
4 who?

5 THE WITNESS: (Redacted)--

6 PRESIDING JUDGE EBOE-OSUJI: All right. Okay, is it something that is part of
7 the culture? Is that how people within any community would understand life to be
8 as part of the rules of society?

9 THE WITNESS: Yes, before, but since I was born, I haven't seen anyone who has
10 been punished because of that, but before, I understand there was. That is why I
11 (Redacted) because I knew it was something.

12 But after this, the conversation, I had to come now to understand that, okay, this thing
13 was before in my culture and I think now they are exercising it because -- because
14 the -- because actually later on they came to -- to punish those people who was in
15 PNU, to give out cows or for -- for attending -- for -- for not supporting the ODM.

16 PRESIDING JUDGE EBOE-OSUJI: So we are clear on the record, are you saying that
17 that was something in the Kalenjin culture, (Redacted)
18 (Redacted)

19 THE WITNESS: Yeah, before I was born, but when I was born -- I heard long ago
20 that it was there, but when I was born, (Redacted)
21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Are there some community sayings, proverbs
23 and idioms, things along those lines, that contain that sort of information?

24 THE WITNESS: Yes, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 Mr Garcia, you may ask follow-up questions from that if you deem it necessary. I'm
2 sure the Defence would also, in their turn, take that matter up if need be.

3 Thank you very much, Witness.

4 MR GARCIA:

5 Q. Now, Madam Witness, you've mentioned the community and the position of
6 the community. Can you tell us for the record what was the position of the
7 community that everyone had to follow at the time, being Kalenjins?

8 PRESIDING JUDGE EBOE-OSUJI: Would that need to be in private?

9 MR GARCIA: We could do that in public, your Honour, but I intend to ask to return
10 back to private to lead off the next subject.

11 PRESIDING JUDGE EBOE-OSUJI: All right. We'll stay in private if this is a limited
12 area of inquiry, but if it's going to take long, we might as well do it outside.

13 MR GARCIA: It is going to be quite limited, your Honour.

14 Q. Witness, you've mentioned a couple of times the position of the community.
15 At this time, before the 2007 elections, what was the position of the community, the
16 Kalenjin community that people had to follow, if not, you say that they were outcast?
17 What was the position of the community?

18 A. It was to follow ODM.

19 Q. And to follow ODM meant what exactly, practically speaking?

20 A. The ODM was the party which we're supporting, so they expect every Kalenjin
21 to support.

22 Q. And who would you have to support?

23 A. It was Raila presidency, and Honourable Ruto for MP, and councillors of course.
24 I can mention a councillor for my area. It is number 5.

25 Q. Witness, if you know, do you know how this position of the community was

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1 broadcasted throughout the community? How would people know what was the
2 position was that you had to follow?

3 PRESIDING JUDGE EBOE-OSUJI: I think we have to go into private -- into public
4 session now. I thought you said limited.

5 MR GARCIA: I just have that question, and I'll move on, your Honour.

6 Q. Witness, if you know, obviously, do you know how this position, the
7 community position, how was that broadcasted to other people within the
8 community? How is it that -- who would be -- who would the community be
9 following? How would the people know that?

10 A. I assume when Honourable Ruto invite people to his home Sugoi, it was to
11 inform them that the party we are supposed to -- to support is ODM. And, of course,
12 when councillors are going around for looking for votes also, they campaign for
13 president, they campaign for MP because they are moving from village to village,
14 or -- yeah.

15 MR GARCIA: I have no further questions on that subject, your Honour, but I still
16 would need a couple of minutes to introduce the next subject in private session.

17 Q. Now, Witness, let's go on to the next day, the 30 December 2007. Am I correct
18 in stating that on that day you would have heard the presidential results?

19 A. Yes.

20 Q. And I'd like to move on to 31 December, the day after the presidential results
21 were broadcasted. Can you tell the Chamber where you were that morning, on the
22 31 December 2007.

23 A. I was in Turbo (Redacted)

24 Q. All right. Witness, I'm going to ask to go into public session, and just remind
25 yourself of that when you're giving answers. And I'll be asking you questions

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1 simply on what you saw on that day, on the 31 December.

2 MR GARCIA: I realise it is 10 to 4, your Honour, but I imagine I still have a couple
3 of questions that I can fit in that time.

4 PRESIDING JUDGE EBOE-OSUJI: We'll go into public session.

5 (Open session at 3.48 p.m.)

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Mr Garcia.

9 Witness, we're back in the public session.

10 MR GARCIA:

11 Q. Now, Witness, on 31 December 2007, can you please tell the Court what you
12 saw that morning?

13 A. Yes, it was around 11 in morning. As I told you, my home is --

14 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait.

15 THE WITNESS: Okay.

16 PRESIDING JUDGE EBOE-OSUJI: What was your question again?

17 MR GARCIA:

18 Q. Witness, just to be clear, I just want you to answer as to what you saw on that
19 day, on 31 December 2007, what you observed.

20 A. What I saw? I saw the Kalenjin youth coming from Besiebor going towards
21 Turbo town.

22 Q. Do you recall how many youth you saw that morning going from Besiebor to
23 Turbo town?

24 A. In the morning, I saw from Sugoi, entering into Turbo. In the afternoon,
25 around 3 to 4, it was from Besiebor going to Turbo. So it was two groups. In the

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1 morning I saw it was from Sugoi entering to Turbo town.

2 Q. So, Witness, let's just start with the -- what you saw in the morning and then
3 afterwards we'll deal with what you saw later on during the day. You stated for the
4 record that you saw youth from Sugoi entering into Turbo, that's the morning; is that
5 correct?

6 A. Correct.

7 Q. Now, would you be able to tell us what the ethnicity of these youths were who
8 were coming -- who were going into the direction of Turbo on that morning?

9 A. It was a Kalenjin.

10 Q. Can you tell us how you arrived at the conclusion that they were Kalenjins?

11 A. Because how they scream. Another tribe doesn't know how that screams.
12 They don't know how to do it, because that is special scream from Kalenjin youths.
13 And that one is like when they are going for circumcision, they normally use that.

14 MR GARCIA: Can I go into private session, your Honour, for just a minute?

15 PRESIDING JUDGE EBOE-OSUJI: Private session.

16 *(Private session at 3.52 p.m.) Reclassified as open session

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

18 MR GARCIA:

19 Q. Now, Witness, in regards to that scream that you heard, had you ever heard
20 that scream before, you personally?

21 A. Yeah. When there is -- there is -- they are performing ceremony for
22 circumcision, they normally use that.

23 Q. (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 MR GARCIA: We can go back into public, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: Then we will go back into public.

14 (Open session at 3.54 p.m.)

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

16 MR GARCIA:

17 Q. Now, Witness, you stated that the youth that you saw advancing towards Turbo
18 town were screaming. Did you observe them do anything else while they were
19 approaching?

20 A. No, it is far a bit. You can see a person, but what they carrying, no.

21 Q. Now, you've stated also that you heard these people screaming, making a
22 scream, a sound, what happened after that? What did you observe?

23 A. I saw houses was burned.

24 Q. How much time after the screaming did you observe that the houses were burnt?

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1 A. It was during that time, a screaming and entering, so there were Kikuyus
2 houses near the Kobil petrol station, before you reach Kobil petrol station, and the
3 Kikuyus were living there.

4 Q. For the record, it is page 92, line 2, the name of the petrol station is Kobil,
5 K-O-B-I-L. I notice it's correctly spelt at page 4, page 92.

6 Now, Witness, just so we can be clear on that matter as well, did you observe
7 these -- these people that you were observing screaming, did you see them actively
8 burn the houses?

9 A. No. As I told you earlier that it is very far. You can see someone moving, but
10 they were moving towards Turbo town and then all of a sudden I saw houses was
11 burnt, so I didn't see them putting the fire, no. But after that, I saw it was them
12 actually who did it and they were screaming. And that time now came into my
13 mind that the person who was telling me when we were in polling station --

14 Q. Just remember, Witness --

15 A. -- it was number 3 --

16 Q. Yes.

17 A. -- when we were in number 3 --

18 Q. I'd ask you to --

19 A. -- in location number 3. So it came to my mind that that is the scream which
20 was -- they meant.

21 Q. Just before we leave off today, Witness, you mentioned that there were houses
22 that were burning. Do you -- can you give us an approximate number of houses that
23 were burning that you observed?

24 A. It was like five, three -- three, five there.

25 Q. And just so that it can be clear on the record as well, these houses belonged to

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1 people of what ethnicity?

2 A. Kikuyus.

3 MR GARCIA: Your Honours, given the time, I'd ask that we stop here and I can
4 continue tomorrow with the remaining questions.

5 PRESIDING JUDGE EBOE-OSUJI: That's a good time to break for the day.

6 And, Witness, we will let you off for today and you'll rejoin us tomorrow at 9.30.

7 MR GARCIA: Your Honour, just -- just before we do break - maybe this is
8 best - I can clarify this right now.

9 Q. Page 59, line 13, Witness, you stated "but after that I saw it was the mack who
10 did it and there was screaming." Did you say "the mack"? I imagine not. Do you
11 remember what you said?

12 A. Mack?

13 Q. Yes, I'm just reading from the transcript. You said, "I saw houses was ..." -- "...
14 houses was burnt so I didn't see them putting the fire, no, but after that I saw it was
15 the" -- and there's a word obviously there "the mack" who did it. Who was it
16 exactly?

17 A. ODM supporters.

18 MR GARCIA: That's all, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: All right. We will --
20 Witness, you will join us again tomorrow.

21 In the meantime, before we adjourn, Mr Garcia, how much more time do you think
22 you need with this witness?

23 MR GARCIA: Your Honour, I hope to be done within -- in two sessions tomorrow,
24 morning and -- I presume by about 1 o'clock I'll be done.

25 PRESIDING JUDGE EBOE-OSUJI: By lunch break tomorrow. Yes. Thank you

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1 very much.

2 The blinds will come down and the witness will be escorted from the courtroom.

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

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

5 (The witness stands down)

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

7 THE COURT OFFICER: All rise.

8 *(The hearing ends in closed session at 4.01 p.m.) Reclassified as open session

9 RECLASSIFICATION REPORT

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

11 2013, and the instructions in the email dated 30th October 2014, the version of the

12 transcript with its redactions becomes Public.

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