

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 Friday, 20 June 2014
10 (The hearing starts in open session at 9.35 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. Court officer, please call
15 the case.
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President. Situation in
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto and
18 Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 Are there any change in appearances?
22 MR STEYNBERG: Good morning, Mr President, your Honours. For the
23 Prosecution only one change, Ms Jasmina Suljanovic replaces Ms Grace Goh as case
24 manager.
25 MR NARANTSETSEG: Good morning, Mr President, your Honours. No change

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1 on our side. Thank you.

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

4 MS ALAGENDRA: Good morning, Mr President, your Honours. For the Ruto
5 Defence we remain the same, your Honour.

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

7 Witness, welcome back. Ms Alagendra will continue her questions to you this
8 morning.

9 Ms Alagendra, I know that yesterday when we closed, we closed on the note that the
10 next witness will be coming -- will be starting on Tuesday, and then we indicated that
11 there is no need to shorten the lunch break today. But I will still urge you to do your
12 best to complete today.

13 As you know, there's a lot of work for the Chamber that we do when we're not sitting
14 in the courtroom, not only in this case, but also in the other cases in which the Judges
15 are also doubling up. So the sooner we can finish the better.

16 And also, Prosecution, yesterday I did signal the need to consider 67(1)(e), what it
17 means. I want to be sure that the impression wasn't left by the Chamber
18 inadvertently that any views had been settled upon the matter by the Chamber. The
19 whole point of it is to say we have spotted an issue, or what may be an issue, and it is
20 important for all parties to think about it at the right time.

21 And also part of what needs to be considered, of course, is quite apart from the matter
22 of any possibility of Article 70 investigations, which is something else, if it is the case
23 that an argument is that a particular person wasn't able to -- didn't come up, didn't
24 come to court, well, any reason directly attributed to an accused person, then that's
25 something else also to be kept in mind, all that debate. So I just wanted to make sure

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1 these are issues that may be looked at at the appropriate time.

2 Ms Alagendra, please.

3 MS ALAGENDRA: Thank you, Mr President.

4 WITNESS: KEN-OTP-P-0613 (On former oath)

5 QUESTIONED BY MS ALAGENDRA: (Continuing)

6 Q. Good morning, madam.

7 A. Good morning.

8 Q. I hope you rested well?

9 A. Yes.

10 Q. Madam, yesterday we left when we had some problems with the video, so I'm

11 going to go back to the issue, okay? And we were discussing, madam, the

12 28 December, when the results were announced in the UG primary school and

13 Mr Ruto was declared the winner. You recall that from yesterday?

14 A. Yes.

15 Q. I'm going to play you a video, madam, and I'm going to ask you to just observe

16 the screen, okay?

17 A. Okay.

18 MS ALAGENDRA: Your Honours, for the record we'll be playing

19 KEN-D09-0036-0100. And the transcript, your Honour, will be at tab 20 in the

20 binder.

21 (Viewing of the video excerpt KEN-D09-0036-0100)

22 MS ALAGENDRA:

23 Q. Madam, I've paused this video. And can you tell the Court please the person

24 wearing the cap, that is Mr Ruto, isn't it?

25 A. Yes.

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1 Q. And could you tell the Court who is the person in the white jacket, please, the
2 one that Mr Ruto is embracing?

3 PRESIDING JUDGE EBOE-OSUJI: Now, before you answer, one second. You will
4 answer the question, but I needed to remind you we are in public session, so if this
5 person is related to you, you don't need to tell us that.

6 MS ALAGENDRA: Indeed, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 MS ALAGENDRA:

9 Q. If I may just remind the witness also from my part, if there is anything in the
10 course of my questioning which is going to identify you or is going to connect you to
11 any individual, please don't state the connection you have, okay?

12 A. Okay.

13 Q. Now, could you please tell the Chamber who is the person in the white jacket
14 that Mr Ruto is embracing?

15 A. It was a KANU candidate.

16 Q. His name, please.

17 A. Jonathan Bee.

18 Q. And Madam Witness, that is -- that was Mr Ruto's opponent, wasn't it?

19 A. Correct.

20 MS ALAGENDRA: And, your Honour, this is at time stamp 00.30.

21 Q. And Madam Witness, he was the opponent from the PNU party, wasn't it?

22 A. Correct.

23 Q. I'm just going to continue playing, madam, so you can watch your screen.

24 (Viewing of the video excerpt KEN-D09-0036-0100)

25 MS ALAGENDRA:

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1 Q. Madam, did you get to hear the speech of Mr Ruto? And you also observed
2 the scenes from the video?

3 A. Yes.

4 Q. So you will confirm, madam, for the Chamber that what you saw was Mr Ruto
5 behaving in an absolutely proper and exemplary manner towards his political
6 opponent; am I right?

7 A. No. Actually, maybe he -- they edited that after I left, but what I saw is
8 different from what is in the video.

9 Q. Now, madam, I'm just referring to what's on the video. So what you saw on
10 the video?

11 A. Is not -- what I saw myself is not in the video.

12 Q. So on the video, madam, is what I'm asking you about, and what that scene
13 depicted is Mr Ruto behaving absolutely properly towards his political opponent; am
14 I right?

15 A. Correct.

16 Q. In fact, what you did tell the Chamber is that when a person was about -- was
17 going towards his political opponent perhaps in an aggressive manner, what Mr Ruto
18 did was to stop it; that's what you testified, isn't it?

19 A. Correct. And I said that because maybe after I left they came to greet each
20 other, and that is the picture you are -- you are showing in the video.

21 Q. Thank you. And, madam, for the sake of the record, what you heard in this
22 speech, and I'm going to attempt to translate it into English is Mr Ruto saying this, he
23 said, "I would like to thank the almighty God, the people of Eldoret North
24 constituency who campaigned for me and later voted for me and for ODM party."
25 He said that, didn't he?

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1 A. (Microphone not activated)

2 Q. Sorry, madam, your "yes" was not captured on the record. If you could just
3 repeat it.

4 A. Yes.

5 Q. And he says "Our flag-bearer, Honourable Raila Odinga, as a Member of
6 Parliament, all councillors and all those who won in ODM ticket and those who also
7 won in other parties, we will work together because we want to serve our people of
8 Eldoret constituency." That's what he said, didn't he?

9 A. Yes.

10 Q. Again, madam, his speech was absolutely proper, wasn't it, unifying people
11 from all political divides to work together? That's what his speech meant, isn't it,
12 madam?

13 A. Yes.

14 MS ALAGENDRA: Your Honour, at this stage I'll request that this video and the
15 transcript be marked for identification, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

17 THE COURT OFFICER: (Interpretation) Can you give us the ERN number of the
18 transcript, please?

19 MS ALAGENDRA: The transcript reference will be KEN-D09-0036-0101 and also
20 page 0102.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, one moment.

22 Witness, when the lawyer was asking you questions about what is on the video, you
23 said that what is on the video was what occurred perhaps after you had left the place.
24 And later you said that someone -- or, from the question of counsel, someone had
25 gone towards Mr Ruto's opponent aggressively and Mr Ruto stopped that person

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1 who was going towards his opponent aggressively. Is there anything more that you
2 saw that was different?

3 THE WITNESS: The part which I saw it, it's not in the video.

4 PRESIDING JUDGE EBOE-OSUJI: What I'm getting at is, is the only difference you
5 had in mind, that difference, would it be only that there was somebody who had gone
6 towards Mr Ruto's opponent aggressively and Mr Ruto stopped that person?

7 THE WITNESS: Yeah.

8 PRESIDING JUDGE EBOE-OSUJI: Was that the only difference?

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Okay.

11 Proceed.

12 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0100, public,
13 document will be MFI-T-D09-00197. Document KEN-D09-0036-0101, a public
14 document, will be assigned the reference MFI-T-D09-00198.

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

16 Mr Garcia, you will feel free to explore during your re-examination any questions
17 arising from the one I asked.

18 MR GARCIA: Certainly, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: So you don't feel limited by a conscription of any
20 difference. Thank you.

21 MS ALAGENDRA:

22 Q. Madam, before I move to my next topic, I want to assure you I'm not trying to
23 trick you, that was the only part of the video that I wanted to show you, okay?

24 PRESIDING JUDGE EBOE-OSUJI: The word was "circumscription," that's
25 circumscribe the difference. I didn't mean "conscription."

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1 MS ALAGENDRA:

2 Q. Madam, moving forward, do you remember during your examination-in-chief
3 you were testifying about a song you heard being played, and you said it was a song
4 entitled "Kwa heri Kibaki," do you remember that?

5 A. Correct.

6 Q. I'll come to that song, madam, but first can you confirm for the Court, there is a
7 very famous song, isn't it, written by an artist called Jua Cali called "Kwa heri"?

8 A. I don't know who was, because even the Court asking me who was singing this.
9 I managed to hear from the speakers.

10 Q. You don't know the artist?

11 A. I don't know.

12 Q. But there is an original song, an actual song called "Kwa heri." Am I right?

13 A. I don't know.

14 Q. Let me play you something, madam, and you can confirm for the Court whether
15 you've heard this song before, okay?

16 MS ALAGENDRA: And, your Honour, for the record we'll be playing

17 KEN-D09-0036-0184. And, your Honours, we had provided separately on a sheet

18 the chorus and the translation of the chorus for your Honours and my learned friends.

19 And the reference for that document is KEN-D09-0036-0187. It was provided this
20 morning in a single document.

21 (Viewing of the video excerpt KEN-D09-0036-0184)

22 MS ALAGENDRA:

23 Q. Madam, is that song familiar?

24 A. The song I heard it was talking about Kibaki and this one is talking
25 about Larsos (phon).

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1 Q. Certainly. I'm just asking a question, madam. Is this song familiar?

2 A. Yes.

3 Q. And the -- my translation of the chorus, madam, is: "I am saying bye to you.

4 I wish you well. I am not able to love you, my lover, good-bye." That's the chorus.

5 A. Yes.

6 Q. Isn't it correct that during campaigns and elections this particular song has been

7 modified and used in campaigns and political satires? You've heard that before?

8 A. Yes.

9 Q. I'm going to play you another video, madam, and you can confirm whether or

10 not this is the kind of context in which this song has been modified and played in

11 relation to elections and politics, okay?

12 A. Okay.

13 MS ALAGENDRA: And, your Honour, for the record we'll be playing

14 KEN-D09-0036-0175. And the translation of the portions we're going to be playing,

15 your Honour, is also in the single document that we handed this morning, and it is

16 KEN-D09-0036-0185.

17 (Viewing of the video excerpt KEN-D09-0036-0175)

18 MS ALAGENDRA:

19 Q. Did you manage to catch the words, madam?

20 A. Yes.

21 Q. Madam, will you confirm for the Court that what is being depicted in this video,

22 in a cartoon, is Honourable Martha Karua and she's singing to Honourable

23 Sonko saying kwa heri to Sonko when he left NARC Kenya and he went to TNA, is

24 that correct?

25 A. Correct.

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1 Q. Now, madam, I'm correct, am I not, that the song you heard being played
2 through the speakers relating to Kibaki was good-bye Kibaki sung to the tune of Jua
3 Cali; am I right, madam?

4 A. Yeah.

5 Q. And I'm right, madam, am I not, that in that context what the song meant was
6 saying good-bye to Kibaki from the State House. That's what it meant, wasn't it,
7 madam, in the same way good-bye to Sonko from NARC Kenya, isn't it?

8 A. I don't know if it means good-bye from State House or -- because what made me
9 to think is because, if it meant good-bye Kibaki from State House, why IDPs was
10 there?

11 Q. The song you heard being played, madam, the lyrics you testified was
12 "good-bye Kibaki", am I right?

13 A. Yes. Correct.

14 Q. And that was the lyrics that you heard?

15 A. Yeah.

16 Q. There was nothing more in the lyrics, right?

17 A. It was "Bye, we will give you a bus to take you to Othaya."

18 Q. That's right, give you a bus to take you to Othaya. Now that part, madam,
19 "give you a bus to take you to Othaya", isn't Othaya Mr Kibaki's home?

20 A. Correct, you are right.

21 Q. And isn't it usual, madam, also in this kind of campaign, speeches and political
22 exchanges that politicians are told to go back to their farm or go back to their home?

23 A. Yes.

24 Q. And what those kind of speeches mean, madam, or those kinds of words is
25 saying good-bye from one place and you go back home to our own home, isn't it?

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1 A. Yes.

2 Q. Madam, have you heard occasions when politicians have, for example, told
3 President Moi to go back to his farm, or to go back to Kabarak? Have you heard
4 that?

5 A. Yeah, I have heard.

6 Q. Madam, I'm going to play you another video and you can confirm whether or
7 not you have heard those words being mentioned, okay?

8 A. Okay.

9 MS ALAGENDRA: Your Honours, for the record we're going to be playing video
10 KEN-D09-0036-0005 and the transcript, your Honour, is at tab 4. It's
11 KEN-D09-0036-0006.

12 Q. Madam, you see on your screen?

13 (Viewing of the video excerpt KEN-D09-0036-005)

14 MS ALAGENDRA: Your Honours, for the record we've stopped the video at 01.10.

15 Q. Madam, what you -- the person speaking there, madam, is Mr Kiraitu Murungi?

16 A. Right.

17 MS ALAGENDRA: And for the record it is K-I-R-A-I-T-U,
18 Murungi, M-U-R-U-N-G-I.

19 PRESIDING JUDGE EBOE-OSUJI: You -- there were two people who spoke on the
20 video.

21 MS ALAGENDRA:

22 Q. The first person who spoke was Honourable Uhuru Kenyatta as he then was;
23 am I right, madam?

24 A. Yeah, correct.

25 Q. And, madam, what Mr Murungi was saying is "We like President Moi to retire

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1 to his farm, to look after his goats and his animals, to live a long life and see to how
2 good governance can be practised so that he can learn." That's what you heard him
3 say, right?

4 A. Yes, correct.

5 Q. And what these words meant, madam, was "You have been defeated so go
6 home."

7 A. Yeah.

8 MS ALAGENDRA: Your Honour, we would like the two song video clips and this
9 present video clip to be marked as exhibits, please, your Honour, with the transcripts.

10 PRESIDING JUDGE EBOE-OSUJI: Prosecution?

11 MR GARCIA: No objection, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: The documents will be marked as the next in the
13 Defence -- sorry, the videos -- next time, Ms Alagendra, let's do this one at a time, all
14 right? How many videos did we see?

15 MS ALAGENDRA: Three, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: And how many transcripts?

17 MS ALAGENDRA: Also three, your Honour. One for each video.

18 PRESIDING JUDGE EBOE-OSUJI: The videos and the transcripts will be marked as
19 a next in the Ruto Defence exhibits.

20 THE COURT OFFICER: (Interpretation) The first song, document

21 KEN-D09-0036-0184 will be marked as MFI-T-D09-00199. It's transcript document

22 KEN-D09-0036-0187 will be identified as MFI-T-D09-00200. Those two documents
23 are public.

24 MS ALAGENDRA: Your Honour, I believe they were meant to be marked as
25 exhibits.

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- 1 THE COURT OFFICER: (Speaks English) Oh, exhibits. (Interpretation) The first
2 song, document KEN-D09-0036-0184 will be given the number EVD-T-D09-00199.
3 Its transcript, document KEN-D09-0036-0187 will be given the number
4 EVD-T-D09-00200. Those two documents are public.
5 For the second song, document KEN-D09-0036-0175 it will be given the number
6 EVD-T-D09-00201. Its transcript, document KEN-D09-0036-0185 will be given the
7 number EVD-T-D09-00202. Those two documents are public.
8 The video KEN-D09-0036-0005 will be given the number EVD-T-D09-00203. Its
9 transcript, document KEN-D09-0036-0106 will be given the reference number
10 EVD-T-D09-00204. Those two documents are public.
11 MS ALAGENDRA:
12 Q. Madam, you testified that the violence broke out immediately after the
13 announcement of the presidential election results. That's correct, isn't it?
14 A. I don't remember saying that immediately, but --
15 Q. It's probably my mistake. Could you remind us what you said, please?
16 PRESIDING JUDGE EBOE-OSUJI: Why don't you put your proposition to her to see
17 if she agrees and then we'll move on from there.
18 MS ALAGENDRA:
19 Q. How soon after the election results for the presidential elections was announced
20 did violence break out?
21 A. If I can remember, it was 35 -- 30th.
22 Q. It was after the announcement that President Kibaki was the winner?
23 A. I think they announced at night and then -- what I told the Court was I saw it
24 right around 11, 31st.
25 Q. The following day?

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1 A. Yes.

2 Q. I apologise.

3 A. Thank you.

4 Q. So it is the day after?

5 A. Correct.

6 Q. Okay. Going back a bit, madam, from very early on in the race of the 2007
7 campaigns there was a perception, wasn't there, that the Kibaki government was
8 going to rig these elections; am I right?

9 A. Yeah, it was there.

10 Q. And you agree with me, madam, that one of the factors that contributed to this
11 perception was the way in which the electoral commissioners were appointed; am I
12 right?

13 A. Repeat it.

14 Q. One of -- I'll repeat it. One of the factors which contributed to this perception
15 amongst the public that the elections were going to be rigged was the manner in
16 which the election commissioners were appointed by President Kibaki; is that correct?

17 A. Yeah, correct.

18 Q. And what in fact took place, madam, is that these commissioners were
19 appointed without consulting the opposition which the government was required to
20 do, isn't it?

21 A. Maybe. I don't know.

22 Q. Also, madam, I believe that when you spoke to the Prosecution you told them
23 that the election campaign material for the PNU was brought from Nairobi by the
24 presidential escort; isn't that correct?

25 A. Correct.

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1 Q. And it is also correct, isn't it, madam, that the PNU in fact were deploying
2 government resources in its election campaigns?

3 A. As what I know, I don't know about up merge. What I know is about ground
4 because what they brought in the ground, but what they were doing up I don't know.

5 Q. And by "up" you mean?

6 A. At Nairobi. I mean, headquarter for PNU. I didn't return, I was in Turbo, so I
7 could not -- I don't know exactly if they were using government resources or not.

8 Q. Maybe I can be a bit clearer as what I'm trying to ask you is: Did you hear or
9 did you see that the PNU campaigns had the involvement of government ministers,
10 government officials, there were complaints that government vehicles were being
11 used, government flights? Did you hear that, madam?

12 A. Yes.

13 Q. Madam, I'm correct, am I not, that the involvement of high-ranking government
14 officials in the PNU campaigns, including from the provincial administration, gave
15 the perception that the ODM was not only fighting a political party, but they were up
16 against a whole government, the State, isn't it, that it gave people?

17 A. I don't remember that. Maybe.

18 Q. Did you hear people speaking in those terms, that it is going to look like very
19 difficult for the ODM because they're fighting the government, the State?

20 A. (No audible response)

21 Q. I didn't get your answer, madam?

22 A. Maybe they said, but you know sometimes you miss some.

23 Q. And what would you assume, madam, when you see that the ODM is up
24 against a political party which has the entire State resources involved in its campaign?
25 What would you assume? Would you assume that it's a party which is now up

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1 against a State?

2 A. Repeat it again.

3 Q. You agree with me that the PNU was using government resources including
4 high-ranking officials in its campaigns, so as a layperson looking at that wouldn't you
5 have the impression that the ODM was up against not just a political party called
6 PNU, but it was up against PNU which had State resources and State backing and
7 that's what they were fighting against? Wouldn't you --

8 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I don't know where you're going
9 with this line of question, but one may think there's a need to distinguish between
10 people and resources, as in it's one thing to talk about government vehicles,
11 government logistical support. I'm not sure that it is a fair question to mix it up with
12 high-ranking persons and government also in a democracy. I don't know if you get
13 the distinction I'm trying to make here, and the reason is the question needs to be fair
14 to the witness. We don't want to confuse witnesses on the stand. I don't know how
15 you do it in a democracy.

16 MS ALAGENDRA: Your Honour, perhaps the -- the propriety of the manner in
17 which PNU conducted its election campaigns we'd address it in submissions or with
18 perhaps the next witness, but right now, your Honour, what we were trying to get at
19 is the views of the witness and what she understood it when she saw the manner in
20 which the PNU was campaigning; whether she felt that the PNU seemed to be a very
21 powerful party because it had on the one side high-ranking government officials
22 involved in the campaigns and also they had the advantage of public resources that
23 they were deploying also in their campaigns.

24 PRESIDING JUDGE EBOE-OSUJI: I understand what you mean by wanting to
25 address the witness's state of mind, but that state of mind needs to be relevant to an

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1 issue, not just something we want to talk about because we have a witness on the
2 stand. I mean, what is the state of mind of this witness in that regard that is relevant
3 to the issues in the case?

4 And while we're on that stream, we want to make sure that the stream of the data
5 you're exploring in that matter is not polluted at source by mixing things up. That's
6 my worry.

7 MS ALAGENDRA: I think I understand, your Honour. Perhaps we'll leave the
8 witness's responses so far as to what she noticed going on and the perceptions we'll
9 address it with another witness, your Honour. Thank you.

10 Q. Witness, am I correct, madam, that on the 27th the presidential candidates also
11 went out to vote? Am I right?

12 A. Yeah.

13 Q. And almost all the presidential candidates had a trouble-free voting day; am I
14 right?

15 A. (No audible response)

16 Q. Sorry, madam, your answer was not captured in the transcript. You said "Yes,"
17 am I right?

18 A. Yes.

19 Q. And I say almost all, madam, because Mr Raila Odinga didn't have a
20 trouble-free day, did he?

21 A. I don't know.

22 Q. You will recall, madam, that when Mr Odinga went to vote he could not find his
23 name in the voters' register, isn't it?

24 A. Yes.

25 Q. And you will also recall that this angered his supporters very much, didn't it?

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1 A. Yes.

2 Q. And in fact it gave the impression that Raila was going to be rigged out of the
3 elections, didn't it?

4 A. That is what I heard.

5 Q. Madam, I'm going to play you another video. Please if you can have a look at
6 the screen and then I'll ask you some questions.

7 Your Honours, we're going to play KEN-D09-0036-0117. The transcript,
8 your Honour, is at tab 24 and the reference is KEN-D09-0036-0152.

9 (Viewing of the video excerpt KEN-D09-0036-0117)

10 MS ALAGENDRA:

11 Q. Madam, am I correct, that what you saw on the video in relation to the other
12 presidential candidates, with the exception of Raila Odinga, was voting taking place
13 in an environment which is -- which was a model of calmness; am I right?

14 A. Yeah.

15 Q. As compared to the situation in which Mr Odinga found himself in, which was
16 complete chaos, wasn't it, madam?

17 A. Yes, that is what I saw.

18 Q. And, in fact, while the wide perception was that Mr Raila Odinga was going to
19 win this election, this incident added to the fear that he was going to be rigged out
20 and erased from the election, isn't it, madam?

21 A. Yes.

22 Q. And moving forward, madam, on 29 December, you will recall the tensions
23 were rising all over the country because there were delays in the announcement of the
24 results, yes?

25 A. Correct.

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1 Q. And you will also recall, madam, that what didn't help was Mr Kivuitu's
2 careless remarks that he could not reach returning officers, and his speculations that
3 results were being cooked, you (Microphone not activated) those kind of remarks,
4 didn't you?

5 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, let's not characterise in that way.
6 Just state the proposition.

7 MS ALAGENDRA:

8 Q. Madam, let me rephrase the question so it appears proper in the record. You
9 will recall the ECK chairman, Mr Kivuitu's remarks in relation to the delays, on public
10 television and radio, he was heard saying that he could not reach returning officers,
11 and he also said they're probably somewhere cooking results. He said that, didn't
12 he?

13 A. Yeah, I heard.

14 Q. And like you heard, many people across the country heard it, didn't it, madam?

15 A. Yes.

16 Q. Madam, you said "yes," but it didn't come on the record. If you can just repeat.

17 A. Yes.

18 Q. And, madam, you'll agree that these remarks by Mr Kivuitu added fuel to the
19 already sensitive situation caused by the delays in the announcement of the
20 presidential election results, yes?

21 You need to say "yes," madam. It's not on the record.

22 PRESIDING JUDGE EBOE-OSUJI: Well, she hasn't said "yes" or "no." She has
23 pauses, a long pause.

24 MS ALAGENDRA: Okay.

25 PRESIDING JUDGE EBOE-OSUJI: The question is why she's pausing.

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1 Witness, remember what I had advised you earlier. You answer -- give an answer
2 you know. If you don't know, as you've been saying all along to some questions,
3 also feel free to say that.

4 THE WITNESS: Thank you.

5 MS ALAGENDRA:

6 Q. Can you repeat what you just said?

7 A. Yeah, repeat it, please.

8 Q. Do you want me to repeat the question?

9 A. Yeah.

10 Q. What I was saying, my question was that these comments by Mr Kivuitu was
11 adding to the tension that people were already going through because of the delay in
12 the announcement of the results; isn't that correct?

13 A. (No audible response)

14 Q. Did you say "correct," madam?

15 A. Yes.

16 Q. Madam, just as a point of procedure, before you answer my question, if you just
17 pause a little bit, then you answer because our speakers tend to overlap when we
18 speak immediately after, okay?

19 A. Okay.

20 Q. Madam, as the results were announced and President Kibaki was quickly sworn
21 in as president of Kenya, in the night violence broke out in several parts of the
22 country, didn't it?

23 A. Yes.

24 Q. And you would have heard, for instance, that in Nairobi reports were coming in
25 that close to 50 people were killed in Kibera alone on the night of the presidential

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1 results when they were announced. You heard that on the news, didn't you?

2 A. Maybe that time I was not on the radio.

3 Q. Did you subsequently hear it that on that night many people were killed in
4 Kibera?

5 A. I heard people have been killed, but I didn't -- you know, that time there was all
6 that tension, so sometimes you missed to hear things in the radio.

7 Q. Of course, I understand.

8 A. Yes.

9 Q. But what you're saying is that after that you heard about this?

10 A. Yes.

11 Q. And in the same way, I'm sure you would have also heard that between 31
12 December and 2 January, about 3,000 stalls were set on fire in Toi Market, in Langata
13 constituency, Nairobi. You must have heard about this?

14 A. I didn't heard that one.

15 Q. It was in fact reported in the Kenya National Commission for Human Rights
16 report. Did you ever read it there, perhaps?

17 A. Maybe it is there but, you know, sometimes you miss other things, and it is not
18 that you know everything which is going on.

19 Q. That's fair, madam.

20 And, madam, you would have heard that simultaneously on those days violence
21 broke out in Mombasa, in Kisumu, Nairobi, and elsewhere, all over the country, isn't
22 it, madam?

23 A. Yes.

24 Q. And, madam, soon after this, am I right that rumours of all kinds started
25 spreading around the North Rift, for example, you would have heard the rumour that

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1 Mr Ruto and Mr Raila Odinga, they were arrested, and Mr Ruto was shot. You
2 would have heard that?

3 A. I heard.

4 Q. And this was making people anxious and angry; am I right, madam?

5 A. Yeah.

6 Q. And you --

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, watch the formulation. Try not
8 to assume what she heard. You can ask her whether she heard, or you can put a
9 proposition, your proposition, but the formulation "you would have heard" is a little
10 problematic.

11 MS ALAGENDRA: I understand, your Honour.

12 Q. Madam, now, moving to Turbo, we are right, aren't we, that there were only
13 two people killed in Turbo during the post-election violence?

14 A. Two people?

15 Q. Yes, madam. You spoke about one person only, but did you hear about
16 another person being killed?

17 A. I heard, but I didn't want to mention someone which I didn't see.

18 Q. I understand. So you mentioned about one person that was killed and you
19 heard about another person that was killed; am I correct, madam? You said "yes"?

20 A. Yeah, I heard that one, but I didn't see it. But this one I see it because --

21 PRESIDING JUDGE EBOE-OSUJI: All right. So what you're saying is -- what
22 you're saying is that you actually observed one person being killed?

23 THE WITNESS: Yes, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: But you heard about the killing of a second
25 person, or did you not hear it?

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1 THE WITNESS: I heard that someone else has been shooted.

2 PRESIDING JUDGE EBOE-OSUJI: Proceed, Ms Alagendra.

3 MS ALAGENDRA:

4 Q. Madam, just as some guidance, don't mention who you heard it from, and if
5 you saw something, don't describe what you saw while we're in a public session,
6 okay?

7 A. Okay.

8 Q. And madam, it's correct, isn't it, apart from these two individuals, there was no
9 one else that was killed in Turbo, isn't it?

10 A. Maybe -- maybe it was, but I didn't know, or maybe it was not there. I don't
11 know.

12 Q. But to the best of your knowledge it's only two people killed in Turbo?

13 A. Yeah, that is what I heard.

14 Q. In fact, madam, the killing of these two individuals is widely known in Turbo,
15 it's widely known in the North Rift, isn't it?

16 A. Yes.

17 Q. Madam, the first person that was killed, which everybody knows about, was a
18 Kalenjin child, yes?

19 A. Correct.

20 Q. And his name was Kevin Kipchumba?

21 A. Correct.

22 Q. And you told the Court that he was in the eighth standard in St Columbus
23 primary school.

24 A. I didn't say he was in St Columbus, I -- what I -- I said -- I said he was doing
25 KCSC in that year and he was joining Form 1, 2008. He was supposed to. That is

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1 what I -- I didn't mention the school.

2 Q. That's my mistake. Did you know, madam, that he was in St Columbus
3 primary school?

4 A. I --

5 PRESIDING JUDGE EBOE-OSUJI: You can say "yes" or "no" to that question.

6 THE WITNESS: No.

7 MS ALAGENDRA:

8 Q. "No," as you don't know?

9 A. What I understand he was in a boarding school, not St Columbus, but I -- I don't
10 know the name of the school.

11 Q. You said he was doing KCPE?

12 A. KCS -- CP -- KCESC -- KCPE.

13 Q. So it is KCPE?

14 A. Yeah. Kenya Certificate of Primary Education.

15 Q. Thank you. And he was about 14 years old, wasn't he?

16 A. Correct.

17 Q. And, madam, he was shot by the police?

18 A. Correct.

19 Q. And the policeman who shot him was a Kikuyu?

20 A. No.

21 Q. Who was it, madam?

22 A. It was a Kalenjin.

23 Q. Who was it? Do you know the person?

24 A. Yeah, I -- I -- I came to hear that it was someone called Kandi (phon), a
25 policeman called Kandi. I don't know. That is what I heard later.

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1 Q. Do you know such a policeman?

2 A. Yeah, there was someone there called that name, but later on he was transferred.

3 Q. But it is widely believed that this boy was shot by a Kikuyu officer, isn't it?

4 A. I don't know. It's only that what I -- about the Kikuyu I didn't hear, but, you
5 know, something which you saw it and you hear it for yourself you can clarify that it
6 is it, but that one when you are saying, you know, from one to three people is a
7 different thing. So about it I'm not sure.

8 Q. So you're not sure about who is the officer who shot him?

9 A. Yes.

10 Q. And the other person, if I move now, this boy, madam, he was a Kalenjin boy,
11 wasn't he?

12 A. Correct.

13 Q. And his shooting angered people. When the police shot him the people were
14 very angry, right?

15 A. Who?

16 Q. The people from the area in Turbo.

17 A. They were shooting?

18 Q. They were angry --

19 A. Uh-huh.

20 Q. -- about the shooting of this child. People were upset about it.

21 A. Okay, okay. Yeah, they were upset.

22 Q. And, madam, the other person that was shot, he was a Luhya, wasn't he?

23 A. Correct.

24 Q. And he was also shot by the police?

25 A. Correct.

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1 Q. And the Luhya community in the area were very upset with the police for the
2 shooting, isn't it?

3 A. Maybe because I didn't come across that -- that tribe.

4 Q. And, madam, did you hear that the population in the area, they gathered
5 around the police station expressing their anger at the shooting of these two people
6 by the police? Did you hear that, or did you see it?

7 A. I heard.

8 MS ALAGENDRA: Your Honour, could we go into private session for just two
9 questions?

10 PRESIDING JUDGE EBOE-OSUJI: Private session.

11 (Private session at 10.39 a.m.) Reclassified as open session

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

13 MS ALAGENDRA:

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 (Redacted)

23 (Redacted)

24 A. (Redacted)

25 Q. (Redacted)

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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 A. (Redacted)
- 4 MS ALAGENDRA: Your Honour, can I ask that KEN-D09-0036-0188 be put on the
- 5 screen, please.
- 6 Q. Do you know this person on the screen?
- 7 A. Yes.
- 8 Q. Can you tell the Court who he is?
- 9 A. I don't know the person.
- 10 Q. (Redacted)
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 A. (Redacted)
- 14 Q. Let me put another photograph.
- 15 A. Okay, okay.
- 16 MS ALAGENDRA: Can we have KEN-D09-0036-0169.
- 17 I apologise, your Honour, I had the wrong number recorded.
- 18 Q. Madam, how about this person. Let's try this person. Do you recognise him?
- 19 A. Yes, this is the person.
- 20 Q. (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 A. (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 MS ALAGENDRA: (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 16 THE WITNESS: (Redacted)
- 17 (Redacted)
- 18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 19 (Redacted)
- 20 MS ALAGENDRA: (Redacted).
- 21 Your Honour, can I ask that this photo be marked as an exhibit, please.
- 22 PRESIDING JUDGE EBOE-OSUJI: Any objection?
- 23 MR GARCIA: No objection, your Honour.
- 24 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the next in the
- 25 Ruto Defence exhibits.

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1 THE COURT OFFICER: (Interpretation) Are you -- is it the last photograph, or are
2 there two?

3 MS ALAGENDRA: Just this photo, please. The other one was my mistake.

4 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0169 will be
5 assigned the reference EVD-T-D09-00205.

6 MS ALAGENDRA: Your Honour, we can go into public session.

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

8 (Open session at 10.45 a.m.)

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

10 MS ALAGENDRA: Your Honour, before moving further, may I request that the
11 video and the transcript showing Mr Raila Odinga's voting day also be admitted as an
12 exhibit, please.

13 PRESIDING JUDGE EBOE-OSUJI: Any objection?

14 MR GARCIA: Your Honours, I notice that in the questioning of the witness there
15 were no questions regarding -- I mean this is how we've done it normally for video
16 and photos authenticating the video. I leave it to the Court's discretion. I'm in the
17 Court's hand. I didn't see any of that -- of that. I noticed that the witness answered
18 that recognising Mr Odinga on the video. That's all the Court has for the moment.

19 PRESIDING JUDGE EBOE-OSUJI: Are you objecting or not?

20 MR GARCIA: I'm not objecting, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: The document would -- the video would be
22 admitted as the next in the Ruto Defence exhibits.

23 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0117 will be
24 assigned the reference EVD-T-D09-00206. And the transcript of that video,
25 document KEN-D09-0036-0152 will be EVD-T-D09-00207. These two documents are

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1 public.

2 MS ALAGENDRA:

3 Q. Madam, it is true, isn't it, that during the period of this post-election violence in
4 your area and other areas Kikuyus and others who were in the IDP camps, they were
5 also coming into town and looting?

6 A. If I remember they already loot and burn the houses, so I don't understand
7 which -- which -- they were coming to -- which -- which centres, again, and they were
8 already destroyed.

9 Q. Did you hear that there were Kikuyus who were coming back into the town for
10 whatever reason and looting?

11 A. What I came to -- to heard, it was like, they were coming -- before they put fire
12 on it they were coming to collect their things, but I cannot say no or yes because
13 I didn't see it.

14 Q. But did you hear that when they were coming to collect their things normally
15 they were coming with the GSU officers and at that time they took opportunity and
16 they were also looting around?

17 A. If I may say, the shops which were there, it was -- belongs to Kikuyus, so I don't
18 know, maybe if it can -- let's say if a Kikuyu -- another Kikuyu send another Kikuyu
19 to take or to loot, we don't know because if he was -- if he was loosing -- he was
20 looting, hey, we didn't understand because they were in IDP camp, so we may -- we
21 may not know if they were looting or the others sent them to take.

22 Q. So what you mean is you don't know whether they were looting the property of
23 others or whether the others had sent them to take their property and bring it to
24 them?

25 A. Yes.

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1 Q. So what you know is that they were coming and taking the property of others,
2 but you don't know why; is that correct?

3 MR GARCIA: I object, your Honour, that's not what the witness has stated. We
4 shouldn't distort what the witness is stating. I think that the witness has been
5 somewhat clear on the matter; she doesn't know.

6 MS ALAGENDRA: Perhaps my friend can explain to me if he's clear on it.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you need to clearly state your
8 proposition to the witness. If you're trying to explain your understanding so that
9 she's on the witness stand so as to help you better understand is something else.
10 "You may be mistaken in this understanding, is that -- am I correct or understanding
11 it that way?" Questions in that manner may be put to a witness so that the witness
12 has the opportunity to clarify in the understanding or misunderstanding you may
13 have.

14 MS ALAGENDRA: Thank you, your Honour. I will perhaps clarify her answer.

15 Q. Madam, you were saying that -- madam, you saw Kikuyus coming back to take
16 belongings; am I right?

17 A. Some they were burn, but the shops which were in front, most -- the others were
18 taken, they came to collect with police, and the others it was looted by Kalenjin and it
19 was burned.

20 Q. And they who came with the police to collect things, the "they" is Kikuyus?

21 A. Yes.

22 Q. And when they came to collect things, you say here you don't know whether
23 they were taking their things or whether they were taking somebody else's things;
24 yes?

25 PRESIDING JUDGE EBOE-OSUJI: All right.

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1 THE WITNESS: No.

2 PRESIDING JUDGE EBOE-OSUJI: There's confusion there. Let's start afresh.

3 Ms Alagendra --

4 MS ALAGENDRA: Your Honour, perhaps --

5 PRESIDING JUDGE EBOE-OSUJI: Hold on. You've now put on the record your
6 take or possible understanding of the situation as one of two possibilities. Why
7 don't you take it one possibility at a time with the witness so it is clear what she is
8 saying.

9 MS ALAGENDRA: Your Honour, perhaps to be fair, I'll just ask her to repeat the
10 whole thing on her own and give it her own words.

11 Q. Madam, can you do that? Can you answer my question again and explain it?

12 A. I will.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, was it your understanding that the
14 Kikuyus who came with the GSU had come and were looting other people's
15 property?

16 THE WITNESS: No, I didn't witness, but I only -- saw only one and then nobody
17 touch property for that one. And they came with GSU and the took the things, but
18 the rest it was looted. They looted the things.

19 PRESIDING JUDGE EBOE-OSUJI: Right, let's -- you said you saw only one?

20 THE WITNESS: One Kikuyu who came to collect the things, but the rest of the -- the
21 others was burnt.

22 PRESIDING JUDGE EBOE-OSUJI: All right. You say you saw one Kikuyu who
23 came to collect things. What things did that Kikuyu come to collect?

24 THE WITNESS: It was like shukas, soaps, unga, OMO. Those necessities of the
25 shop.

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1 PRESIDING JUDGE EBOE-OSUJI: Belonging to who?

2 THE WITNESS: To kikuyu.

3 PRESIDING JUDGE EBOE-OSUJI: To the same Kikuyu who came to collect the
4 things?

5 THE WITNESS: Correct.

6 PRESIDING JUDGE EBOE-OSUJI: You also said "They were looting things." Who
7 were you referring to by "they" looting things?

8 THE WITNESS: I'm referring to Kalenjin youth, because I managed to see when they
9 were looting things, after that they destroyed the houses, or I saw them carrying
10 Galsheets.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, please continue. You can take it
12 from there, or if that's not clear you can still ask further questions on the matter.

13 MS ALAGENDRA: It is very clear, your Honour.

14 Q. Madam, I'm going to move to a different area. Madam, you agree that the
15 ODM as a party they were portraying themselves as a multi-ethnic party; am I right?

16 A. Yes.

17 Q. And the Pentagon -- ODM Pentagon members, for example, they were
18 representing various communities, yes?

19 A. Yes.

20 Q. And there were prominent Kikuyus who were part of the ODM in the 2007
21 elections, yes?

22 A. Like who? Just remind me.

23 Q. For example, Honourable Bishop Margaret Wanjiru?

24 A. Okay, that was in Nairobi. I'm talking about --

25 Q. (Microphone not activated)

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- 1 A. Yes.
- 2 Q. The question, madam, is generally the ODM as a whole?
- 3 A. Okay. Okay.
- 4 Q. (Microphone not activated)
- 5 A. Yeah, they were there.
- 6 Q. There were prominent Kikuyus in the ODM, yes?
- 7 A. Yeah, they were there.
- 8 Q. For example, there was Honourable Bishop Margaret Wanjiru?
- 9 A. Yes.
- 10 Q. And she in fact won the election in 2007 and she became the MP for Starehe
- 11 constituency, yes?
- 12 A. Correct.
- 13 Q. Then there was also Mumbe Ngaru who was part of the ODM. Do you recall
- 14 her?
- 15 A. Yes.
- 16 Q. And she was the presidential campaign team leader for Mr Raila Odinga; am I
- 17 right?
- 18 A. You are right.
- 19 Q. And I'm also sure you would have heard that Mr Maina Njenga, the Mungiki
- 20 leader, was supporting the ODM; am I right?
- 21 A. Yes.
- 22 Q. And now he still supports Raila Odinga, doesn't he?
- 23 A. He's still supporting.
- 24 Q. Madam, for Othaya, President Kibaki's home area, the ODM candidate for
- 25 Othaya for MP, who was standing against Mr Kibaki in 2007, he was a Kikuyu, wasn't

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1 he?

2 A. He was.

3 Q. It was Stanley Maina Benjamin; am I right?

4 A. Yes.

5 Q. And in Gatundu South, His Excellency Uhuru Kenyatta's constituency where he
6 stood in 2007 --

7 A. Yes.

8 Q. -- his opponent in the ODM was also a Kikuyu, wasn't he?

9 A. He was.

10 Q. It was Charles Ngugi Mbugua.

11 A. Correct.

12 Q. Madam, the fact is, isn't it, that in areas where the majority of the population
13 belongs to one ethnic group, the political candidates are more often than not from that
14 ethnic group? Shall I give you an example?

15 A. Yes.

16 Q. Like for example in the North Rift it is a predominantly Kalenjin area, isn't it?

17 A. Correct.

18 Q. So the candidates in all the parties, majority of those candidates were Kalenjin;
19 am I right?

20 A. You are right.

21 Q. And similarly in areas like in Central Province, where the majority of the
22 population is predominantly Kikuyu for example, the candidates from all political
23 parties are more often than not Kikuyu; am I right?

24 A. Right.

25 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, we will leave it there for now and

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1 then we will come back at 11.30. We will let the witness out, but then let's remain for
2 a quick second or minute it is safer to say.

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

4 (Closed session at 10.59 a.m.) Reclassified as open session

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

6 (The witness stands down)

7 PRESIDING JUDGE EBOE-OSUJI: I thought I should say this in the absence of the
8 witness. (Redacted). I don't know what you
9 proposed to do with it.

10 Yes, we do not -- we've ruled that it is not appropriate to tell a witness, "Witness X
11 will be coming," or, "Somebody else is coming to say something later," but there
12 is -- that's a different matter, of course, from putting a direct proposition to a witness
13 while on the stand that may be contradictory of what the witness said even though
14 you may -- in anticipation of another witness coming. So there is no
15 misunderstanding about what we had said in the past on this, okay?

16 The Court will rise.

17 THE COURT USHER: All rise.

18 (Recess taken at 11.01 a.m.)

19 (Upon resuming in open session at 11.37 a.m.)

20 THE COURT USHER: All rise.

21 Please be seated.

22 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back. We are back in open
23 session and Ms Alagendra will continue her questions of you.

24 MR GARCIA: Sorry to interrupt, your Honour, but just for the record

25 Mr Anton Steynberg will not be joining us for this session. He'll be in for the last

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1 session of the day.

2 MR KIGEN-KATWA: And for the record, Mr President, our case manager,

3 Honor Lanham, will not be in this session. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, please proceed.

5 MS ALAGENDRA: Your Honour, for the record Ms Sarah Morgan has joined our
6 team.

7 Q. (Redacted)

8 A. (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 (Redacted)

16 A. (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 A. (Redacted)

22 MS ALAGENDRA: Your Honour, can I go into private session for just one minute?

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

24 (Private session at 11.40 a.m.) Reclassified as open session

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

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- 1 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, it might be safe to redact from the
2 public delayed broadcast the question and answer between your appearances now on
3 the transcript; that is between line 18 of page 41 and line 11 of page 42. (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 MS ALAGENDRA: (Redacted)
8 PRESIDING JUDGE EBOE-OSUJI: (Redacted).
9 MS ALAGENDRA: (Redacted)
10 (Redacted)
11 (Redacted)
12 PRESIDING JUDGE EBOE-OSUJI: And that's why I say I'm not saying you've done
13 anything wrong in particular. It's not a rebuke. It's simply to avoid temptation for
14 people to speculate. Anyway, it is a direction I'm giving. It's not a reprimand of
15 how you've done it. It's simply safer to remove that.
16 MS ALAGENDRA: Certainly, your Honour.
17 Q. Madam, you know somebody by the name of William Rono who was in the
18 PNU, don't you?
19 A. I know.
20 Q. And what position did he hold in the PNU, according to your understanding?
21 A. I don't remember, but I know he was participating somewhere.
22 Q. In the PNU campaigns?
23 A. Yes, yes.
24 Q. And you also know that he was very closely associated with the PNU, correct?
25 A. Yes.

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1 MS ALAGENDRA: Your Honour, would it be all right for me to continue with the
2 PNU structure in public, please, in the same way that I went through some of the
3 ODM officials?

4 PRESIDING JUDGE EBOE-OSUJI: All right. (Redacted)
5 (Redacted)
6 (Redacted)

7 MS ALAGENDRA: Can we go into public, please?

8 PRESIDING JUDGE EBOE-OSUJI: Public session.
9 (Open session at 11.44 a.m.)

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

11 PRESIDING JUDGE EBOE-OSUJI: And also you can put your own direct
12 propositions, put it to her if that is the case, and then directly whatever it is, and then
13 she will accept or disagree, and we move on.

14 MS ALAGENDRA:

15 Q. Madam, Samuel Kimeli Koskei was the Vijana na Kibaki co-ordinator for
16 Mosoop constituency, yes?

17 A. Yes.

18 Q. Bethwel Ruto, he was the PNU deputy organising secretary for Eldoret North
19 constituency, yes?

20 A. Some I don't remember clearly because (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: One second. I'm signing this thing.

22 All right. Proceed, Ms Alagendra.

23 MS ALAGENDRA:

24 Q. I'll take that question again. You can just say yes or no. Don't explain further,
25 please.

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- 1 A. Okay. Okay.
- 2 Q. Bethwel Ruto, he was a PNU official, wasn't he?
- 3 A. Yes, he was.
- 4 Q. Meshack Yebei, he was constitutional secretary for Eldoret North and he was
5 responsible for Tapsagoi ward in Turbo, wasn't he?
- 6 A. Yes.
- 7 Q. Christopher Koech, he was a PNU agent in the 2007 elections, wasn't he?
- 8 A. He was.
- 9 Q. Julius Kipchirchir Chumba, he was contesting for councillor in Tapsagoi ward
10 on a PNU ticket, am I right?
- 11 A. No. It was FORD-Kenya.
- 12 Q. And FORD-Kenya was part of PNU?
- 13 A. Yes.
- 14 Q. Wilson Mutai was the ODM candidate that won the election against
15 Julius Chumba; correct?
- 16 A. Correct.
- 17 Q. Jonah Ngetich Bureti, he was a PNU agent in the 2007 elections; correct?
- 18 A. Correct.
- 19 Q. Jonah Bureti spelt J-O-N-A-H, Ngetich, N-G-E-T-I-C-H, Bureti, B-U-R-E-T-I.
20 Madam, Simon Rotich, he was NARC Kenya interim chairman for Tapsagoi ward and
21 later he was supporting PNU in the 2007 elections, correct?
- 22 A. Repeat it.
- 23 Q. Simon Rotich in 2007 elections, he was supporting the PNU?
- 24 A. Correct.
- 25 Q. And before that he was NARC Kenya interim chairman for Tapsagoi?

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1 A. I don't remember that.

2 PRESIDING JUDGE EBOE-OSUJI: You need to watch whether you said "not Kenya"
3 or something else.

4 MS ALAGENDRA: What I said was NARC Kenya N-A-R-C as in the political party.

5 THE WITNESS: NARC Kenya, okay. I got it other difference. I thought it was
6 "not Kenya".

7 MS ALAGENDRA:

8 Q. Oh.

9 A. But I'm clear now. Thank you.

10 Q. So do you want to answer it, whether he was part of NARC Kenya before?

11 A. Yes, correct.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, so at line 20 of page 45 and line 1
13 of page 46 where the appearance "not Kenya" we have it now, it should say "NARC
14 Kenya."

15 MS ALAGENDRA: That's correct, your Honour, capital N-A-R-C.

16 PRESIDING JUDGE EBOE-OSUJI: Proceed.

17 MS ALAGENDRA: Your Honour, could I go into a private session for just one
18 minute?

19 PRESIDING JUDGE EBOE-OSUJI: Private session.

20 (Private session at 11.49 a.m.) Reclassified as open session

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

22 MS ALAGENDRA:

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted).

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 MS ALAGENDRA: Your Honour, we can go back into open session.
- 11 PRESIDING JUDGE EBOE-OSUJI: Back to public session.
- 12 (Open session at 11.50 a.m.)
- 13 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 15 MS ALAGENDRA:
- 16 Q. Madam, yesterday when you testified you spoke about election campaigns that
- 17 were disrupted, PNU election campaigns that were disrupted by ODM supporters.
- 18 Do you recall that?
- 19 A. Yes.
- 20 Q. Madam, when you spoke to the Prosecution investigators, did they ask you any
- 21 questions about PNU campaigns that did take place in the area or they only focused
- 22 on what did not take place or disruptions?
- 23 A. When I spoke, I spoke to them, they were asking about what -- actually, they
- 24 wanted to know what went wrong. Others, no.
- 25 Q. That's clear, thank you. Madam, do you recall an incident when Mr Ruto

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1 himself was attacked on an ODM rally sometime in September 2007 in Kisii?

2 A. I remember.

3 Q. And do you remember he had an arrow shot into his knee?

4 A. Correct.

5 Q. And he was admitted in hospital?

6 A. Correct.

7 Q. And he was attacked by PNU supporters?

8 A. I don't know, because it was Kisiis, but I heard from radio that he has been
9 attacked.

10 Q. By who?

11 A. I didn't hear -- I didn't know actually the people who attacked him but -- I didn't
12 heard.

13 Q. Madam, I'm correct, am I not, that this incident happened in September 2007,
14 the record we have is actually 22 September?

15 A. I don't remember the date, madam.

16 Q. But do you remember the month, September 2007?

17 A. Even the month. But what I remember is that happened.

18 Q. And it was in 2007?

19 A. Yes.

20 Q. And it was wildly broadcasted, correct?

21 A. Yes.

22 PRESIDING JUDGE EBOE-OSUJI: Okay. Witness, you have to wait for that pause
23 that I had advised you earlier.

24 And, Ms Alagendra, you too. If you look at line 20, for example, you see "the month"
25 appears, but I believe the witness had said "even the month." It's because of that

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1 overlapping that's happening. The witness did say at line 20 that she did not even
2 remember the month.

3 MS ALAGENDRA: That is correct, your Honour. And I think I'm also questioning
4 too fast after her answer. So I will also watch my pace.

5 PRESIDING JUDGE EBOE-OSUJI: Yes. We will observe the pause. It might make
6 things appear slow, the proceedings, but it is important that we observe it so we can
7 avoid overlapping speakers.

8 MS ALAGENDRA:

9 Q. So, madam, we've just spoken about Mr Ruto being attacked in September -- in
10 September 2007, we say. Do you recall, madam, that in early October Mr Kibaki was
11 in Eldoret campaigning. Do you remember?

12 A. Yes.

13 Q. It was on 4 October 2007. Do you recall?

14 A. I don't recall the date exactly, but it was in Eldoret during campaign.

15 Q. And there were many people that attended his campaigns (microphone not
16 activated) of people?

17 A. Yes. It's normally, even if you're not supposed, and I heard that Honourable
18 Ruto is there, I normally go because he's a leader and we need to hear what he's
19 saying. Even if you are not supporting that person, it's normal to go there to attend
20 the rally, yes.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, don't forget to turn off your
22 microphone when the witness is speaking.

23 MS ALAGENDRA:

24 Q. Madam, I'm going to play you a video and then I'll ask you some questions
25 about that video, okay?

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1 A. Okay.

2 MS ALAGENDRA: Your Honour, we're going to play video KEN-D09-0036-0025.

3 And the transcript, your Honour, is at tab 10. And the reference for the transcript is
4 at KEN-D09-0036-0026.

5 PRESIDING JUDGE EBOE-OSUJI: Is it public?

6 MS ALAGENDRA: Public please, your Honour.

7 (Viewing of the video excerpt KEN-D09-0036-0025)

8 MS ALAGENDRA:

9 Q. Do you recall that event?

10 A. Yes.

11 Q. Did you attend that event?

12 A. Yes.

13 Q. And do you -- and would you say, madam, that the video that I've shown you
14 are events that you witnessed yourself? Don't explain why, but just say whether or
15 not, what I just showed you in the video, is what you saw happening when you
16 attended the event.

17 A. It was that way.

18 MS ALAGENDRA: Your Honour, we'd request that this transcript and video be
19 admitted as evidence, please.

20 PRESIDING JUDGE EBOE-OSUJI: Any objection?

21 MR GARCIA: No objection.

22 PRESIDING JUDGE EBOE-OSUJI: The video and the accompanying transcript will
23 be admitted as the next in the Ruto exhibits.

24 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0025 will be
25 entered as EVD-T-D09-00208. Document KEN-D09-0036-0026 will be entered as

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1 EVD-T-D09-00209. The two documents are public.

2 PRESIDING JUDGE EBOE-OSUJI: So these would be Ruto Defence Exhibit 208 and
3 Ruto Defence Exhibit 209. Thank you.

4 MS ALAGENDRA:

5 Q. Madam, Mr Ruto spoke in English. To that extent we understand all of us in
6 the courtroom what he said, but there was a portion where he spoke in Swahili. And
7 I will give you the translation that we have and you can tell us if it's accurate, okay?

8 A. Okay.

9 Q. We have Mr Ruto saying in the beginning --

10 PRESIDING JUDGE EBOE-OSUJI: Where is that tab again, sorry?

11 MS ALAGENDRA: Tab 10, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you. All right. Sorry about that.

13 Proceed.

14 MS ALAGENDRA:

15 Q. Mr Ruto is saying, "We welcome you to address these people. The majority of
16 them have already made their decisions politically, but you are welcome to address
17 them because it is a democracy."

18 A. Correct.

19 Q. Madam, do you recall that President Kibaki was again in the North Rift on
20 19 and 20 December to campaign for PNU and his re-election? Do you recall that?

21 A. I recall, but I didn't attend that one.

22 Q. And you recall that one of the events took place in the Nandi Bear Club. Do
23 you recall that?

24 A. Yeah, I heard about it, but I didn't attend also.

25 MS ALAGENDRA: Can I ask that document KEN-D09-0036-0043 be put on the

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1 screen, please. This is at tab 13, your Honour. In fact, I apologise, can I put another
2 document first? It's 0036-0045, which is at tab 14.

3 Q. Madam, this is the event of December 19, 2007, and this is an official report from
4 the State House informing the public of the president's activities on that day. Can
5 you see that, madam?

6 A. I have seen, but I said I didn't attend this one.

7 Q. But is this the rally you heard about?

8 A. Yes, yes.

9 MS ALAGENDRA: Your Honour, can I ask that this document be marked as an
10 exhibit please.

11 MR GARCIA: The Prosecution objects to that document being marked as an exhibit.
12 There's been absolutely no evidence from the part of the witness that this document is
13 authentic. All I see here is a printout and there is a lack of evidence on the record
14 that was elicited to demonstrate any reliability in regards to its content. So I'd ask
15 that, at the most, it should be simply marked for identification as a document that was
16 shown to the witness.

17 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra.

18 MS ALAGENDRA: The witness has read the document and she confirms the event
19 being described in that document as what she heard about. I think that it could be
20 sufficient.

21 PRESIDING JUDGE EBOE-OSUJI: That's an insufficient basis to admit that
22 document as such. You had characterised it as an official report. We've not laid
23 any foundation to establish that this witness knows that this is an official report and
24 that she accepts it to be that.

25 MS ALAGENDRA: Your Honour, the basis of that formality, then we will ask that

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1 this be marked as MFI.

2 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.

3 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0045 will have
4 the number MFI-T-D09-00210.

5 MS ALAGENDRA:

6 Q. Madam, did you hear that the day before -- sorry, the day after President Kibaki
7 was in the Nandi Bear Club campaigning for PNU and his re-election, the day after
8 that he was in Kitale also campaigning. Did you hear that?

9 A. Maybe. But I didn't hear because, as I told you, most of the times -- sometimes
10 you are busy not in the radio listening. So about that one, I may say I didn't hear,
11 but I didn't mean that it was not there.

12 Q. That is fair, madam. Thank you.

13 Madam, moving on, the DO of Turbo, the district officer, from 2006 until early 2008,
14 was a Kikuyu woman by the name of Rebecca Muturi; correct?

15 A. Correct.

16 Q. And in 2007, the assistant chief of Kapkong location, in Sugoi, was
17 Mr David Kipruto Samoei; correct?

18 A. Correct.

19 Q. Kapkong location is spelled K-A-P-K-O-N-G.

20 And in fact, Mr David Samoei is the chief of Sugoi today, isn't he?

21 A. Correct.

22 Q. Madam, you will agree that about 500 or less metres from Mr Ruto's home is the
23 Sugoi Anglican church; correct?

24 A. Yes.

25 Q. Madam, during the violence of 2007-2008, around 31 December, did you hear

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1 that several Kikuyu families had gone to the Sugoi Anglican church for refuge?

2 A. I didn't hear about other places, but as -- I learned later that there was Kikuyus
3 also -- houses was destroyed near Honourable Ruto's home and I think it was
4 children's home. That is what I came to learn, that one, but others, no.

5 Q. And did you hear that in the course of that, the Kikuyus ran away from there
6 and they went and they were hiding in the church, the Anglican church?

7 A. I can't remember that, forgive me.

8 Q. Madam, in fact, 35 Kikuyu families, including a Kisii man by the name of
9 Matthew Umhuweni (phon) and some Luhyas, they ran away to the Sugoi Anglican
10 church, on 31 December, and they were hiding there.

11 MR GARCIA: I object to that being put to the witness again. It's argumentative.
12 The witness has already replied twice that she's not heard about these events. So
13 I don't see why we would pursue that line of questioning in light of what the witness
14 has stated.

15 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

16 Witness, can you answer?

17 MS ALAGENDRA:

18 Q. Did you hear that, madam? At any point did you hear it, at the time or later?

19 A. I heard.

20 Q. It's correct, isn't it, madam, that Mr Samoei, with the assistant -- with the
21 assistance of Kalenjin elders from the area, they were assisting these people who were
22 hiding in the church by providing them food? Did you hear that as well?

23 A. I as I told you, I didn't hear because things was mixed up, so every ones was
24 looking at their own place, but what we know, actually, things was bad in every
25 corner in Kikuyus people.

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1 Q. Did you come to hear later that the chief of Sugoi with some Kalenjin elders
2 from that area, they were giving food to these IDPs in the church while they were
3 there?

4 A. I can't remember, madam.

5 Q. Did you also hear that Mr Samoei, the Chief of Sugoi, together with quite a
6 number of Kalenjin elders, they assisted these refugees who were in the church to
7 leave and to go to the DO's office? Did you hear that?

8 A. If I may say I didn't hear, but maybe it was done because it was another
9 location.

10 Q. So you don't know about this?

11 A. Let me say it like this. Maybe it was because even now like Lugari district
12 there were some Kikuyus they were escorting, but I'm not saying that it was/it was
13 not escorted. What I'm saying is I didn't come across it.

14 Q. You see, madam, what happened we say is that these Kalenjin elders, together
15 with the chief, formed a human shield around these Kikuyus and escorted them to the
16 DO's office and from there they were taken to the Turbo police IDP camp. Did you
17 hear that?

18 A. Yeah, I heard Kikuyus, they are come for refuge in the police station, but about
19 what -- what was going on in Sugoi, that is what I don't know.

20 Q. So these refugees I'm talking about, which were escorted by the Kalenjin elders
21 to safety, you don't know about them being escorted by the Kalenjin elders? Is that
22 what you are saying?

23 A. What I'm saying about assistance in Sugoi in church, but as you're saying they
24 were escorted to police station. That one I know. They were escorted.

25 Q. And, madam --

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1 PRESIDING JUDGE EBOE-OSUJI: One second, Counsel.

2 Witness, the point is did you hear that that escorting of Kikuyus to the police station
3 was done by Kalenjin elders who had escorted the Kikuyus? Was that how you
4 heard it?

5 THE WITNESS: No. What I heard is it was like now, when I stated in Turbo, the
6 priest and the policemen was escorting to police station. So what I heard is they
7 were escorted to IDP camp, not by elders. I didn't know who was escorting them.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MS ALAGENDRA:

10 Q. Madam, the Sugoi area was among the first to begin peace and reconciliation
11 with the IDPs, isn't it?

12 A. Correct.

13 Q. And the Chief of Sugoi who was leading this initiative was actually commended
14 for his peace efforts; correct?

15 A. Correct.

16 Q. And it's for that reason that from being Assistant Chief he was confirmed as
17 Chief of Sugoi; correct?

18 A. Correct.

19 Q. And in fact the Permanent Secretary in the Ministry of Education went to visit
20 the area because they wanted to take the example of how peace and reconciliation
21 was done in that Sugoi area; correct?

22 A. Correct.

23 PRESIDING JUDGE EBOE-OSUJI: Is the terminology "Permanent Secretary"
24 generally known and used in Kenya and the witness knows that?

25 MS ALAGENDRA: I believe so, your Honour, but I can ask.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MS ALAGENDRA:

3 Q. Madam, you're familiar with the position of Permanent Secretary in the
4 Ministry of Interior?

5 A. Of course, yes.

6 Q. And you call him "PS," don't you, in Kenya?

7 A. Correct.

8 PRESIDING JUDGE EBOE-OSUJI: The top civil servant --

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: -- in the ministry?

11 THE WITNESS: Yes.

12 MS ALAGENDRA:

13 Q. Madam, I'm going to play you a video which was played by my learned friend
14 yesterday and I want you to watch the video again, but this time with the sound,
15 okay?

16 A. Okay.

17 PRESIDING JUDGE EBOE-OSUJI: Before you do that, I had said "top civil servant."
18 What appears is "civil servant" on the transcript just for the transcript. We don't
19 need to belabour the point. Continue.

20 MS ALAGENDRA: And also, your Honour, at page 57, line 17, it is internal security,
21 not education, and Permanent Secretary, not parliament secretary.

22 Your Honours, I would ask the assistance of the Court to play this video because it
23 was a Prosecution exhibit.

24 THE COURT OFFICER: (Interpretation) Can we have an ERN number, please?

25 MS ALAGENDRA: Your Honours, I'm going to be playing KEN-OTP-0033-0009 and

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- 1 this is Prosecution Exhibit 107.
- 2 THE COURT OFFICER: (Interpretation) Is it public, the video?
- 3 MS ALAGENDRA: Yes, it was public.
- 4 Q. Madam, please listen to the sound.
- 5 (Viewing of the video excerpt KEN-OTP-0033-0009)
- 6 Q. Madam, did you hear clearly what was said?
- 7 A. Yes.
- 8 Q. What was said, madam, is the IDPs were mostly Kikuyu?
- 9 A. Correct.
- 10 Q. So you will agree there were IDPs of other ethnicities in the Turbo police
- 11 IDP camp?
- 12 A. I didn't come across that.
- 13 Q. I'm not asking what you personally saw, madam. I'm asking you what is being
- 14 depicted in this video?
- 15 A. Okay.
- 16 Q. And I will repeat. What the commentator said is that the IDPs in this camp are
- 17 mostly Kikuyu?
- 18 A. Correct.
- 19 Q. That means there were other tribes?
- 20 PRESIDING JUDGE EBOE-OSUJI: It's fair to ask the witness whether she -- just state
- 21 a more neutral proposition on the matter and ask her whether she agrees with it,
- 22 because the commentator said what he said. Does the witness agree as to the
- 23 meaning you are putting to it beyond the obvious?
- 24 MS ALAGENDRA:
- 25 Q. Madam, will you -- do you agree with what is being said by the commentator

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1 that the IDP camp at Turbo police had mostly Kikuyus?

2 A. Yes.

3 Q. Were there IDPs of other ethnicities there as well?

4 A. Madam lawyer, as you know, people are inter-marrying. You can get a
5 Kikuyu marrying Luhya, or you can get a Luhya marrying Kikuyu. And at that
6 situation, if a lady is either -- if she's a Kikuyu and she was married to a lady, I think
7 those people when they -- they left, they go together. So that is why they were
8 saying some were -- mostly was Kikuyu, but the other tribes I think because of
9 marriages, something like that.

10 Q. And do you know this as a fact, or are you still assuming?

11 A. This is a fact.

12 Q. So it's your testimony that all those people from other ethnicities that were in
13 that camp were there because they were all married to Kikuyus?

14 A. No. What I'm saying is like Kisiis and they were in let's say Lugari and the one
15 they had about when they attacked Honourable Ruto, I think even them they were
16 been just because of what happened in Kisii. So what I meant is they were there,
17 other tribes, but mostly were Kikuyus.

18 Q. And, madam, what we heard the commentator also say is that the IDPs who
19 were there were from Uasin Gishu district?

20 A. Yes.

21 Q. You heard that. And also from Lugari district?

22 A. Yes.

23 Q. And Uasin Gishu district, madam, comprises of Eldoret North, Eldoret East and
24 Eldoret South; correct?

25 A. Correct.

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1 Q. And the MP for Eldoret South during that period was Margaret Kipkoech
2 Kamar?

3 A. Not South, East. Margaret Kamar for East, not South.

4 Q. The MP for Eldoret South is Peris Chepchumba?

5 A. Correct.

6 Q. The MP for Eldoret North is -- was Mr Ruto?

7 A. Yes.

8 Q. So the IDPs that were there were from all these different areas; correct?

9 A. No, there were other IDPs in Eldoret town, ASK Showground.

10 Q. That's fair, but in this particular place that you're seeing on the video the IDPs
11 who were there were coming from all these areas: Eldoret North, Eldoret South,
12 Eldoret East?

13 A. According to me, that IDP it was from Lugari and Eldoret North of course,
14 because I'm not imagining someone from Eldoret East coming to Turbo. It is easier
15 for that person to go to IDP camp in Eldoret town.

16 Q. And there were also IDPs from Lugari district?

17 A. Yes.

18 Q. And Lugari district is in Western Kenya?

19 A. Even that Turbo police station is in Lugari district and Turbo police station is in
20 Uasin Gishu.

21 Q. So it's not the case, is it, madam, that all those thousands of IDPs in that camp
22 were from your area?

23 A. No.

24 MS ALAGENDRA: Your Honour, for the record Kamar is spelled K-A-M-A-R, not
25 Kamau. Page 61, line 7.

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1 MR GARCIA: Also if the record could be corrected at line 14 of page 61, near the
2 ending. I think it's Eldoret Showground.

3 PRESIDING JUDGE EBOE-OSUJI: You accept the correction?

4 MS ALAGENDRA: Certainly, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Yes.

6 MS ALAGENDRA: Your Honour, can I go into private session for just one more
7 minute?

8 PRESIDING JUDGE EBOE-OSUJI: Private session.

9 (Private session at 12.27 p.m.) Reclassified as open session

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

11 MS ALAGENDRA:

12 Q. (Redacted)

13 A. (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Okay.

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

3 (Open session at 12.29 p.m.)

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. Proceed.

6 MS ALAGENDRA:

7 Q. Madam, earlier we spoke about an individual by the name of William Rono.

8 Do you recall that?

9 A. Yes.

10 Q. Now, during the period of the Waki investigations, William Rono was assisting
11 to identify and mobilise witnesses to give evidence to the Waki; correct?

12 A. Correct.

13 Q. And William Rono himself provided testimony to the Waki, correct?

14 A. Correct.

15 Q. Now, madam, during the period of the -- of 2008, Mr Iringo Mutea was the
16 deputy permanent secretary for internal security; correct?

17 A. Correct.

18 PRESIDING JUDGE EBOE-OSUJI: Spelling.

19 MS ALAGENDRA: M-U-T-E-A, I-R-I-N-G-O. Mutea Iringo.

20 Q. Now, Madam Nancy Gitau, she was the director of political affairs in the office
21 of the president at the time; correct?

22 A. Correct.

23 Q. And Honourable Martha Karua in 2008, she was minister of justice?

24 A. Correct.

25 Q. And Stephen Tarus, he was contesting on a PNU ticket during the elections;

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1 correct?

2 A. In?

3 Q. (Microphone not activated) In Emgwen contingency. He was standing for
4 elections?

5 A. Okay. Yes.

6 Q. Before that he was assistant minister in the Kibaki government?

7 A. Correct.

8 Q. And after the Waki period, he was appointed by the Kibaki government as
9 ambassador of Kenya to Australia; correct?

10 A. Correct.

11 Q. And, madam, Mr William Rono, he was given this task of identifying and
12 mobilising witnesses by these government officials, wasn't he?

13 A. He was.

14 Q. And when he was mobilising these witnesses, he was working with two
15 organisations in the North Rift, that was Centre Against Torture and Centre for
16 Human Rights and Democracy; correct?

17 A. Correct.

18 Q. And the Centre Against Torture, madam, Mr David Koros was heading the
19 organisation; correct?

20 A. Correct.

21 Q. And Mr Ken Wafula was heading CHRD?

22 A. Correct.

23 MS ALAGENDRA: It's Ken Wafula, W-A-F-U-L-A.

24 Q. And, madam, when key lawyers came to receive the evidence from witnesses,
25 Mr William Rono was co-ordinating these efforts, correct?

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- 1 A. Yes, (Redacted).
- 2 Q. Madam, some of the witnesses that were mobilised by William Rono were
- 3 Samuel Kimeli Kosgey, yes?
- 4 A. I don't know that one because every person was going at his own.
- 5 Q. Mr Rono was also involved with Mr David Ng'enda?
- 6 A. Correct.
- 7 Q. He was also involved with Mr David Koech?
- 8 A. Correct.
- 9 Q. He was also involved with Mr Simon Rotich?
- 10 A. Correct.
- 11 Q. And he did this together, was mobilising witnesses and working with these
- 12 government officials together with one Mr Bethwel Ruto; correct?
- 13 A. Correct.
- 14 Q. And madam, the lawyers that were selected to come and meet with witnesses
- 15 for the Waki Commission, some of them were Mr Njenga Mwangi; correct?
- 16 A. Correct.
- 17 Q. Mr Peter Maundu?
- 18 A. I can't remember exactly names.
- 19 Q. Do you recall someone by the name of George Morara?
- 20 A. As I told you, the lawyers were there, but I cannot remember the names.
- 21 Q. So the only name you remember is Njenga Mwangi?
- 22 A. Yes.
- 23 Q. That's fair?
- 24 A. Yes.
- 25 MS ALAGENDRA: Your Honour, for spellings it's Morara, M-O-R-A-R-A. And

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1 Peter Maundu is M-A-U-N-D-U.

2 Q. And these lawyers that came, madam, they were also associated with the PNU,
3 weren't they?

4 A. Yes, they were.

5 Q. And, madam, the witnesses, most of them who were identified and mobilised
6 by this group to give their story to Waki, were PNU officials and supporters from the
7 area; correct?

8 A. Correct.

9 Q. And after they provided their statement and their evidence to Waki, some of
10 these individuals were placed into a witness protection programme funded by the
11 internal security ministry of the government; correct?

12 A. I didn't know that, but I -- what I heard, they were in protection. (Redacted)
13 (Redacted)

14 MS ALAGENDRA: Your Honour, can I go into a private session for a few minutes?

15 PRESIDING JUDGE EBOE-OSUJI: We'll go into private session.

16 (Private session at 12.36 p.m.) Reclassified as open session

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

18 MS ALAGENDRA:

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

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1 (Redacted)

2 (Redacted)

3 MS ALAGENDRA: We can go back to public, please.

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

5 (Open session at 12.38 p.m.)

6 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: So the -- Witness, your -- the point is that

8 you -- your answer is that you did not know that those people were placed into

9 protection programme, you only heard about it?

10 THE WITNESS: Yes, I heard about it.

11 MS ALAGENDRA:

12 Q. And madam, you heard that the moneys that were being given to these witness

13 in that protection programme was in fact coming from Mr Iringo and Nancy Gitau;

14 you heard that, didn't you?

15 A. No about that, I didn't know about money. In fact, me, I thought it was from

16 Kenya Human Rights Commission. I didn't know it was from someone pocket.

17 Q. And did you hear, madam, that Honourable Martha Karua also assisted for

18 witnesses to provide statements to the Waki Commission? You heard that, didn't

19 you?

20 A. No, I didn't.

21 Q. And madam, these witnesses who were mobilised by Mr William Rono together

22 with Mr Iringo, Nancy Gitau, Martha Karua, Stephen Tarus and others, they were

23 told to provide evidence to Waki to implicate Mr Ruto and the ODM in the

24 post-election violence, that's correct, isn't it?

25 A. I didn't hear that.

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1 Q. And in fact, madam, Mr Rono and these government officials, they mobilised
2 witnesses and told them to falsely implicate Mr Ruto. That is true, isn't it?

3 PRESIDING JUDGE EBOE-OSUJI: Do you know that?

4 THE WITNESS: No, I don't know.

5 MS ALAGENDRA:

6 Q. Did you hear about it, madam?

7 A. No.

8 Q. Madam, you're aware that in later years, 2009 and even 2010, Mr William Rono
9 continued to be in very close contact with Mr Iringo Mutea? You know that, don't
10 you?

11 A. As I told you, I didn't know -- what I was thinking, I was thinking that they
12 were with Kenya Human Rights. I didn't know that.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Let's stop it there.

14 MS ALAGENDRA:

15 Q. Madam, I'm asking you specifically now questions going forward about
16 Mr William Rono. Did you hear that Mr William Rono had a very close relationship
17 with Mr Iringo, even in 2009 and 2010?

18 A. Yes.

19 Q. Did you hear that Mr Rono was in fact acting as an agent for Mr Iringo, and he
20 was monitoring the movements of Waki witnesses and potential ICC witnesses? Did
21 you hear that?

22 A. I didn't hear that, madam.

23 Q. Madam, moving forward now, this organisation called Centre Against Torture,
24 it's correct, isn't it, that Mr David Koros also mobilised witnesses to provide evidence
25 to the Waki Commission?

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1 A. Correct.

2 Q. And he also mobilised witnesses to provide evidence to the Human Rights
3 Watch?

4 A. Correct.

5 Q. He also mobilised witnesses to provide evidence to the Kenya National
6 Commission for Human Rights investigations?

7 A. Correct.

8 Q. And the evidence that was corrected by Mr David Koros, Human Rights Watch,
9 that evidence formed the report called "Ballots to Bullets;" correct?

10 A. I heard that.

11 Q. Madam, you are aware from mid-February 2008 to beginning of March 2008,
12 Mr David Koros got himself into a Human Rights Watch funded witness protection
13 programme?

14 A. I didn't know that. I'm -- I'm hearing from you.

15 PRESIDING JUDGE EBOE-OSUJI: Okay. All right. Keep it short, Madam
16 Witness. If you listen carefully, some of these questions are questions you can
17 answer simply by "Yes" or "No." If it is possible to answer it with "Yes" or "No," or
18 you don't know, or you don't remember, those are always the shortest best answers.
19 If the lawyer wants to ask you follow-up questions to your answer, she will.

20 THE WITNESS: Okay, thank you, Mr President.

21 MS ALAGENDRA:

22 Q. Madam, did you hear that from mid-February 2008 to beginning of March 2008,
23 those few weeks, Mr David Koros was in a witness protection programme?

24 A. Yeah, I heard.

25 Q. And did you hear that for those, for that very short period, he

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1 received 5,000 USD?

2 A. I didn't hear that.

3 Q. Madam, centre against torture and Mr Koros, he was also managing witness

4 protection programmes for post-election violence witnesses, who were potential ICC

5 witnesses, wasn't he?

6 A. Yeah, I heard about it, but I --

7 Q. And in fact, madam, Mr Koros and his organisation, they were receiving funds

8 from USAID and the Ambassador of Switzerland for this purpose; isn't that true?

9 A. I don't know that one.

10 Q. You know he received money from USAID, do you, madam?

11 A. Yes.

12 Q. Do you know he received money from the Swiss ambassador?

13 A. No.

14 MS ALAGENDRA: Your Honour, I want to refer the witness to a document at tab 81

15 and that is KEN-D09-0035-0004.

16 MR GARCIA: And I object. Prosecution objects to that document being shown to

17 the witness. I don't see what the purpose is of Defence counsel to show that

18 document to the witness. There has been no evidence of its authenticity and I say it's

19 improper to show such a document - we have no idea of its reliability - to the witness

20 to try and contradict her.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda?

22 MS ALAGENDRA: Your Honour, I think the objection is premature. I haven't

23 sought to tender this document as an exhibit yet and I would like to invite some

24 comment from the witness, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: The objection is anticipatory sometimes. They

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1 are not out of line, anticipatory objections. The point Mr Garcia is making is that
2 you've asked the witness a certain question and the witness is giving -- given her
3 answer to it. Why are we bringing this document to show to the witness?

4 MS ALAGENDRA: Your Honour, for one I would like her to identify a signature
5 and, secondly, there is some information contained in the document which we believe
6 the witness could provide some assistance to the Court on as to the background and
7 content to details.

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

9 (Private session at 12.48 p.m.) Reclassified as open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MS ALAGENDRA: (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

21 (Redacted)

22 MS ALAGENDRA: Your Honour, perhaps to make it easier I'll spare the witness
23 from the documents.

24 PRESIDING JUDGE EBOE-OSUJI: We'll move on then. We'll go back to public
25 session.

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1 (Open session at 12.50 p.m.)

2 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

4 MS ALAGENDRA:

5 Q. Madam, did you know that between April and June 2010 Mr Koros
6 received 16,000 US dollars from the Swiss Embassy for witness protection?

7 A. I didn't know that.

8 Q. If not from the Swiss Embassy, did you know that he received money from
9 somewhere during that period for witness protection?

10 A. What I heard it was from what you said, but this Swiss Embassy I didn't hear
11 that.

12 Q. And did you ever hear, or do you know, that Mr Koros himself put himself
13 down as one of the witnesses to be protected by the Swiss Embassy? Did you hear
14 that?

15 A. I heard only that he's -- he's a witness, but I didn't understand how it was -- it
16 was going on. I didn't know.

17 Q. Are you aware, madam, that it was in fact Mr Maina Kiai who put
18 Mr David Koros into contact with the Swiss Embassy to secure witness protection
19 funds? Did you know that?

20 A. What I know is Centre Against Torture was in touch to Mr Kiai, but I didn't
21 know that there was something going on like Swiss Embassy, Maina Kiai and Koros.

22 Q. Madam, I'm going to show you some photographs and I'd like you to see if you
23 can identify anyone in those photographs, okay?

24 A. Okay.

25 MS ALAGENDRA: Your Honour, can I ask that the witness be shown

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1 KEN-D09-0036-0123?

2 PRESIDING JUDGE EBOE-OSUJI: Public or private?

3 MS ALAGENDRA: Public please, your Honour.

4 Q. Do you recognise anyone in that photo, madam?

5 A. Yes.

6 Q. Who?

7 A. I can't remember the name, but I have been seeing him. I have been seeing the
8 person, but the name I can't remember now.

9 Q. The lady or the man?

10 A. The man. The lady, I don't know.

11 Q. But it's Mr Maina Kiai, isn't it?

12 A. Yes.

13 Q. The lady next to him, madam, she's the Deputy Head of Mission of the Swiss
14 Embassy, isn't she?

15 A. As I told you, I know nothing about embassy and Kiai, and what I heard it was
16 all you said and Koros and the Centre Against Torture. And Maina Kiai I knew they
17 were working together with Centre Against Torture, but about this I don't know.

18 Q. Have you ever spoken or met this lady? Do you recall her face?

19 A. No, please.

20 MS ALAGENDRA: Your Honour, can I request that we exhibit this photograph to
21 the extent that she's identified Mr Maina Kiai?

22 PRESIDING JUDGE EBOE-OSUJI: Any objection?

23 MR GARCIA: No objection, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: The document is accepted as the next in the Ruto
25 Defence exhibits.

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1 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0123, public,
2 will be entered as EVD-T-D09-00211, or Ruto Defence Exhibit Number 211.

3 MS ALAGENDRA: Can I ask that the witness be shown KEN-D09-0036-0121? It
4 can be shown in public.

5 Q. Madam, can you tell the Court who do you see in that photograph?

6 A. Koros.

7 Q. Which one is Mr Koros?

8 A. The one which is blue shirt.

9 Q. With the jacket?

10 A. Yes.

11 Q. So the man with the brown jacket standing behind, that's Mr David Koros, isn't
12 it?

13 A. Yes, correct.

14 Q. And the man on the telephone, that's Mr Maina Kiai, isn't it?

15 A. Yes.

16 Q. And the lady who is standing behind Maina Kiai, it's not very clear, but do you
17 recognise that lady as the one who appeared in the photograph I showed you earlier,
18 the Swiss deputy ambassador?

19 A. Yes. And I told you I don't know and I've never met her.

20 Q. I understand that, madam.

21 A. Okay.

22 MS ALAGENDRA: Your Honour, can I ask that this document be marked as an
23 exhibit, please.

24 PRESIDING JUDGE EBOE-OSUJI: Any objection?

25 MR GARCIA: No objection.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence
2 exhibits.
- 3 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0121, public,
4 will be recorded as EVD-T-D09-00212, or Ruto Defence Exhibit Number 212.
- 5 MS ALAGENDRA: Your Honour, perhaps we can continue after lunch.
- 6 PRESIDING JUDGE EBOE-OSUJI: Yes, indeed.
- 7 Witness, we have come to the time to take our lunch-break, and we will be adjourning
8 and returning at 2.30.
- 9 Before we adjourn, how are we doing?
- 10 MS ALAGENDRA: Your Honour, I expect we can finish by today, your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: That's good news. The blinds will come down
12 and the witness will be ushered out.
- 13 (Closed session at 1.00 p.m.) Reclassified as open session
- 14 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.
15 (The witness stands down)
- 16 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 17 THE COURT OFFICER: All rise.
- 18 (Recess taken at 1.00 p.m.)
- 19 (Upon resuming in open session at 2.46 p.m.)
- 20 THE COURT USHER: All rise.
- 21 Please be seated.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 23 Welcome back, everyone. We will go into private session briefly.
- 24 (Private session at 2.37 p.m.) Reclassified as open session
- 25 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 2 (Redacted)
- 3 (Redacted)
- 4 MR STEYNBERG: (Redacted).
- 5 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 MR STEYNBERG: (Redacted).
- 11 PRESIDING JUDGE EBOE-OSUJI: We will now -- let's go back to public session and
- 12 announce what we're doing.
- 13 (Open session at 2.48 p.m.)
- 14 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 16 So we will now bring in the witness to continue her testimony, but we will bring
- 17 down the blinds first so that the witness will be ushered into the courtroom.
- 18 (Closed session at 2.49 p.m.) Reclassified as open session
- 19 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.
- 20 (The witness enters the courtroom)
- 21 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, so we're still on course according to your
- 22 existing schedule?
- 23 MS ALAGENDRA: Your Honours, I'll try my very best. It's just that we started a little bit
- 24 later, but I will do my very best, your Honour, I promise.
- 25 PRESIDING JUDGE EBOE-OSUJI: So we'll be going back into open session?

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- 1 MS ALAGENDRA: Yes, please, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: All right. Back to open session then.
- 3 (Open session at 2.51 p.m.)
- 4 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 6 Witness, welcome back. Ms Alagendra will continue her cross-examination.
- 7 MS ALAGENDRA: Thank you, Mr President.
- 8 Q. Good afternoon, madam.
- 9 A. Good afternoon.
- 10 Q. Madam, Mr David Koros, he was running a witness protection programme funded by
- 11 the USAID in relation to potential ICC witnesses. Am I correct, madam?
- 12 A. I only heard about it.
- 13 Q. And I'm correct, am I not, madam, that the witnesses that were benefiting from this
- 14 USAID programme were Mr William Rono, Mr Samuel Kimeli Kosgei and Mr David Ng'enda?
- 15 That is correct, isn't it?
- 16 A. Correct.
- 17 Q. Madam, I'm also correct, am I not, that at the time these witnesses were receiving money
- 18 from Mr Koros under a USAID programme they were not under any threat, were they,
- 19 madam?
- 20 A. I don't know about that.
- 21 Q. Why we say that, madam, is that at that very same period they were actually in a
- 22 witness protection programme in Nairobi funded by the Kenyan National Commission for
- 23 Human Rights at the very same time. That is correct, isn't it, madam?
- 24 PRESIDING JUDGE EBOE-OSUJI: That is now argumentative, isn't it?
- 25 MS ALAGENDRA: Your Honour, may I rephrase the question?

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1 Q. Madam, at the same time these individuals were receiving money under USAID, they
2 were under a witness protection programme being funded or being managed by the Kenyan
3 National Commission for Human Rights in Nairobi. That is correct, isn't it?

4 A. Yeah, I knew about that, but the other one you want -- the other side I don't -- I don't
5 know. I didn't know. I didn't come across the other one for Martha Karua, or --

6 Q. No, madam, just my question. You're aware they were in a witness protection
7 programme being run by Kenya Human Rights Commission?

8 A. Correct.

9 Q. And that Kenya Human Rights Commission programme was running simultaneously at
10 the same time as the USAID protection programme; correct?

11 A. According to me, USAID I thought it was for other programmes. I didn't know it was
12 for protection.

13 Q. But earlier, madam, when you testified, you told the Chamber that you're aware of the
14 USAID protection programme. So you knew there was a USAID protection programme,
15 isn't it?

16 A. Maybe it's because (indiscernible).

17 Q. You heard about it, madam?

18 A. I heard about it, about you say it was giving money, Centre Against Torture, but
19 actually I didn't know it was protection or what activity. I'm sorry to say that.

20 PRESIDING JUDGE EBOE-OSUJI: For purposes of transcript, Ms Alagendra, you need to
21 look at line 9 and also line 16 on the current page. Your question says, "USAID." I don't
22 know whether the witness is saying "USAID" in the manner of saying "you said". Do you see
23 the difficulty there?

24 MS ALAGENDRA: Yes, your Honour. Perhaps I can clarify that?

25 PRESIDING JUDGE EBOE-OSUJI: Yes, because what I see is "you said," as in you saying

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1 something, whereas she may also mean USAID, somebody pronouncing it as "You said."

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

3 Q. Madam Witness, when you are referring to the entity that David Koros was receiving
4 money from, you are talking about the organisation called USAID, U-S-A-I-D, am I correct?

5 A. Yes.

6 Q. Madam, you were aware, or did you know or hear, that witnesses under the witness
7 protection programme being run by Mr David Koros were putting in false claims for money?

8 A. I heard that.

9 Q. And, madam, in fact Mr Koros himself made a lot of money, didn't he, from the various
10 witness protection programmes?

11 A. Maybe, but I didn't come across it because I was not frequently in --

12 Q. But you heard about it, madam, that he made a lot of money?

13 A. I heard it.

14 Q. And, madam, you also know, don't you, that between 2004 and 2009, which will also
15 include the period when the Waki Commission and the Kenya Human Rights Commission
16 were doing their work, during that period the director of USAID Kenya was in fact the wife of
17 Mr Maina Kiai? You knew that, didn't you?

18 A. I never knew it.

19 Q. And her name, madam, is Cheryl Anderson. Have you heard that name?

20 A. No, I never knew it even who is the wife of Maina Kiai.

21 Q. Madam, you'll agree with me that Mr David Koros was using the allegations of witness
22 intimidation of post-election violence witnesses and potential ICC witnesses as a means of
23 making money, wasn't he?

24 A. Yes.

25 Q. And he even tried to make some money using this issue from the Ambassador of The

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1 Netherlands, didn't he, madam?

2 A. I never knew that.

3 Q. Madam, I'm going to ask you to have a look at a photograph and I'm going to ask you to
4 identify some people in that photo, okay?

5 A. Okay.

6 MS ALAGENDRA: Your Honour, can I ask that KEN-D09-0036-0156 be put on the screen
7 please?

8 PRESIDING JUDGE EBOE-OSUJI: Before -- before you do that, I want to make sure that the
9 answer to question -- the question appearing at number 2 is clear in what is said. The reason
10 I say that is there have been instances where the witness said, "I heard." There's a lot of those
11 instances on the record, that she heard certain things having been said, but when you look at
12 the question appearing at line 2 one doesn't know whether it was what she heard, or what she
13 knows. I want you to repeat that question.

14 MS ALAGENDRA:

15 Q. Madam, I asked you if you agreed with me that Mr David Koros was using allegations
16 of witness intimidation of post-election violence witnesses and potential ICC witnesses as a
17 means of making money?

18 A. I heard other people say. We have the --

19 MS ALAGENDRA: Could we have the -- public, please.

20 Q. Madam, the person standing on the far left, that is Mr David Koros, isn't it?

21 A. Correct.

22 Q. And the fair lady standing next to him, she's Madam Laetitia van den Assum, the
23 Ambassador of The Netherlands to Kenya; correct?

24 A. I haven't seen her even. I don't know. I don't know her.

25 MS ALAGENDRA: And for the record her name is spelled L-A-E-T-I-T-I-A, van, V-A-N,

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1 next word den, D-E-N, the next word A-S-S-U-M.

2 Q. Madam, who is the gentleman standing next to her?

3 A. I don't recall.

4 Q. And the lady standing next to that gentleman, her name is Mariam Suleiman, isn't it?

5 A. Correct.

6 Q. And she is in fact the wife of Mr Ken Wafula; correct?

7 A. I don't know if she's the wife of Ken. I don't.

8 MS ALAGENDRA: May I please ask that what the ambassador is holding be zoomed into,
9 please?

10 Q. Madam, do you see in this photograph that Mr David Koros and the ambassador
11 together are holding for the cameras a newspaper with the front facing the camera?

12 A. Correct.

13 Q. And on top -- sorry?

14 A. Correct.

15 Q. And the headline being showcased is "Ministers Threaten Ocampo Witnesses;" correct?

16 A. Correct.

17 Q. Madam, do you notice the right hand of the ambassador? She seems to be holding
18 something?

19 A. It's not clear. It look like a ring.

20 Q. Do you see a clenched fist like she's holding something?

21 A. Yeah, it's not clear what it is.

22 Q. Certainly, but it's just her action that she's holding something, isn't it?

23 A. Correct.

24 MS ALAGENDRA: Your Honour, can I now ask for a second photograph to be shown,
25 please, KEN-D09-0036-0157?

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- 1 THE COURT OFFICER: (Interpretation) Is your document public?
- 2 MS ALAGENDRA: Public, please.
- 3 PRESIDING JUDGE EBOE-OSUJI: She's asking you if this would be a public document.
- 4 MS ALAGENDRA: Indeed, your Honour.
- 5 Can I ask for you, the court officer, to please zoom in a little into the hands?
- 6 Q. Madam, do you see in this photograph the ambassador is handing something to
- 7 Mr Koros and the person next to the ambassador is also observing what is being handed over?
- 8 Do you see that, madam?
- 9 A. I'm seeing it look like they are shaking hands.
- 10 Q. Do you notice all three individuals are looking at her hands?
- 11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, I have not stopped you, but at some point
- 12 you will come to the point. The witness says, "It looks like a handshake," so I hope you can
- 13 suggest that it is more than that, or you can show that it is more than that, because it should
- 14 not be a matter of speculation, you know?
- 15 MS ALAGENDRA: We will, your Honour. At this point, your Honour, all we want the
- 16 witness to do is to make an observation as to what she's seeing happening in the photograph.
- 17 PRESIDING JUDGE EBOE-OSUJI: And she says it looks to her like a handshake and that
- 18 looks like it too, so maybe you have something else you haven't yet shown in the photos?
- 19 MS ALAGENDRA: And the next question I asked her, your Honour, was does she see that
- 20 all the three individuals are looking at the hands of the ambassador and David Koros' hands.
- 21 That's what I want her to observe, the focus of that picture, your Honour.
- 22 Q. Do you see that, madam?
- 23 A. According to me, I -- I'm not seeing anything, but I'm seeing hands.
- 24 Q. And do you see the three people, Mr Koros, the ambassador and the man next to her, all
- 25 looking at her hands?

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1 A. Yes.

2 MS ALAGENDRA: Your Honour, at this stage could we request that these two photographs
3 be marked for identification?

4 PRESIDING JUDGE EBOE-OSUJI: They will be so marked.

5 THE COURT OFFICER: (Interpretation) Document KEN-D09-0036-0156 will be marked
6 MFI-T-D09-00213. Document KEN-D09-0036-0157 will be marked MFI-T-D09-00214. These
7 two documents are public.

8 MS ALAGENDRA:

9 Q. Madam, did you know that on that day what the ambassador was handing over to
10 Mr Koros very discreetly was in fact money? Did you hear that?

11 A. No.

12 Q. Madam, Mr Ken Wafula, he was also engaging in the same witness protection activities
13 as Mr Koros, wasn't he?

14 A. He was.

15 Q. And his witness protection activities was also being funded by the USAID; correct?

16 A. I didn't know about that one.

17 Q. Did you know that Mr Ken Wafula was receiving money from USAID and other
18 organisations to fund activities by CHRD?

19 A. I never knew.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, I do not want to interrupt you, but so
21 your proposition is that the person you described as the ambassador and Mr Wafula were
22 exchanging money discreetly and photographing it?

23 MS ALAGENDRA: Mr Koros. Yes, your Honour, that's the --

24 PRESIDING JUDGE EBOE-OSUJI: And taking photos of a discreet transaction?

25 MS ALAGENDRA: I'm not sure whether it was intended to be discreet. The manner in

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1 which it seems to be happening in the photo comes across that way, but in the event a case is
2 called on we will definitely call evidence on it.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

4 MS ALAGENDRA: And in fact, your Honour, what's troubling is that they didn't seem to
5 see anything wrong with it.

6 Q. Madam, did you hear that Mr Ken Wafula was repeatedly getting himself into trouble
7 for misusing and misappropriating donor funds?

8 A. I never knew that.

9 MS ALAGENDRA: Could I ask that document KEN-D09-0036-0060 be shown to the witness,
10 please? It can be public.

11 Q. Madam, do you see these two people in the photograph on the screen?

12 A. Yes.

13 Q. That is (Redacted), isn't it?

14 A. Correct.

15 Q. And, madam, where these two -- where this couple live, next to their home there is a --

16 MR GARCIA: Your Honours, if I may just interrupt? Can we possibly go into private
17 session?

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 (Private session at 3.13 p.m.) Reclassified as open session

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

21 MR GARCIA: (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 MS ALAGENDRA: (Redacted)

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- 1 (Redacted)
- 2 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 3 MS ALAGENDRA: (Redacted)
- 4 (Redacted)
- 5 MR GARCIA: (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 10 MR GARCIA: (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 MR GARCIA: (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 2 (Redacted)
- 3 MS ALAGENDRA: (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted).
- 7 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 8 (Redacted)
- 9 MS ALAGENDRA: (Redacted)
- 10 (Redacted)
- 11 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 12 MS ALAGENDRA:
- 13 Q. (Redacted)
- 14 (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. And you are aware, madam, that on that empty piece of land it was usual for meetings
- 19 to take place, community meetings; correct?
- 20 A. I don't know if there were meetings there, or belongs to who. I never knew it was for
- 21 who actually.
- 22 Q. For instance, do you know that the area chief he used to call the meeting of the
- 23 population on that land?
- 24 A. Maybe, but I never -- I never knew it.
- 25 Q. You perhaps didn't attend it, madam, but did you hear that the area chief used to hold

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1 meetings on that land?

2 A. No. They normally -- most of the time they normally -- we normally -- they called in
3 people at the chief's office, but about that, that land piece, maybe I never come. I never
4 heard about it.

5 Q. I think, madam, the chief's office is not large enough to hold many people, but that land
6 was and that's the reason they used to hold meetings there. Did you hear that?

7 MR GARCIA: I object, your Honour. That's the second time that the question has been put
8 to the witness. The witness has already answered that question.

9 MS ALAGENDRA: Your Honour, I think the witness should be given a chance to tell the
10 Court what she knows or what she doesn't know.

11 MR GARCIA: The answer is at page -- it's 90, page 9. Page 90 at line 9 --

12 MS ALAGENDRA: What's the answer?

13 MR GARCIA: -- and line 13 as well, where the answer -- the witness is answering the same
14 type of question.

15 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, one more time and then you have to move
16 on.

17 MS ALAGENDRA: Thank you, your Honour.

18 Q. Madam, did you hear that the chief used to hold larger meetings on that land?

19 A. Maybe they were there, but I never heard.

20 Q. And during the period of the violence, January 2008, in fact there were two very
21 important meetings that took place on that land, wasn't there?

22 A. I never knew, because you know I normally -- (Redacted). So
23 when the meeting -- they were holding meetings actually in that side we were going to,
24 because in Turbo town there are two chiefs' offices. So the bigger -- the one which has a big
25 compound, it is a senior chief.

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1 Q. What are you saying, madam? (Redacted)

2 (Redacted)

3 A. Okay. That is the area I went by, but what I mean is maybe actually they call people
4 and they have -- they held a meeting there without me knowing.

5 Q. Madam, did you hear that around the time early January, the GSU and the police also
6 called a meeting in that land with the community around there? Did you hear that?

7 A. I never heard that.

8 Q. Nobody told you about that?

9 A. No.

10 MS ALAGENDRA: Your Honour, if we can continue in private session please?

11 PRESIDING JUDGE EBOE-OSUJI: You want --

12 MS ALAGENDRA: To continue in a private session.

13 PRESIDING JUDGE EBOE-OSUJI: In private.

14 MS ALAGENDRA: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Okay.

16 MS ALAGENDRA:

17 Q. (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 A. (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 Q. (Redacted)
- 9 (Redacted)
- 10 A. (Redacted).
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 A. (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

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1 (Redacted)

2 A. (Redacted)

3 Q. (Redacted)

4 (Redacted)

5 A. (Redacted)

6 Q. Madam, I'm going to ask you to have a look at this document, KEN-OTP-0113-0487.

7 MR GARCIA: Could we have the number in the bundle please, first of all, before we show
8 the document?

9 MS ALAGENDRA: It's at tab 27 and tab 28.

10 MR GARCIA: The Prosecution is going to object to either of these documents being shown
11 to the witness. They're not documents with which the witness has any link whatsoever.

12 They're documents that were drafted by a third person, and I say that it's completely
13 inappropriate to confront the witness with documents she's not participated in any which
14 way in the drafting and that she cannot confirm their authenticity to try and contradict her on
15 elements.

16 The Defence is able to call any witness it wishes in its own case if the matter is evidence that is
17 necessary for their case and it's not collateral. But I submit that in this particular case it
18 would be inappropriate to show these documents to the witness.

19 MS ALAGENDRA: Your Honour, the witness has been named in this document and, in
20 fairness, if she didn't know about it she can tell us. How is it then her name comes in here?
21 And if she knew about it, maybe this could refresh her memory, your Honour. And she was
22 the best witness to confirm whether or not she (Redacted)

23 (Redacted)

24 MR GARCIA: The questions can be put to the witness, your Honour. That's not what I'm
25 objecting about. What I'm objecting is that we show the witness documents for which there

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1 is no evidence before the Court as to their authenticity or reliability and to try and get the
2 witness to concede on points on those facts. We have to be fair with the witness.
3 Defence counsel can put any proposition that it feels is necessary emanating from
4 these documents to the witness and the witness can answer. There's no need to
5 show her what documents that emanate from a third party. That's unfair to the
6 witness.

7 MS ALAGENDRA: Your Honour, I think for the authenticity of it probably an (Redacted)
8 (Redacted).

9 PRESIDING JUDGE EBOE-OSUJI: What is your purpose in showing the document to the
10 witness? Is it something that can be safely indicated while the witness is on the stand
11 because you know the answer she has given so far?

12 MS ALAGENDRA: Your Honour, (Redacted)
13 (Redacted)
14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: The documents may be shown to the witness.

16 MS ALAGENDRA: Your Honour, perhaps I can hand a hard copy to the witness. Since
17 we're in private session, I can give her a hard copy.

18 PRESIDING JUDGE EBOE-OSUJI: Yes.

19 MS ALAGENDRA:

20 Q. (Redacted)

21 (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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- 1 Q. (Redacted)
- 2 A. (Redacted)
- 3 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 MS ALAGENDRA: (Redacted).
- 7 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 8 THE WITNESS: (Redacted)
- 9 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 10 (Redacted)
- 11 MS ALAGENDRA:
- 12 Q. (Redacted)
- 13 A. (Redacted).
- 14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 THE WITNESS: (Redacted)
- 18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 THE WITNESS: (Redacted)
- 22 (Redacted)
- 23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 24 THE WITNESS: (Redacted)
- 25 (Redacted)

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- 1 (Redacted)
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- 3 (Redacted)
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- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 Ms Alagendra, continue.
- 14 MS ALAGENDRA: Your Honour, at this stage, can I request that these documents be
- 15 marked as MFI please.
- 16 PRESIDING JUDGE EBOE-OSUJI: They'll be so marked.
- 17 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0113-0487 will have the
- 18 number - the MFI number - T-D09-00215.
- 19 MS ALAGENDRA:
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 A. (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 Q. (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 (Redacted)
- 5 (Redacted).
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 A. (Redacted)
- 12 (Redacted)
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 Q. (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 (Redacted)
- 25 A. (Redacted)

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 Q. (Redacted)
- 5 A. (Redacted)
- 6 Q. (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 (Redacted)
- 12 Q. (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 20 MS ALAGENDRA: (Redacted).
- 21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 22 MS ALAGENDRA: (Redacted).
- 23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 24 MS ALAGENDRA: (Redacted).
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

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- 1 (Redacted)
- 2 MS ALAGENDRA: (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 5 MS ALAGENDRA: (Redacted).
- 6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 7 MS ALAGENDRA: (Redacted).
- 8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 MS ALAGENDRA: (Redacted)
- 13 (Redacted)
- 14 Q. (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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- 1 A. (Redacted)
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 (Redacted)
- 15 Q. (Redacted)
- 16 (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 Q. (Redacted)
- 25 A. (Redacted)

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Witness: KEN-OTP-P-0613

(Private Session)

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. Madam, when you were -- when you spoke to the Prosecution for the first time,
- 19 (Redacted) you told them that you were informed (Redacted) cow was
- 20 taken and slaughtered in a house between Turbo and Besiebor and you didn't remember
- 21 whose house it was.
- 22 Your Honour, the basis of this question is from the document at tab 71.
- 23 That's correct, isn't it? That's what you told them on (Redacted)
- 24 A. I cannot remember. It's seven years since that time, so talking and -- I can't remember.
- 25 Q. So, madam, you cannot remember what happened seven years ago in relation to this

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1 issue?

2 A. Some I can remember, but now if you ask me about my -- (Redacted) it
3 will come to -- ask me about a Prosecution --

4 Q. Madam.

5 A. -- I -- I'm mixed up. I don't understand.

6 Q. Okay. Madam, I can -- I've actually moved on to a different topic. I'm talking now
7 about your statement to the Prosecution on (Redacted). So you can move your mind away
8 now from (Redacted) and try to listen to my question, please, okay?

9 MR GARCIA: Just to be clear for the record, I just want that to be clear, Defence counsel,
10 we're speaking about screening note KEN-OTP-0086-0682, not a formal statement?

11 MS ALAGENDRA: I referred the Chamber to the document, so I think they understood that.

12 Q. Madam, when you spoke to the Prosecution, (Redacted) you told them that you were
13 told (Redacted) cow was taken and slaughtered in a house between Turbo and
14 Besiebor and you didn't remember whose house it was. That's what you told them, isn't it?

15 A. As I -- I said before, when I was testifying with the Prosecution, (Redacted)
16 (Redacted) So some I said just -- but later on I
17 came to -- to tell what it was. So sometimes you can find -- in the first statement it's different
18 to the second one, but actually it mean the same words, but it's only I didn't elaborate to them,
19 I just gave --

20 Q. But in your screening note, you provide a lot of other information and that information
21 you provided did you do so because you were not afraid of what you were saying in relation
22 to that information?

23 A. Repeat it.

24 Q. Is it only in relation to this issue of cows being slaughtered (Redacted) is it
25 only in relation to that issue that (Redacted)

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1 A. No, I was --

2 MR GARCIA: Your Honour -- your Honour, if I may, just before the witness answers. If
3 we're going to be fair with the witness, at least the witness should have a copy of the
4 screening note. This is the procedure we've adopted for other witnesses in the past. If we
5 are going to be trying to contradict or cross-examine on specific portions of it, then the witness
6 should have it before her.

7 MS ALAGENDRA: Your Honour, of course we did notice that on this issue the witness was
8 not able to proceed without reference to her statement, but that's not how we want to proceed,
9 your Honour. As my learned friend said, it was a screening note.

10 PRESIDING JUDGE EBOE-OSUJI: Were you trying to contradict her on the basis of what's
11 in the screening note, or are you trying to explore the possibility that she might have
12 information?

13 MS ALAGENDRA: Your Honour, we have three different accounts on this one issue and I'm
14 trying to explore with the witness as to how the accounts evolved. That's all I'm trying to do,
15 your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Proceed, but be mindful of the procedure for
17 contradictions.

18 MS ALAGENDRA:

19 Q. Madam, the information we have from the Prosecution is that when they first spoke to
20 you, (Redacted) all you said to them was that you were told (Redacted)
21 cow was slaughtered in a house between Turbo and Besiebor and you didn't know whose
22 house it was.

23 MR GARCIA: Your Honour, I suggest, and this is the problem here with the -- with the
24 witness not having a copy of the screening note is -- Defence counsel is omitting certain words
25 and other words. Other things that she's mentioning are not in there actually, so it'd be best

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1 if it be read to her verbatim what is stated in the screening note as to what the -- the witness
2 would have stated on (Redacted) rather than Defence counsel putting in her own
3 words and her own take on it.

4 PRESIDING JUDGE EBOE-OSUJI: That is indeed a correct approach, Ms Alagendra.

5 MS ALAGENDRA: But, your Honour, if I may, my learned friend just objected a few
6 minutes ago that it's a screening note, and it's not her statement.

7 PRESIDING JUDGE EBOE-OSUJI: But if you're saying that the Prosecution said something
8 and that is all that it's indicated that she said, it's fair to put to her precisely what it is you are
9 talking about. It's a fair procedure.

10 MS ALAGENDRA:

11 Q. Madam, this is what the investigator noted that you said, and I'm going to read it to you,
12 okay.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Do you recall saying that?

18 A. Maybe I've forgotten now, but according to what I know the cows which were taken
19 from people they were taken to the place which I have mentioned already.

20 Q. Madam, I'm not going to go into the detail of that account. I'm just focusing on what
21 you told the Prosecution when you spoke to them for the first time.

22 A. So as I say earlier, like, the information which I gave first, I didn't give the detail, I gave
23 it just --

24 Q. Is it just how I've read it, or did you tell them more?

25 A. I don't remember.

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1 Q. Now, madam, your second interview with the Prosecution on (Redacted) now, this
2 interview, madam, when you met with the Prosecution (Redacted), wasn't it, on
3 the --

4 A. Yes, it was.

5 Q. And you were with OTP investigators; correct?

6 A. Correct.

7 PRESIDING JUDGE EBOE-OSUJI: Are we still at tab 71?

8 MS ALAGENDRA: No, your Honour. I've now moved to the next statement in
9 (Redacted) which is the statement at tab 1 of my learned friend's bundle.

10 Q. So, madam, you confirm you were (Redacted) when you were with OTP
11 investigators; correct?

12 A. Yeah.

13 Q. And when you met with the investigators, madam, did you feel safe being in their
14 company?

15 A. Yes, I was safe.

16 Q. And did you feel comfortable enough to speak to them and tell them what you knew?

17 A. Yes.

18 Q. Good. So, madam, when you met with them on (Redacted) when you felt safe
19 and comfortable, what you told them, madam, and I'm going to read it to you again, it's the
20 part which my learned friend asked you -- to refresh your memory with. You said that --

21 PRESIDING JUDGE EBOE-OSUJI: Where is -- what paragraph are we looking at, what
22 page?

23 MS ALAGENDRA: It's paragraph 59, your Honour, at page 0325, KEN-OTP-0087-0325.

24 Q. And what you told them, madam, is: (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 A. (Redacted).
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. No.
- 13 Q. But on this occasion that is all you told them, you agree?
- 14 A. Yes.
- 15 Q. Okay. And you agree, madam, this is slightly more than what you said earlier, in this
- 16 version now you have named (Redacted) and this time you say you were walking past
- 17 and you saw it; correct?
- 18 A. Yes.
- 19 Q. Now, (Redacted), madam, we are now in (Redacted), you met with the OTP
- 20 investigators again; correct?
- 21 A. Correct.
- 22 Q. (Redacted)
- 23 A. Correct.
- 24 Q. (Redacted)
- 25 (Redacted)

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- 1 A. It was.
- 2 Q. The same. And the conditions were the same, madam?
- 3 A. It was.
- 4 Q. And this time you added something more, madam, and you told them (Redacted)
- 5 (Redacted)
- 6 A. Correct.
- 7 Q. So you agree, madam, that your story has evolved --
- 8 A. No.
- 9 Q. -- over three occasions?
- 10 A. No. Why -- why should I exaggerate or why should I fix someone? If I did it, I would
- 11 say I did it. If I did it -- I'm not here to fix anyone because I don't have any hatred to anyone.
- 12 I'm just speaking what I saw, and I know that is that one will make me free.
- 13 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, the clock.
- 14 MS ALAGENDRA:
- 15 Q. Madam, in fact, you --
- 16 PRESIDING JUDGE EBOE-OSUJI: The clock in the courtroom. How much more time do
- 17 you need?
- 18 MS ALAGENDRA: Your Honour, I can condense it within 10 minutes, if it's possible.
- 19 PRESIDING JUDGE EBOE-OSUJI: So you can wrap it up in 10 minutes?
- 20 MS ALAGENDRA: I hope to, your Honour. Your Honour, if you can just give me one
- 21 second to consult.
- 22 PRESIDING JUDGE EBOE-OSUJI: While Ms Alagendra is consulting, Mr Kigen-Katwa.
- 23 MR KIGEN-KATWA: It is unlikely that I'll ask any questions, your Honour.
- 24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, would you -- do you anticipate any
- 25 re-examination?

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- 1 MR GARCIA: Perhaps just one question, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: So you've consulted?
- 3 MS ALAGENDRA: Yes. Yes, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: You still think you can make it in 10 minutes?
- 5 MS ALAGENDRA: Yes, your Honour. Perhaps sooner.
- 6 PRESIDING JUDGE EBOE-OSUJI: Wait one second. I will crave the indulgence of the
- 7 interpreters and the court officers to -- and the court reporters to bear with us to see if we can
- 8 complete this today.
- 9 Continue, Ms Alagendra.
- 10 MS ALAGENDRA:
- 11 Q. (Redacted)
- 12 (Redacted)
- 13 A. (Redacted).
- 14 Q. (Redacted)
- 15 MR GARCIA: I object to that, your Honour. The witness can't possibly answer that
- 16 question.
- 17 MS ALAGENDRA:
- 18 Q. And, madam, the reason you did not mention it the first two times when you spoke to
- 19 the Prosecution is because it never happened, madam, isn't it?
- 20 A. No. As I told you, I didn't -- I didn't say it (Redacted)
- 21 Q. And madam --
- 22 A. (Redacted)
- 23 (Redacted)
- 24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, why was that question impossible for the
- 25 witness to answer?

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1 MR GARCIA: Your Honour, the question was, "(Redacted)

2 That's the question that I objected to.

3 PRESIDING JUDGE EBOE-OSUJI: I realise that. You say --

4 MR GARCIA: The witness can't -- I'm sorry. But the witness can't, I mean, the witness can't

5 possibly answer that question whether people did or did not (Redacted). She can't

6 speak for other people. You can ask -- you can put it to her that other people -- well, there is

7 different ways of putting that. And I understand where Defence counsel is going, but the

8 question as formulated, the witness can't possibly answer that.

9 We're asking the witness to answer or to determine whether other people were there

10 saw her or not. I don't see how the witness is in a position to answer that question.

11 PRESIDING JUDGE EBOE-OSUJI: That objection is overruled.

12 MS ALAGENDRA:

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 Q. (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 A. It's not true.

5 Q. You see, madam, we accept that not all parts of what you have told this Chamber is not
6 true. But there are some aspects of your testimony, madam, which we find difficulty in
7 accepting or believing. Am I clear, madam?

8 A. According to my knowledge, what I told the Court is what I saw it.

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 (Redacted)

17 A. No, madam.

18 Q. I have no further questions for you, madam. Thank you very much for coming here.

19 A. Thank you also.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, just to round out the circle, it remains
21 the case that you have no questions?

22 MR KIGEN-KATWA: For the record, I have no questions, your Honours.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Garcia?

25 MR GARCIA: Prosecution has no questions, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: All right.
- 2 MS ALAGENDRA: Your Honour, if I may, just to add in the exhibits, the remaining
- 3 exhibits.
- 4 PRESIDING JUDGE EBOE-OSUJI: Go on.
- 5 MS ALAGENDRA: Your Honour, first if I can make a correction to the transcript, page 107,
- 6 line 3. It should be (Redacted). And also for the letter which I requested
- 7 to be MFI'd, for the annex as well to be included, which is KEN-OTP-0113-0488.
- 8 And for the photograph, KEN-D09-0036-0060, (Redacted), for
- 9 that to be marked as an exhibit, your Honour, as she identified the individuals.
- 10 PRESIDING JUDGE EBOE-OSUJI: Any objection?
- 11 MR GARCIA: No objections.
- 12 PRESIDING JUDGE EBOE-OSUJI: The photographs will be marked as exhibits in the next
- 13 Ruto Defence exhibits.
- 14 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0113-0488 will be referenced
- 15 MFI-T-D09-00216.
- 16 Photograph KEN-D09-0036-0060 will be given the reference EVD-T-D09-00217. That
- 17 is a Defence exhibit for Mr Ruto, number 217.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 19 Witness, we have come to the end of Ms Alagendra's cross-examination of you. And
- 20 the Prosecutor has no re-examination. I will be discharging you for now for the
- 21 record, but be on standby for Monday. We may have to recall you on Monday, but
- 22 for now, if we don't, then we wish you a safe journey back. But we may call you
- 23 back on Monday.
- 24 THE WITNESS: Thank you.
- 25 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

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(Closed Session)

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

2 (Closed session at 4.18 p.m.) Reclassified as open session

3 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.

4 (The witness stands down)

5 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

6 THE COURT OFFICER: All rise.

7 (The hearing ends in closed session at 4.18 p.m.) Reclassified as open session

8 RECLASSIFICATION REPORT

9 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
10 2013, and the instructions in the email dated 31st October 2014, the version of the
11 transcript with its redactions becomes Public.