

Trial Hearing  
Witness: KEN-OTP-P-0800

(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-Carbuccia and Judge Robert Fremr  
7 Trial Hearing  
8 Tuesday, 18 November 2014  
9 (The hearing starts in open session at 9.36 a.m.)  
10 THE COURT USHER: All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
14 Court officer, the case please.  
15 THE COURT OFFICER: Thank you, Mr President.  
16 The situation in the Republic of Kenya, in the case of The Prosecutor versus William Samoei  
17 Ruto and Joshua Arap Sang, ICC-01/09-01/11.  
18 We are in open session.  
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
20 Appearances?  
21 MR STEYNBERG: Good morning, your Honours. For the Prosecution appearances remain  
22 the same.  
23 MR NARANTSETSEG: Good morning, your Honours. The victims are represented by  
24 myself, Orchlon Narantsetseg, James Mawira, Amanda Wilmot and Charlotte Devinat.  
25 Thank you.

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

3 MS ALAGENDRA: Good morning, Mr President, your Honours. The Ruto team remains  
4 the same.

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

6 And, Witness, welcome back. Thank you for joining us again. We're in open session now  
7 and Mr Steynberg will continue with his examination-in-chief.

8 Keep in mind, Witness, the advice given to you yesterday about the tone. You are so far  
9 speaking at a moderate tone, that's a good tone, but try your best to observe the five seconds  
10 pause. You were doing it relatively well for much of the time, but try and do it all the time.  
11 Thank you.

12 MR STEYNBERG: Thank you, your Honours. Perhaps the record should also reflect that  
13 (Redacted) is also present today.

14 PRESIDING JUDGE EBOE-OSUJI: Indeed.

15 WITNESS: KEN-OTP-P-0800 (On former oath)

16 QUESTIONED BY MR STEYNBERG: (Continuing)

17 Q. Good morning, Mr Witness.

18 A. Good morning.

19 Q. Mr Witness, when we left off yesterday we were just dealing with certain events relating  
20 to the 2005 referendum, and before we move forward to the elections in 2007, I would just like  
21 to ask you a little bit, one or two more questions about that.

22 At the time of the 2005 referendum, what was the most popular radio station in the  
23 Rift Valley?

24 A. In Rift Valley, the most popular radio station was Kass FM.

25 Q. And on that radio station, please tell the Court what was the most popular show and

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1 who was the most popular presenter.

2 A. The most popular show or programme was a popular Lene Emet, and the presenter was  
3 Joshua Arap Sang.

4 Q. And what was the significance of Kass FM and Mr Sang in the 2005 referendum  
5 campaign?

6 A. This radio station and the programme, plus its presenter used the station as a platform  
7 to campaign for the "No" campaign.

8 Q. And when you refer to "its presenter," for the clarity of the record, who are you referring  
9 to?

10 A. Joshua Sang.

11 Q. And tell us a bit more about how it was used as a platform for the "No" campaign.

12 A. This radio station allowed people to talk and campaign on it directly to the people, to  
13 the -- to the -- to the listeners and at the same time they used Kalenjin proverbs and a popular  
14 song which was sung. It was -- it was -- it was played in the station which provoked the  
15 Kalenjins. The song was called "Ki mi bek kwenet," "We are in the middle of the sea."

16 Q. And what language is that?

17 A. Ki mi bek kwenet is a Kalenjin language.

18 Q. And let me just place the spelling on the record. Correct me if I am wrong. It's K-I,  
19 new word M-I, new word B-E-K, new word K-W-E-N-E-T. Is that --

20 A. Yes.

21 Q. -- correct?

22 A. Yes, your Honour.

23 Q. And how did this song provoke the Kalenjin?

24 A. The song, as I've explained, means we're in the middle of the sea, to mean the Kalenjin  
25 understood it that we were -- that we were in the middle of the sea, but until we win in

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1 the -- in the -- in the referendum such that we'll be now out from the sea or the other side of  
2 the sea. This song and proverbs that Mr Joshua Sang used in the station, plus how the  
3 people used to campaign through calls in the station actually provoked the people, especially  
4 the Kalenjins, in the -- through the programme.

5 Q. All right. I'd like to clarify one or two aspects. You've spoken on a couple of  
6 occasions about people calling. What was the format of Mr Sang's show?

7 A. At times he will pose -- he will put a question and people will be -- will be giving their  
8 opinions. At other times people will be invited to the station for a discussion, and after they  
9 leave you will hear him talk in proverbs discussing afterwards what they were -- what they  
10 were talking about.

11 Q. You've also mentioned the use of proverbs on a few occasions. Tell us more about  
12 these proverbs. What were they? What did they signify?

13 A. The proverbs, the use of proverbs, is significant to the Kalenjin community. They'll  
14 always use proverbs, songs and other -- and similar kind of communication in order to pass  
15 information to the Kalenjin.

16 Now Sang used these proverbs himself, being a good orator and a person who can  
17 actually pass information very quickly through proverbs and songs. He used the  
18 platform of Kass FM to talk about it, to -- to -- to pass information through these  
19 proverbs. At times you will hear him talk on proverbs like "Pik ab chego." People  
20 of milk. You'll hear him talk about proverbs like "Wa sabo (phon) muriat kobo kot  
21 nebo". If -- in translation in English that one means that if a rat is bad it belongs to  
22 that house.

23 Q. All right. I'm going to have to stop you there to try and clear up the record. You've  
24 mentioned two proverbs. Are those in the Kalenjin language?

25 A. Yes, your Honour.

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1 Q. The first one you translated, I didn't quite hear you. The record says "milk." I thought  
2 you said something like "people of milk." What was the translation for the first proverb you  
3 mentioned?

4 A. "Pik ab chego" means people of milk.

5 Q. People of milk. And can you spell that for the record, please?

6 A. Your Honour, "Pik ab chego" means --

7 PRESIDING JUDGE EBOE-OSUJI: One second. Do you have a sheet of paper and pen? If  
8 not, a sheet of paper and a pen should be made available to the witness. It might assist him  
9 in spelling things.

10 THE WITNESS: "Pik ab chego" is pik is P-I-K. P-I-K. Ab is A-B. Chego is C-H-E-G-O.

11 MR STEYNBERG:

12 Q. Thank you. And these people of milk, to whom did that refer?

13 A. The Kalenjins.

14 Q. I see. And the second proverb you used, meaning if a rat is bad it belongs to that house,  
15 can you repeat and spell that in Kalenjin please?

16 A. "Ngoya muriat kobo kot nevo." This means, like I translated, if a rat is bad it belongs to  
17 that house. To ask the Kalenjins, that one means that if a leader is bad, so long as he is a  
18 Kalenjin he's still ours.

19 Q. All right.

20 PRESIDING JUDGE EBOE-OSUJI: Can you -- can you spell the actual words?

21 THE WITNESS: Ngoya is N-G-O-Y-A. Muriat is M-U-R-I-A-T. Kobo is K-O-B-O. Kot is  
22 K-O-T. Nebo is N-E-B-O.

23 MR STEYNBERG:

24 Q. Thank you. Now, you've mentioned that Kass FM was the most popular radio station  
25 in the Rift Valley. Amongst which community in the Rift Valley was that?

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1 A. The Kalenjin community.

2 Q. And what is your source of knowledge about what was being said on Kass FM at that  
3 time?

4 A. At times, your Honour, I will hear the programme, I will tune in the programme and  
5 hear myself and at times I will hear from discussions of people.

6 Q. All right. Now you've mentioned that Kass FM, or Mr Sang at least, was campaigning  
7 for the "No" campaign. At any time when you yourself was listening to Kass FM, did you  
8 hear Mr Sang referring to the opponents; the persons supporting the "Yes" campaign?

9 A. Yes, your Honour. He advised the people of Kalenjin to vote and hear the words of  
10 their leaders.

11 Q. Very well. I'd like to move away then from 2005 and discuss in the next segment  
12 events surrounding the 2007 presidential elections. Mr Witness, it's not in dispute that the  
13 2007 presidential election vote was held on 27 December 2007. Does that accord with your  
14 recollection?

15 A. It is, your Honour.

16 Q. And the presidential results were announced on the evening of 30 December; is that  
17 correct?

18 A. Yes, your Honour.

19 MR STEYNBERG: Your Honour, may I ask to move into private session for no more than  
20 five minutes?

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 \*(Private session at 9.55 a.m.) Reclassified as Open session

23 THE COURT OFFICER: We're in private session, Mr President.

24 MR STEYNBERG: Thank you, your Honours.

25 Q. Mr Witness, you told us yesterday that at that time you were -- (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 Q. All right. Now, I would just like to remind you that the Court is primarily interested in  
9 what you yourself saw and what you yourself heard, so if at any time you're referring to  
10 information that you learnt from (Redacted) you must please make that clear to the Court.  
11 Do you understand?

12 A. Yes, your Honour.

13 Q. All right. Before we go back into public session, (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. And what was the attitude of the leaders in the Rift Valley in 2007 and 2008 towards  
19 (Redacted)

20 A. At this time most -- most people did not like (Redacted) because as we spoke,  
21 they could judge us that we were supporting -- that we were not in support of the Kalenjin  
22 community.

23 Q. All right. I'm going to shortly move back into public session, Mr Witness, and I'm  
24 going to ask you certain questions about the conditions in the area of (Redacted)  
25 (Redacted), and the areas of (Redacted). I will refer to them as

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1 locations 9 and 8 respectively, and I would just like to remind you to be cautious not to inject  
2 any personal details into your answers. Do you understand?

3 A. Yes, your Honour.

4 Q. Thank you.

5 MR STEYNBERG: Public session please, your Honours.

6 PRESIDING JUDGE EBOE-OSUJI: Public session.

7 (Open session at 10.00 a.m.)

8 THE COURT OFFICER: We're in open session, Mr President.

9 MR STEYNBERG: Thank you, madam.

10 Q. Mr Witness, in the period prior to the 2007 elections, can you please describe the  
11 atmosphere in location 9 and surrounding area?

12 A. At this time in location 9, people had already started to group themselves according to  
13 their tribes.

14 Q. And why was this happening?

15 A. Because others had fear of what will happen after elections and others were already  
16 with the information from their leaders that elections will be rigged and, therefore, they were  
17 just waiting for the time to come.

18 Q. And who are you referring to when you say persons received information from their  
19 leaders that elections will be rigged?

20 A. From the leaders, your Honour.

21 Q. Yes, but I'm talking about the people that had that information, which -- which ethnicity  
22 are you referring to?

23 A. The Kalenjin, your Honour.

24 Q. And who are the people that had fear of what will happen after the elections?

25 A. The Kikuyu. The Kikuyu, your Honour.

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1 Q. Can you please just give the Chamber some information about the ethnic composition of  
2 location number 9? Which were the predominant ethnicities in that area?

3 A. In this area it was a mix up of mostly the Kalenjins and the Kikuyus.

4 Q. Do I understand from that that the Kalenjin were the majority?

5 A. Yes, your Honour.

6 Q. All right. Now, it's -- just bear with me one moment, please, your Honour.

7 Yes, let me just clarify one issue. The Kalenjin community in the Rift Valley, which  
8 party were they predominantly supporting in the 2007 elections?

9 A. The Kalenjins supported the ODM.

10 Q. And the Kikuyu?

11 A. The Kikuyu supported the PNU.

12 Q. Now, in area 9, were you aware of any Kalenjin who in fact supported the opposite  
13 party, the PNU?

14 A. I beg your pardon, your Honour?

15 Q. You said that the Kalenjin generally supported the ODM. Were there any who  
16 supported the PNU in location 9?

17 A. Yes, your Honour, a few Kalenjins supported PNU.

18 Q. And what was the attitude of the Kalenjin community, the Kalenjin majority towards  
19 those Kalenjin members who supported the PNU in the area of location number 9?

20 A. Kalenjin people who supported PNU were perceived to be enemies amongst the  
21 Kalenjins.

22 Q. How were they treated?

23 A. At times they were not welcomed in discussions. At times if you're a PNU supporter,  
24 when you go to a group of other Kalenjins, you will see -- you will hear them -- you will see  
25 that they stop talking because you are there.

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1 Q. And if I can jump forward in time for a moment, after the elections and after the  
2 violence that followed, what became of these Kalenjin PNU supporters? Are you aware?

3 A. Your Honour, after elections, the Kalenjin PNU supporters were asked to pay a fine and  
4 give also either a goat or a bull.

5 Q. Why was that?

6 A. Because they were perceived as traitors.

7 Q. Lastly on this point, you mentioned that the Kalenjin received the message from their  
8 leaders that the elections would be rigged. Who were these leaders that were giving this  
9 message?

10 A. William Ruto, your Honour.

11 Q. And one last follow-up question. You say the Kalenjin PNU supporters were  
12 perceived as enemies or traitors. Why was that?

13 A. Because they did not follow the Kalenjins in their votings -- in their vote -- in  
14 the -- during the elections and they were not -- they were perceived traitors because they  
15 joined the Kikuyu during the elections.

16 Q. And who was it that made them or forced them to give a goat or a bull as a fine?

17 A. Elders and other Kalenjin youths, who are now warriors, forced them to give these fines.

18 Q. Was this only at location 9 or are you aware that this took place at any other locations?

19 A. I personally saw what took place in location number 9, and I got information from  
20 (Redacted) that the same took place in different areas.

21 Q. Now, you mentioned in relation to the 2005 referendum that at that stage  
22 Mr Ruto - Mr William Ruto - was perceived to be the, or was the spokesman for the Kalenjin  
23 people. What was the position in 2007?

24 A. He was respected Kalenjin spokesperson still in 2007.

25 Q. And what did it mean to be spokesperson for the Kalenjin?

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1 A. It meant that he was talking on behalf of all the Kalenjins. Views that he gave were  
2 views of the Kalenjin. And at times his decision was decision of the Kalenjin people.

3 Q. And what did it mean to a Kalenjin who held a view contrary to Mr Ruto?

4 A. Anyone who was contrary to Mr Ruto was perceived to be a traitor.

5 Q. All right. I'd like to ask you then a few questions about the atmosphere in the region of  
6 location number 8 prior to the 2007 elections. What can you tell us about that?

7 A. Your Honour, at location number 8, before elections, people were grouping themselves  
8 according to their -- in their -- in the tribal lineage, and also there were campaigns taking place  
9 in group discussions at designated places in town, hotels and so forth.

10 Q. All right. Now, I think it's safe to refer to Eldoret town in public session. That is a  
11 large town. Can you refer to -- can you tell the Court about any particular place in Eldoret  
12 town where such discussions took place?

13 A. Your Honour, there's a designated place in Eldoret town commonly known as Posta. It  
14 is just outside Telecom offices in Eldoret town. That is where most people meet to discuss  
15 and talk, especially during campaigns and any other discussion that is in the country.

16 Q. Can you recall any occasions when leaders -- when a leader spoke prior to the elections  
17 at the Posta?

18 For the record I should spell that: P-O-S-T-A.

19 A. Yes, your Honour.

20 Q. And who is that person? I don't think there is any problem about mentioning  
21 names -- that name in public.

22 A. I remember Mr Farouk Kibet.

23 Q. Yes. And firstly, approximately when was this?

24 A. It was before elections, your Honour.

25 Q. Before the 2007 elections?

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1 A. Yes, your Honour.

2 Q. Can you give us an idea of how long before? Weeks, months, days?

3 A. Just a few days before elections, your Honour, like four, three days.

4 Q. All right. So we know the election was on 27 December, three or four days before that  
5 would put it just before Christmas 2007. Do you agree?

6 A. Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, before you proceed, I was waiting for an  
8 opportune moment to clarify something in the evidence of the witness. You -- during your  
9 questioning, Mr Steynberg, you put it to the witness at some point, I believe it's line -- page 12,  
10 line 10, you premised or you started with the proposition: "Now, you mentioned in relation  
11 to the 2005 referendum that at that stage Mr Ruto was perceived to be or was the  
12 spokesperson for the Kalenjins."

13 Was that the testimony of the witness?

14 MR STEYNBERG: That is my recollection of the testimony of the witness yesterday, your  
15 Honours, toward yesterday late afternoon. I can check that though.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, is that the position as you understood it?

17 THE WITNESS: Yes, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. That's all. Please proceed.

19 MR STEYNBERG: In fact I can give you the reference, your Honour, it's --

20 PRESIDING JUDGE EBOE-OSUJI: That's all right. That's all right.

21 MR STEYNBERG: As the Court pleases.

22 Q. Yes. So we just established the date of Mr Kibet's discussion at the Posta. The source  
23 of your knowledge, is this something you witnessed yourself or something you heard from  
24 another person?

25 A. I heard myself, your Honour.

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- 1 Q. And what did Mr Kibet say when he spoke at that venue?
- 2 A. Mr Kibet said that if the Kikuyu wanted to stay in Uasin Gishu and Eldoret, they ought
- 3 to vote in line with the Kalenjin people.
- 4 Q. Yes. Anything else?
- 5 A. And if not, they needed to go.
- 6 Q. To go where?
- 7 A. Out of Rift Valley, your Honour.
- 8 Q. Thank you. Is there anything else you want to add to that?
- 9 A. That's what I remember, your Honour.
- 10 Q. And if the Court will bear with me, please.
- 11 This Mr Farouk Kibet, who is he? Tell us a bit more about him, please.
- 12 A. Farouk Kibet is a close friend to Ruto and also comes from the Eldoret North of Uasin
- 13 Gishu, your Honour.
- 14 Q. What was Mr Kibet's involvement in Mr Ruto's campaign prior to these elections?
- 15 A. He was a chief campaigner of Mr Ruto.
- 16 Q. And after the elections, what post did Mr Kibet hold?
- 17 A. After elections, your Honour, you mean which elections?
- 18 Q. I'm referring to the 2007 elections. Maybe -- maybe let me rephrase the question.
- 19 Are you aware what post Mr Kibet holds today?
- 20 A. Yes, your Honour. I know Mr Farouk Kibet to be the personal assistant of Mr Ruto.
- 21 Q. And to your knowledge when was he appointed into that position?
- 22 A. I don't know when, your Honour, but I know he has been very close person to Mr Ruto.
- 23 Q. What is Mr Kibet's ethnicity?
- 24 A. He is a Kalenjin, your Honour.
- 25 Q. And why is it that Mr Kibet chose -- would have chosen this venue to speak at, this

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1 Posta venue?

2 A. For a very long time now, most people meet at Posta because that is where they sell the  
3 newspapers mostly - the Nation newspaper, the People newspaper, the Standard  
4 newspaper - around that place, outside that place. So most people meet there to discuss  
5 issues that come up from the newspapers and so mostly people who talk politics in town meet  
6 there to discuss, your Honour.

7 Q. And what was the reaction of the people when Mr Kibet said that the Kikuyus should  
8 vote for the ODM or leave the Rift Valley?

9 A. The Kalenjins and the people who are there actually believed that the words of  
10 Mr Farouk were -- were actually -- he was delivering message from Mr Ruto and the Kalenjins  
11 were very happy for what Mr Farouk was talking about.

12 Q. Why would that make the Kalenjin people happy?

13 A. Because it was about what they believed was theirs. They believed if Kikuyu people  
14 will leave, especially in Eldoret town, then the Kalenjin will take over their businesses, which  
15 mostly were -- the Kikuyu people had dominated in town. If Kikuyu people leave, then  
16 other jobs will be available for the Kalenjin people that were dominated by the  
17 Kalenjin -- by the -- by -- by the Kikuyu.

18 Q. And why would the Kalenjin believe that that was theirs?

19 A. They believe that Rift Valley and also Eldoret is the land of the Kalenjin people, and all  
20 other people who are there are foreigners.

21 Q. Thank you. Now, it's not in dispute that after the elections there was widespread  
22 violence in Kenya, including the Rift Valley. My question is what do you know about  
23 preparations for the violence that followed the elections?

24 A. Your Honour, (Redacted) for --

25 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait, wait, wait. Sorry. Let's go to private

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1 session.

2 \*(Private session at 10.29 a.m.) Reclassified as Open session

3 THE COURT OFFICER: We're in private session, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 We understand the difficulty, Witness. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 I don't know how you get around this, Mr Steynberg.

10 MR STEYNBERG: (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: I know. What I mean is going back now to take it up  
14 from there.

15 MR STEYNBERG: Perhaps -- perhaps we can just take this one or two sentences in private  
16 and then we go back to public.

17 PRESIDING JUDGE EBOE-OSUJI: Good suggestion.

18 MS ALAGENDRA: Your Honour, if I may just raise an objection at this point? My learned  
19 friend has asked a question regarding preparations, but this is not something that's already in  
20 evidence and so I request that my learned friend not lead on that issue please.

21 MR STEYNBERG: Noted, your Honours.

22 Q. You had just started to tell the Court about, if I can find the relevant section -- yes, what  
23 you knew about preparations for violence and you started saying, (Redacted)  
24 (Redacted) Please continue.

25 A. Yes. (Redacted)

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1 violence was planned and I also in person attended other meetings which were in preparation  
2 for the violence which will take place -- which was to take place after elections if Kibaki will  
3 be announced the winner.

4 PRESIDING JUDGE EBOE-OSUJI: All right. We will now go into public session.  
5 (Open session at 10.32 a.m.)

6 THE COURT OFFICER: We're in open session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Ms Alagendra, you were rising.

9 MS ALAGENDRA: Yes, I'm just a bit concerned because it appears that for a while now the  
10 witness is not able to answer questions looking up. So just to check if he's got something on  
11 the table, or if there is any another reason why he keeps looking on his table?

12 MR STEYNBERG: Your Honours, I'm not aware.

13 Q. I can see a piece of paper in front of you, Mr Witness. Is that your PIS form?

14 PRESIDING JUDGE EBOE-OSUJI: Indeed, Ms Alagendra's observation is correct. So  
15 I -- we don't know how far we can take that observation, but the last answer in particular the  
16 witness gave that looking down.

17 Witness, do you have a piece of paper in front of you?

18 THE WITNESS: Your Honour, what I have is what I was provided. These are the PI --

19 PRESIDING JUDGE EBOE-OSUJI: The PIS, all right. Okay, thank you.

20 MR STEYNBERG:

21 Q. Mr Witness, it's quite correct for you to look for names and locations when you need to  
22 use them, but other than that it's not necessary to stare at the PIS while you give your answers,  
23 all right?

24 A. Yes, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: But of course if what you were trying to do is to look at

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1 the PIS, identify the places of interest and then refer to them by the location number indicated  
2 in the PIS, you may do that. What the concern is is whether you are -- maybe you made  
3 separate notes that you were looking at during your testimony. That would be what Ms  
4 Alagenda's concern would be about.

5 Now let's continue.

6 MR STEYNBERG:

7 Q. All right. You briefly mentioned in private session your sources of knowledge for  
8 certain plans that were made for the violence which occurred after the 2007 elections. I want  
9 to get to one specific aspect of that, so let me first ask you: In terms of what you learnt, who  
10 was to carry out the violence that occurred after the elections?

11 A. Your Honour, the Kalenjin had already arranged and trained their youths in preparation  
12 of the war which will take place after elections.

13 Q. And specifically what can you tell us about the training of the Kalenjin youth prior to  
14 the elections?

15 A. Kalenjin youths were trained from different parts of Eldoret and from locations number  
16 9.

17 Q. All right. Now I want to ask you specifically about the training in the region of  
18 location number 9, but I'm going to have to ask to go briefly into private session - I beg your  
19 pardon, your Honours - just to -- just to get a location which I can't mention in public.

20 PRESIDING JUDGE EBOE-OSUJI: Private session.

21 \*(Private session at 10.37 a.m.) Reclassified as Open session

22 THE COURT OFFICER: We're in private session, Mr President.

23 MR STEYNBERG:

24 Q. All right. I just want to -- I want you to tell us about any specific location that you were  
25 aware of where training of Kalenjin youth took place.

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1 A. I'm aware of a place called Boronjo.

2 Q. Please spell that.

3 A. B-O-R-O-N-J-O.

4 Q. And where is that?

5 A. Boronjo is after Ziwa as you head to Kitale.

6 Q. How far from Ziwa?

7 A. Around 4 to -- around 4 to 5 kilometres.

8 Q. And --

9 PRESIDING JUDGE EBOE-OSUJI: Now, before you proceed, I see Mr Kigen-Katwa has been  
10 wanting to rise I suppose to say we can go back to public session?

11 MR KIGEN-KATWA: Thank you very much, Mr President. That's my concern. And  
12 more particularly, Mr President, that if the intention of going into private session is to discuss  
13 training venues, I would submit that doesn't need to be in a closed session, Mr President.  
14 That's something the witness can say in public.

15 MR STEYNBERG: Your Honours, I was just concerned about the (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: Proceed.

20 MR STEYNBERG:

21 Q. Just please help us with the geography, Mr Witness. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Yes, your Honour.

2 Q. How do you know that?

3 A. I saw the youths taking their vehicles going for this training and I also spoke to some  
4 who attended this training.

5 Q. And the youth to whom you spoke, who attended this training, were they from -- from  
6 (Redacted) at location number 9?

7 A. Yes, your Honour.

8 MR STEYNBERG: Thank you, your Honours. I think we can deal with the rest in public  
9 session.

10 PRESIDING JUDGE EBOE-OSUJI: We're back to open session then.

11 (Open session at 10.42 a.m.)

12 THE COURT OFFICER: We're in open session, Mr President.

13 MR STEYNBERG: Thank you, your Honour.

14 Q. Just to recap then, in private session you informed the Court, Mr Witness, that you were  
15 aware of training of Kalenjin youth that took place in a location known as Boronjo, which is I  
16 think you said 4 to 5 kilometres from Ziwa on the Kitale road, and that you saw youth from  
17 location number 9 being transported there and you spoke to some of the youth from location 9  
18 who had attended this training; is that correct?

19 A. Your Honour, if I heard you well, you said "45." I said "4 to 5 kilometres."

20 Q. I also said "4 to 5." Let's see if the record got that correctly. Yes, the record has it  
21 correctly. "4 to 5 kilometres." Otherwise correct?

22 A. Yes, your Honour.

23 Q. All right. Please tell the Court what you learnt from these youths who attended the  
24 training? What took place at that training in Boronjo?

25 A. The youths are trained on how not to leave any evidence behind, how to target, what to

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1 wear in order not to be identified, how to put houses into fire and what to use as -- as  
2 accelerants to make sure that the houses get flames.

3 Q. All right. Let's get a bit more detail. What were they taught about how to target?

4 A. Your Honour, I beg your pardon.

5 Q. Well, you said in your last answer "... youths are trained on how not to leave any  
6 evidence behind, how to target, what to wear in order not to be identified ..." and et cetera.  
7 What did you mean by they were trained how to target, target?

8 A. Thank you, your Honour. Kalenjin youths use bows and arrows during war. And  
9 here they were -- they were -- they were trained on how to use them to get the right target.

10 Q. And what were they taught about what to wear in order to not be identified?

11 A. Yes, your Honour.

12 MS ALAGENDRA: Your Honour, we're still not clear on the previous answer about how to  
13 target.

14 MR STEYNBERG: Well, I observe, as always, my learned friend is welcome to clarify that.

15 Q. But you're referring to bows and arrows, is that correct, when you said they were  
16 trained on how to use them to get the right target? Is that right?

17 A. Yes, your Honour. To use --

18 Q. Can you give any more detail on that to explain it further?

19 A. For instance, the people who attended these training told me they will use empty tins of  
20 aluminium tins -- or some -- yeah, aluminium tins to be put on trees ahead of them, like 10 to  
21 20 -- 10 -- 10 -- 10 metres, 15 metres, and they were using their -- their -- their arrows to target  
22 that -- that empty tin from away, like 15 to 10 metres. So that's what I meant by the right to  
23 get to the right target. By practising that and getting to that target often, then when you go  
24 to war you are -- you -- if you are targeting to a person, then you will, you will -- you will be  
25 able to -- to -- to -- to have the right target by -- by shooting you're -- you're -- you're arrow

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1 towards -- towards that person.

2 Q. All right. What you've described I think the English term would be target practice or  
3 shooting practice; is that right?

4 A. Yes, your Honour.

5 Q. Getting back to what the -- what the Kalenjin youth were told to wear in order to not be  
6 identified, my question was what, what were they told? What were they to wear so that they  
7 wouldn't be identified?

8 A. On what to wear, your Honour, the Kalenjin youths were advised to wear not a long  
9 trouser, but a pair of short, and smear their faces with mud, also their legs, and put marks  
10 from their knees down and part -- and also on their face for identification amongst themselves,  
11 but people who are not part of them will not identify them by their names because now they  
12 will look all white and with -- all of them has pair of shorts.

13 Q. I see. And you mentioned additionally that they were -- if I can find it again. You  
14 said something about being taught to put things on fire. And you mentioned accelerants.  
15 Tell us more about that?

16 A. Your Honour, the youths here were trained on how to use mattresses to put fire and  
17 make sure it catches the houses and how to use sugar as accelerant for heavier flames.

18 Q. And perhaps I should just correct the record, your Honours, at -- it's just jumped again.  
19 The previous page, 23, line 8, the word which now appears as X-L-R-A-P-B-T-S I heard as  
20 accelerants.

21 How are the youths to use mattresses to set houses alight?

22 A. Your Honour, they will push or pull the mattresses against the walls and then light up  
23 the mattresses and that will ensure that the wooden houses -- or, put that mattresses -- that  
24 wooden houses will get -- automatically get flame because of heavy flames from the mattress;  
25 or else put that mattresses on the ceiling board and light it up for the ceiling board, and the

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1 flames from the -- from the mattresses will then ensure that the strong houses which are  
2 semi-permanent, or permanent houses, they -- all the roof will be on fire.

3 Q. And are you aware which property this training took place on at Boronjo -- or, whose  
4 property, should I say?

5 A. Yes, your Honour. I remember the property being -- I mean the land of which the  
6 training took place was for one of the old men called, by a nickname, Muzuri.

7 Q. Muzuri is that spelt M-U-Z-U-R-I?

8 A. Yes, your Honour.

9 Q. And I just wanted to make sure the record got you correctly because I didn't hear very  
10 well. Did you say -- what -- how did you describe Muzuri? Did you say "... one of the old  
11 men?"

12 A. There's an elder in -- in Boronjo.

13 Q. Thank you. And who was providing the training for these youths?

14 A. The youths were trained by retired army officers.

15 Q. Do you know any of their names?

16 A. Yes, your Honour. One Mr Bile, from that area, was among those who were training  
17 the youths.

18 Q. And the transcript correctly reflects the spelling.

19 Just one or two more questions about this. How many youth attended this training  
20 according to your information?

21 A. More than 300, your Honour.

22 Q. And besides location 9, which other areas were the youth, did the youth come from?

23 A. I'm aware the youth came from location number 9.

24 Q. My question was besides location number 9, do you know whether there were youth  
25 from any other area, or was --

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Hold it there.

2 Ms Alagendra?

3 MS ALAGENDRA: Yes, your Honour, again this is an area which is contentious, your  
4 Honour, and we request the Prosecutor not to lead. His previous question was quite  
5 leading.

6 MR STEYNBERG: Well, not really.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, proceed.

8 MR STEYNBERG: Yes.

9 Q. So you've mentioned youth from location number 9. Are you aware of youth -- was  
10 this the only area from which the youth came, or were there youth from other areas as well?

11 A. There were other areas, your Honour.

12 Q. What other areas are you aware of?

13 A. From areas surrounding Eldoret, including Ziwa, the same area Boronjo, and areas  
14 neighbouring Eldoret, Eldoret town.

15 Q. And just to get a time frame, can you tell the Chamber please approximately when or  
16 how long before the 2007 elections this training took place?

17 A. This -- this training took place like a month on different -- on different -- on different  
18 days. I'm aware the training took place, like, one month before the elections.

19 Q. I just want to make sure we understand your answer. You say the training took place,  
20 like, a month on different days. Over how many days did the training take place?

21 PRESIDING JUDGE EBOE-OSUJI: Wait, wait. Let's -- I'm not sure that that's the only  
22 inference from how he answered that question that may be drawn.

23 Witness, can you state again what you meant to say? Let's assume you're hearing  
24 this question for the first time. How long before the 2000 elections did the training  
25 take place? What's your answer?

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1 THE WITNESS: Like one month, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Proceed. You may explore other things, Mr Steynberg.

3 I just didn't want his interpret -- the interpretation you gave to be the only one that was  
4 possible.

5 MR STEYNBERG: Your Honours, I was going to get back to that, but thank you.

6 Q. And how long did the training last?

7 A. Like three weeks, your Honour.

8 Q. And do you know or can you give us some more details about how long individual  
9 youth would attend the meeting? Would they all attend for the whole three weeks, or would  
10 some go for one day and then others the next day? How did it work?

11 A. The youths that attended this training attended for the three weeks because they were  
12 from different places. And these youths who are trained will then go back and pass  
13 information and tactics and -- well, and take back what they were trained to the others at  
14 home.

15 Q. I see. And did the youths remain at Boronjo for the entire time? Did they sleep there,  
16 or did they come backwards and forwards every day?

17 A. I don't know, your Honour, whether they slept there, but what I'm aware is that there  
18 were vehicles which were ready to take them to the training and back home when they were  
19 needed.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, the time.

21 MR STEYNBERG: Thank you, your Honour. May I just ask one last question on this topic?

22 Q. And in location number 9, what -- what did you personally observe regarding the  
23 transportation of these youths to the training?

24 A. In this location, your Honour, from where I was at this location, I could see the vehicles  
25 parked ready to take the youths, and when I knew they were to come back I will

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1 also -- I'll -- you'll -- from -- from this location it was easy to see when the -- when the -- when  
2 they were coming.

3 MR STEYNBERG: Thank you, your Honour. I think I can pick that up again after the  
4 break.

5 PRESIDING JUDGE EBOE-OSUJI: We will take our morning break now, Witness. We will  
6 also give you 30 minutes to rest. So the Chamber will rise after you've been let out of the  
7 courtroom. The blinds down and the witness to be escorted from the courtroom. And then  
8 you will join us in 30 minutes.

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

10 THE COURT OFFICER: We are in closed session, Mr President.

11 (The witness stands down)

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

13 THE COURT OFFICER: All rise.

14 (Recess taken at 11.03 a.m.)

15 (Upon resuming in open session at 11.46 a.m.)

16 THE COURT USHER: All rise.

17 Please be seated.

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

19 Witness, welcome back.

20 Mr Steynberg, please continue.

21 MR STEYNBERG: Thank you, your Honours.

22 Q. We're in open session again, Mr Witness, and I'd just like to finish up the subject of the  
23 transportation of the youth from location number 9 to the training site in Boronjo. Just  
24 before the break you told the Chamber that from where you were at location number 9 you  
25 could see vehicles parked ready to take the youth. My first question is what sort of vehicles

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1 were these?

2 A. The matatu.

3 Q. And you then said, "When I knew they were to come back, I will also from this location  
4 it was easy to see when -- when they were coming." What exactly did you see when -- when  
5 they returned?

6 A. I will see them alighting and that is when I will look for the youths who had attended to  
7 tell me what they were -- they were -- they were being trained in the training site.

8 Q. And is that the time when you got the information from the youths who attended that  
9 you've told the Court about?

10 A. Yes, your Honour.

11 Q. Lastly on this subject, how was this training financed?

12 MS ALAGENDRA: Could we please establish first that in fact it was financed in the first  
13 place?

14 THE WITNESS: The training, your Honour, I was informed by the youths who attended that  
15 the money -- that after the training they were -- they were -- they were given money ranging  
16 from 250 shillings to 500, others were even given 1,000 who were leaders, and this money that  
17 they got there was from Mr Ruto.

18 MR STEYNBERG:

19 Q. How did they know that?

20 A. They were -- they got information from the training site.

21 MR STEYNBERG: If you will bear me with one moment please, your Honours.

22 Q. Now, apart from information which you've told us you received from organisation  
23 number 1, you mentioned that you personally attended certain occasions when things were  
24 discussed. The first thing I want to ask you is did you attend any ODM rallies prior to the  
25 2007 election?

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- 1 A. Yes, your Honour.
- 2 Q. And where and when was that?
- 3 A. It was in Eldoret, your Honour, in one of the stadiums which is -- which is close to West  
4 Market on your way to Huruma.
- 5 Q. Do you know the name of this stadium? What is it commonly known as?
- 6 A. It's known as 64 Stadium, your Honour.
- 7 Q. When was this rally?
- 8 A. I think, your Honour, it was on 19th or 20th.
- 9 Q. Of what month and year?
- 10 A. Of December 2007, your Honour.
- 11 Q. And tell us a bit about this rally. How many people approximately attended?
- 12 A. There were many people. I approximate 5,000 to 10,000 people.
- 13 Q. And who addressed this rally from the ODM?
- 14 A. I saw leaders from ODM who had -- who were in attendance and addressed the rally,  
15 including Joe Nyaga, Musalia Mudavadi and Honourable William Ruto.
- 16 MR STEYNBERG: All right. For the record it's -- Joe Nyaga is correct.
- 17 Q. I think you then said Musavalia (phon) Mudavadi? Is my pronunciation correct?
- 18 PRESIDING JUDGE EBOE-OSUJI: Musalia.
- 19 MR STEYNBERG:
- 20 Q. Musalia Mudavadi. Is that correct?
- 21 A. Yes, your Honour.
- 22 Q. Mudavadi is M-U-D-A-V-A-D-I. Musalia I'm going to take a guess at, it's -- I think they  
23 have it correctly there. Yes, thank you. And the third person you mentioned was the  
24 Honourable Ruto.
- 25 Did any of these persons -- well, these are the people who addressed the rally. What do you

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1 recall about Mr Ruto's address, Mr Witness?

2 A. I recall Mr Ruto promising the Kalenjin and the people who were in support of ODM  
3 victory in the elections which were just to -- were to be held around one week to come from  
4 that time.

5 Q. Yes. What else?

6 A. I remember Mr Joe Nyaga telling the people who were attend -- who were in attendance  
7 that, especially the Kikuyu people, that they had no room in -- in central Kenya, your Honour.

8 Q. All right. Let's just get some clarity about Mr Nyaga's address before we return to  
9 Mr Ruto. What was Mr Nyaga's ethnicity?

10 A. Mr Nyaga was a Kikuyu, your Honour.

11 Q. And which area of Kenya was he from?

12 A. I know him to come from the central part of Kenya, your Honour.

13 Q. And what language did he -- did he address the rally in?

14 A. In Kiswahili, your Honour.

15 Q. All right. Tell us some more details about what he was saying in relation to there being  
16 no room in central for the Kikuyu people? What was that all about?

17 A. The Kikuyu people -- was telling the Kikuyu people to vote in line with the Kalenjin  
18 because if the Kalenjin decided to send them away from Eldoret and Rift Valley, they had no  
19 room in central Kenya, your Honour.

20 Q. All right. Let's return for a moment to Mr Ruto's address. In what language did  
21 Mr Ruto address the crowd, or languages?

22 A. In many cases he addressed -- he addressed the rally in Kiswahili and on  
23 parts -- other -- other parts of his talking he will switch to Kalenjin.

24 Q. And what sort of things did he address the rally on when he switched to Kalenjin?

25 A. Especially when he was giving incitive words towards the Kikuyu he will switch to

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1 Kalenjin.

2 Q. We're still talking about the rally on 23 of December; is that correct? Sorry, sorry, I beg  
3 your pardon, on 19 or 20 December? My mistake.

4 A. Yes. Yes, your Honour.

5 Q. Can you give us an example of the inciting words that the -- Mr Ruto used when he  
6 switched to Kalenjin on this occasion?

7 A. He will talk of rigging and at times I remember him talk about the -- the Kikuyu, that  
8 they needed to vote in line with the Kalenjin community.

9 Q. And you said at line 23 to 24 you mentioned "incitive words towards the Kikuyu."  
10 What were these incitive words towards the Kikuyu?

11 A. Incitive words towards the Kikuyu that I meant were these words that Mr Ruto used to  
12 show that the Kikuyu had to vote in line with the Kalenjin so -- so that they will have to be  
13 accommodated in Rift Valley and Eldoret in general.

14 Q. So the Kikuyu were to vote in favour of -- in line of the Kalenjin so that they will be  
15 accommodated in the Rift Valley. What would become of them if they were not to vote in  
16 line with the Kalenjin?

17 A. They will be -- they will be sent away or they will be fought to go away by the natives,  
18 these are the Kalenjins.

19 Q. And I'm interested in as far as --

20 MS ALAGENDRA: Your Honours, if I can -- if I can just request if perhaps the witness be  
21 asked to just say everything he remembers about what the speakers spoke. That may be a bit  
22 fairer.

23 MR STEYNBERG:

24 Q. Well, my next question was what were the exact words that Mr Ruto used that you can  
25 recall?

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1 A. I don't remember now, your Honour.

2 Q. When Mr Ruto referred to the Kikuyu, can you recall what word or words he used to  
3 refer to the Kikuyu?

4 A. I don't remember now, your Honour.

5 MR STEYNBERG: All right. Your Honours, can I ask to briefly go into private session for  
6 the next -- to introduce the next topic?

7 PRESIDING JUDGE EBOE-OSUJI: Private session.

8 \*(Private session at 12.02 p.m.) Reclassified as Open session

9 THE COURT OFFICER: We're in private session, Mr President.

10 MR STEYNBERG: Thank you, madam.

11 Q. Mr Witness, I want to now ask you about your knowledge of any meetings held in the  
12 (Redacted) area prior to the elections. Firstly, are you aware of any such meetings being  
13 held in relation to the post-election violence?

14 A. Yes, your Honour.

15 Q. What is the -- what is the source of knowledge -- of your knowledge of those meetings?

16 A. (Redacted) I knew when the meetings were to be held and (Redacted)  
17 (Redacted) information from the meetings, your Honour.

18 Q. And can you provide the Chamber with the names of the persons who gave you that  
19 information?

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. And if I could just direct your attention to the PIS you will see his name is at number 11,  
24 so please refer to him by the number if you need to do so in public session.

25 Anyone else?

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. Was there any reason why you didn't attend these meetings yourself?

15 A. Yes, your Honour.

16 Q. Why?

17 (Redacted)

18 (Redacted)

19 MR STEYNBERG: All right. I think then the -- we can probably safely go into private  
20 session for most of the rest of this, your Honours -- sorry, public session.

21 PRESIDING JUDGE EBOE-OSUJI: Before we do, Witness, did you assume that to be the case  
22 or did you actually find out that (Redacted)

23 (Redacted)

24 THE WITNESS: Your Honour, like I said in the morning, (Redacted) during that

25 time were taken to be enemies of the -- of the -- of the Kalenjin because we stood mostly

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1 against what they were discussing against the Kikuyu and so forth. So at many occasions  
2 when they had -- when the Kalenjin had their private talks, (Redacted)  
3 (Redacted) your Honour.

4 MR STEYNBERG:

5 Q. Sorry, you --

6 PRESIDING JUDGE EBOE-OSUJI: I realise what you're saying, but I wasn't suggesting that  
7 your answer was right or wrong. I just wanted to know what exactly happened on that  
8 relating to my specific question then, whether the reason you did not attend was because you  
9 (Redacted)  
10 (Redacted)  
11 (Redacted). Which one is it, or something else other than what I've just  
12 indicated?

13 THE WITNESS: No, your Honour. (Redacted)

14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MR STEYNBERG: Sorry, your Honours. Just before we go into public session, one other  
17 issue.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR STEYNBERG: Very well.

23 Can we please proceed into public session, your Honour?

24 PRESIDING JUDGE EBOE-OSUJI: Yes.

25 MR STEYNBERG: Mr Witness, please be careful not to inject any personal information into

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1 your answers when we go into public session.

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

3 (Open session at 12.10 p.m.)

4 THE COURT OFFICER: We're in open session, Mr President.

5 MR STEYNBERG:

6 Q. Mr Witness, in private session you were -- you just told the Chamber that you had  
7 received reports of certain meetings held in the area surrounding location number 9 relating  
8 to the post-election violence. Please tell us what you learnt about these meetings. Firstly,  
9 where were they held?

10 A. The meetings were held in houses of elders around that location, your Honour.

11 Q. Can you give the Chamber the -- well, is it safe to give the identity of these elders in  
12 public session? Let me rather seek your views on that.

13 PRESIDING JUDGE EBOE-OSUJI: Let's go back to public -- to private session and get the  
14 names and then we'll come back out.

15 \*(Private session at 12.11 p.m.) Reclassified as Open session

16 THE COURT OFFICER: We're in private session, Mr President.

17 MR STEYNBERG: Sorry for the in and out, your Honour.

18 Q. Who are these elders - this elder, or these elders - at whose home or homes the meetings  
19 were held?

20 A. Mostly the meetings were held at (Redacted)'s home.

21 Q. And you'll notice that he is number 18 on the list. It's a bit hard to see against the red  
22 background. Do you see that on the list of persons?

23 A. Yes, your Honour.

24 Q. How did you know the meetings were held at his house?

25 A. When the meeting was to be held, people who were to attend were -- were being

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1 informed by word of mouth and therefore I will hear from the people who would attend.

2 Q. And can you tell the Chamber who these people were who attended the meetings at, for  
3 instance, Mr (Redacted)'s house?

4 A. The people who -- who could attend were policy makers. These are people who could  
5 easily mobilise people around the locality. And some of the people who attended meetings  
6 in these -- on -- in these -- in this, (Redacted)s place, were: (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Right.

10 A. -- (Redacted) and others.

11 Q. All right. We're going to have to get some spellings on the record, I'm afraid. (Redacted)  
12 (Redacted) we have. Then you said I believe (Redacted); is that correct?

13 A. Yes, your Honour.

14 Q. (Redacted)

15 A. (Redacted)

16 Q. (Redacted)

17 A. Yes.

18 Q. (Redacted). Then the next name that we have appears to be (Redacted); is that  
19 right?

20 A. No, (Redacted).

21 Q. Is that (Redacted)?

22 A. Yes, your Honour.

23 Q. The next we have is (Redacted); is that right?

24 A. Yes, your Honour.

25 Q. (Redacted)?

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1 A. Yes, your Honour.

2 Q. (Redacted)?

3 A. Yes, your Honour.

4 Q. And then (Redacted) and we don't have the last name. It's written here as (Redacted) Is that  
5 correct, or was it (Redacted)?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 A. Yes, your Honour.

11 Q. All right. And what was Mr --

12 PRESIDING JUDGE EBOE-OSUJI: Now, before we continue, we're in private session,  
13 Mr Steynberg. I was wondering when to go back out, but before we do that, Witness, is  
14 there any reason why -- is Mr (Redacted) connected to you? I'm trying to establish that,  
15 when we mention his name in public, people will not trace the testimony back to you. That's  
16 why I asked you that question.

17 THE WITNESS: Yes. Yes, your Honour. We are connected. It comes -- it's just a  
18 (Redacted), your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: All right. Okay.

20 MR STEYNBERG: Your Honours, if I can just get some more details of personalities then as  
21 to actually what was discussed at the meeting, I think we can do that in public.

22 Q. Mr (Redacted), what was his position in the community in location 9?

23 A. (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 A. Yes, your Honour.

3 Q. I see. And the -- what is the ethnicity of all of these people that you've mentioned who  
4 attended this meeting, including Mr (Redacted)?

5 A. All of them are Kalenjins, your Honour.

6 Q. One last thing to mention before we go out. You've mentioned a --

7 PRESIDING JUDGE EBOE-OSUJI: Person number 18, is that what you're looking for?

8 MR STEYNBERG: No, we've mentioned person number 18, your Honours. It's person  
9 number 23.

10 Q. Is that one of the persons you mentioned earlier? I'm not sure if the spelling is correct.

11 A. It's the wrong spelling, your Honour.

12 Q. You mentioned (Redacted) is that correct?

13 A. Yes, your Honour.

14 Q. All right. So I direct your attention then to persons 18 and 23 in case you need to refer  
15 to them.

16 PRESIDING JUDGE EBOE-OSUJI: Before we do that, person 23 is there nobody else whose  
17 name appears as now spelled in number 23? What I mean is does the witness know of  
18 anybody called (Redacted)?

19 MR STEYNBERG:

20 Q. Yes. Is there such a person as (Redacted) that you know?

21 A. No, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: So that would then take the correction there. (Redacted).

23 MR STEYNBERG: Indeed, your Honour. I think that's just a spelling mistake.

24 Public session, please, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. We'll go back -- we'll go back to the open

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1 session and so, Mr Steynberg, you'll then deal with the PIS, person number 18 I think.

2 All right. We'll go back to public session.

3 (Open session at 12.20 p.m.)

4 THE COURT OFFICER: We're back in open session, Mr President.

5 MR STEYNBERG: Thank you, madam.

6 Q. Mr Witness, you've just in private session discussed various meetings that were held at  
7 the house of person number 18. You've mentioned a number of people who attended whose  
8 names I will not repeat in public session. You've mentioned that the people were of the  
9 Kalenjin ethnicity. What I'd like you to tell the Chamber about now in public session is  
10 what -- what were the main topics of discussion at these meetings, according to your  
11 information?

12 A. The -- the information that was discussed was: (1) how to mobilise the people in order  
13 to ensure that enough votes are cast from the Kalenjin; (2) was how to start to make sure that  
14 war starts immediately after the -- if -- if then it will be rigged and -- and PNU is announced  
15 the winner, that is president -- former president, Mr Kibaki; and another thing was how to get  
16 funds in order to go and bring poisonous weapons, arrows from Keiyo. That is people were  
17 trying to get ready in any eventuality if in case the elections will be rigged and ODM will not  
18 win.

19 MR STEYNBERG: All right. Just to correct the record, at line 4 what I heard was "...  
20 discussion to get funds ..." F-U-N-D-S "... to go and get poisonous weapons or arrows."

21 Q. Is that correct?

22 A. Yes, your Honour.

23 MR STEYNBERG: And I believe Keiyo is correctly spelt.

24 Q. Let's just get a little bit more detail there. What was -- what was discussed would  
25 happen if Mr Kibaki was announced as president after the elections?

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1 A. If Kibaki will be announced the president -- will be announced the president, the youths  
2 could start attacking the Kikuyu immediately and make sure they are pushed away from that  
3 location, your Honour.

4 Q. And after the Kikuyu were pushed away from that location, what was to become of  
5 their property?

6 A. Their lands will be used to graze the livestock. Their -- I mean the trees which were on  
7 the lands of the Kikuyu will be fell down and all fences be removed. The animals, these are  
8 livestock, will be taken away by the -- by the -- by the -- by the Kalenjin for themselves. And  
9 also in case, your Honour, the Kikuyu will -- will -- will -- will overcome, will try to overcome  
10 the Kalenjin. It was agreed that reinforcements will be brought in from the neighbouring  
11 areas, your Honour.

12 Q. How would those reinforcements be brought in?

13 A. Elders who were rich businessmen from Eldoret were ready to provide their lorries to  
14 transport youths to different locations where they were needed for reinforcement, your  
15 Honour.

16 Q. And do you know the identity of any of these rich businessmen from Eldoret who  
17 would provide lorries?

18 A. I know one, your Honour.

19 Q. Who is that? I think you can mention the name in public session.

20 A. Mr Kibor, your Honour.

21 Q. Who is Mr Kibor? What do you know about him?

22 A. He is a rich farmer and a well-known person in Eldoret, your Honour.

23 Q. And where was Mr Kibor -- where would Mr Kibor get lorries from?

24 A. His own lorries, he has lorries for his -- for -- for -- for his own. And personally I took  
25 it to mean Kibor will provide his own lorry -- lorries to transport youth for reinforcement,

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1 your Honour.

2 Q. All right. Now, you mentioned something about getting funds to get poisonous  
3 weapons or arrows from Keiyo. Firstly, what were these poisonous weapons or arrows  
4 needed for?

5 A. To be used to fight the Kikuyu during the war, your Honour.

6 Q. And why would you get such items from Keiyo?

7 A. The Keiyo community is part of Kalenjin as a whole and they are well-known to be  
8 making poisonous weapons in terms of arrows and this is why most Kalenjins when they  
9 need these weapons which are poisonous they will get it from Keiyo.

10 Q. And where were the funds to come from to get these poisonous arrows?

11 A. Rich businessmen will get the funds, will donate funds and where need be William Ruto  
12 will also be contacted to add on funds.

13 Q. All right. Just to get some -- a bit more clarity about the dates, when were these  
14 meetings held? How long before the election?

15 A. Your Honour, meetings in preparation for the 2007 elections were throughout, others  
16 will take place a month before, others would have taken place two months before, others  
17 will -- will take place a short time before -- before elections. The meetings I have information  
18 about were meetings that took place not a long time before the elections of 2007.

19 Q. Can you be any more specific than "not a long time"?

20 A. Around one month, your Honour.

21 Q. All right. I'd like to move away now from the issue of meetings and planning towards  
22 events that occurred just before and after the elections. Now, we know the election took  
23 place on 27 December 2007. Are you aware of any incidents in the area of Eldoret town on  
24 the previous day, 26 December, or Boxing Day, 2007?

25 A. Yes, your Honour.

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1 Q. And what incident is that?

2 A. In the morning of that day, your Honour, people gathered outside Brookside because  
3 they believed that ballot boxes were transported there by 2NK and Molo Line buses ready for  
4 rigging the elections.

5 Q. Just for the record, two -- is that 2 and K or 2 letter NK buses?

6 A. 2 letter NK.

7 Q. And I see the record has borderline buses, but I believe I heard you say Molo Line,  
8 M-O-L-O; is that correct?

9 A. Yes, your Honour, you are correct; it is Molo, M-O-L-O, Line buses.

10 Q. What is your source of knowledge about the events that happened at Brookside on 26 of  
11 December?

12 A. It was announced in the morning in Kass FM, your Honour, that elections -- people to be  
13 cautious because elections would be rigged and 2NK has transported the ballot boxes to  
14 Brookside, your Honour.

15 Q. And you say it was announced in the morning on Kass FM. Is this something you  
16 heard yourself or something that was told to you by another person?

17 A. In the morning through the programme it was -- it was -- it was said by people who  
18 were calling the station that the buses had transported that ballot boxes to -- to Brookside,  
19 your Honour.

20 Q. Yes, but let me repeat my question. When you said it was announced or people called  
21 in on the radio that morning, were you listening to the radio that morning or was somebody  
22 else listening to the radio who then told you about these announcements?

23 A. I was listening, your Honour.

24 Q. All right. What else was said on Kass FM that morning?

25 A. I remember something that was said too, was that people should not be like (Redacted)

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1 (Redacted)

2 Q. All right. I'll come back to that. Relating to the incident of the ballot boxes and  
3 Brookside Dairy, was -- is that all that you can recall being announced?

4 A. Yes, your Honour.

5 Q. All right. And on which show was this announcement made?

6 A. Kass FM, your Honour.

7 Q. And -- sorry, the question was which show, which radio show on Kass FM and by  
8 which presenter?

9 A. Lene Emet, was the show, by Joshua Sang, your Honour.

10 Q. All right. Just a little bit of information about 2NK and Molo Line buses. Who owns  
11 these two bus companies, or maybe I should just say what is the ethnicity of the owners of  
12 these companies perceived to be in Eldoret area?

13 A. It is perceived to be for the -- the Kikuyu community, your Honour.

14 Q. This place you've mentioned, Brookside, what kind of -- what kind of place is  
15 Brookside?

16 A. Brook -- Brookside is a company that is a milk company that is situated just after Sosiani  
17 River as you head to Kapsabet, your Honour.

18 Q. And is that the only office or -- or is this a company which has facilities elsewhere in  
19 Kenya?

20 A. I don't know of any other facility, your Honour.

21 Q. And what is the ethnicity of the owners of Brookside milk company?

22 A. It is for the Kikuyu, your Honour.

23 Q. After you heard the announcement on Mr Sang's show this -- that morning, what did  
24 you then do?

25 A. Your Honour, at around 10 in the morning I went -- I went to this company because

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1 there was this -- a gathering of so many people chanting that they wanted to burn the  
2 Brookside because they believed the ballot papers and boxes were inside.

3 Q. And referring, please, to the PIS, was there anybody from organisation 1 with you at  
4 that time?

5 MS ALAGENDRA: Your Honour, can I request that my learned friend does not lead on  
6 these issues, your Honour. Perhaps the question could be who he went with without  
7 narrowing down anyone from any particular organisation. There are many ways in which  
8 one can lead.

9 MR STEYNBERG:

10 Q. Let me phrase it this way: Did you go -- when you travelled to Brookside, did you  
11 travel alone or did you travel with anybody else?

12 A. Going there I went alone, but reaching the scene I found (Redacted) at the scene.

13 Q. And can you please, if the person is on the PIS form, refer to that person by the number?

14 A. Person number 6, your Honour.

15 Q. Very well. Please describe what occurred at the Brookside milk company that day.  
16 What did you observe?

17 A. I beg your pardon, your Honour?

18 Q. What did you see at Brookside?

19 A. Many people were gathered outside Brookside with intentions of getting into the  
20 company and burn the company because they believed the -- the -- the ballot boxes and  
21 papers were inside.

22 Q. And what happened then?

23 A. I remember the area DC arrived at the scene and a few people were selected to get  
24 inside with the DC to see whether it is true that these ballot boxes were inside.

25 Q. For people who are not familiar with Kenya, what does the area DC stand for? Who is

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1 that person?

2 A. The district commissioner, your Honour.

3 Q. Is that a policeman?

4 A. No, your Honour. He's an administrator.

5 Q. I see. And after the people -- well, did the people then go inside with the district  
6 commissioner as you mentioned?

7 A. Yes, your Honour.

8 Q. And what was the result? Were any ballot boxes found?

9 A. No, your Honour, there were no ballot boxes.

10 MR STEYNBERG: Your Honour, may I ask for private session just for one question?

11 PRESIDING JUDGE EBOE-OSUJI: Private session.

12 \*(Private session at 12.42 p.m.) Reclassified as Open session

13 THE COURT OFFICER: We're in private session, Mr President.

14 MR STEYNBERG: Perhaps in retrospect it might be one or two questions, your Honours.

15 Q. Where did you go to from Brookside after that incident was over?

16 A. After Brookside, the people also had suspicion that more ballot boxes were in Tuskys  
17 supermarket, which is close to the main stage, and another gathering was at the police -- at the  
18 police station.

19 Q. I don't want to break your flow, but Tuskys supermarket, is that T-U-S-K-E-Y  
20 apostrophe S, Tuskey's?

21 A. Yes, your Honour.

22 Q. So where did you go to from Brookside?

23 A. To Tuskys supermarket, your Honour.

24 Q. And how did you get to Tuskys supermarket?

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. All right. Thank you. Before we go back into public session, Mr Witness, I'd ask you  
9 to please be careful about saying (Redacted) in public because that might tend to identify you.

10 If you could please just refer to him as person number 6. All right?

11 A. Yes, your Honour. I also -- before you go to -- I also realised that I mentioned the  
12 names in -- in the -- in the public section.

13 Q. Yes.

14 A. And I'm sorry for that. I don't know whether it was --

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 One second, please. Thank you, your Honours. I think we can safely move back to  
19 public now.

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

21 (Open session at 12.47 p.m.)

22 THE COURT OFFICER: We're in open session, Mr President.

23 MR STEYNBERG:

24 Q. Thank you, Mr Witness. So in private session you had just told us that you proceeded  
25 from Brookside towards the Eldoret police station, which is also close to a supermarket

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1 known as Tuskys supermarket, where there were also suspicions that ballot boxes were being  
2 hidden. Is that an accurate summary of what you told the Chamber?

3 A. Yes, your Honour.

4 Q. You also mentioned that Tuskys was near the main stage. What does "the main stage"  
5 in Eldoret refer to?

6 A. Is referred as -- the same as main stage.

7 Q. Yes, but what is it? To people who are not Kenyan, what does "the main stage" mean?

8 A. This is where buses, matatus, I mean the vehicles in public transport stop and also start  
9 their journey from Eldoret, your Honour.

10 Q. So it's a reference to the main bus and transport station of Eldoret; is that right?

11 A. Yes, your Honour.

12 Q. And where exactly did you arrive at, without telling us how you got there? Did you go  
13 to the police station or did you go to Tuskys first?

14 A. I went to Tuskys first.

15 Q. All right. I'm going to come back to Tuskys because there is a question I'm going to  
16 need to ask you in private session. But after that, where did you go?

17 A. After Tuskys I went to the police station, your Honour.

18 Q. And what happened at the police station that you observed?

19 A. There was a gathering outside the police station, at the police station, and I -- I heard  
20 one -- one person talking there and inciting the Kalenjins against the Kikuyu, your Honour.

21 Q. Who was that person?

22 A. Mr Farouk Kibet, your Honour.

23 Q. And how was Mr Farouk Kibet inciting the Kalenjins against the Kikuyu?

24 A. When I got there I heard him talking, because he was the one talking at the moment -- at  
25 the moment. And he was asking -- he was -- he posed a question in public asking in

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1 Kiswahili, "Wa kikuyu waende, wasiende." It means do Kikuyu -- do Kikuyu people -- do  
2 we let the Kikuyu people go or not? And people were chanting and saying "Waende." That  
3 means let them go.

4 Q. All right. For the record I believe I have the spelling of that. Wa Kikuyu waende, is  
5 that W-A, Kikuyu spelt as usual, waende, W-A-E-N-D-E, is that correct?

6 A. Yes, your Honour.

7 Q. And wasiende, W-A-S-I-E-N-D, is that right?

8 A. And an E at the end.

9 Q. Yes. Wasiende.

10 A. Yes.

11 Q. Now, tell us a little bit more about this incident. Where was Mr Kibet when he was  
12 speaking, when he was addressing the crowd?

13 A. At the police station, your Honour.

14 Q. Was he just standing on the ground? Was he on some sort of platform? Was he,  
15 I don't know, on the back of a vehicle? How was he standing? Give us some description.

16 A. I saw him standing just in the middle of the crowd, your Honour.

17 Q. And as he was speaking, was he just addressing the crowd with his unamplified voice  
18 or was he using some device?

19 MS ALAGENDRA: Your Honours, can I request that my learned friend does not lead.

20 MR STEYNBERG:

21 Q. Describe please exactly how Mr Kibet was speaking to the crowd.

22 A. I saw him speaking in the middle of the crowd, your Honour, without using -- I didn't  
23 see him use any amplifier or it was not an organised forum where there was amplifiers or  
24 loud speakers or what. I heard him just speaking with his own voice in a big tone asking,  
25 "Wa Kikuyu waende, wasiende" and people were chanting "Waende."

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1 Q. What do you mean speaking "in a big tone"?

2 A. Loudly, your Honour.

3 Q. Can you estimate the number of people who were present when Mr Kibet was saying  
4 these things?

5 A. Around over 200 people, your Honour.

6 Q. How far were you away from Mr Kibet when he was making this speech?

7 A. I was around 7 metres, 5 to 7 metres, your Honour, away from him.

8 Q. And could you identify anybody else present when Mr Kibet was making this speech?

9 A. Yes, your Honour. I remember seeing Mr Henry Kosgey, but I didn't hear him talk and  
10 I don't -- I didn't see how he left. I saw also and -- and heard Mr William Ruto speaking at  
11 the same -- at the -- at the same point, your Honour.

12 Q. All right. We'll come to Mr William Ruto, but firstly Mr Kosgey, who is Mr Henry  
13 Kosgey and what was his position at that time?

14 A. He was -- he was a member of the parliament from -- from Nandi, your Honour.  
15 I don't remember his position.

16 Q. What party did he represent at that time?

17 A. The -- I know him to have been for ODM, your Honour.

18 Q. All right. You say that you heard Mr William Ruto speak at that time. Before we get  
19 to what he said, tell us a bit about where he spoke, how he spoke, describe what you observed,  
20 please.

21 A. Your Honour, I don't understand your question, your Honour.

22 Q. All right. You heard me asking questions about where Mr Kibet was when he was  
23 making his speech, how he was speaking. I want to know the same details for Mr Ruto,  
24 please.

25 A. Yes, your Honour. Like Mr Farouk, also Mr Ruto was speaking loudly as people were

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1 cheering him, your Honour.

2 Q. Where was Mr Ruto when Mr Kibet was asking the crowd whether the Kikuyu should  
3 stay or go?

4 A. He was -- he was in the midst of the crowd, your Honour, close to Mr -- to Mr -- to  
5 Mr Farouk.

6 Q. And what did you hear Mr Ruto say when he addressed the crowd?

7 A. He said that he was aware that the administration police will be used to rig the elections,  
8 but it will not go through.

9 Q. Why would it not go through?

10 A. I assumed it to -- that it was because now that he was aware of it and therefore many  
11 leaders were aware, especially from the ODM, that the administration police will be used for  
12 rigging the elections, your Honour.

13 Q. What language or languages did Mr Ruto use when he addressed the crowd?

14 A. When he was talking about -- about the administration police, he spoke in -- in Swahili,  
15 but he also continued to speak in -- in -- in Kalenjin, your Honour.

16 Q. And can you recall what Mr Ruto said to the crowd when he spoke in Kalenjin? And if  
17 you know the exact words, that would be helpful.

18 A. I remember, your Honour, he said, "Kittoi che kiitoi bonik." That is Kalenjin words  
19 meaning, "We will do to them what we do to the witches."

20 MR STEYNBERG: I note the time, your Honour. Perhaps I can just get the spelling on  
21 record.

22 Q. Mr Witness, is kittoi K-I-I-T-O-I?

23 A. Yes.

24 Q. Che, C-H-E?

25 A. Yes.

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1 Q. Kiitoi same spelling and bonik, B-O-N-I-K?

2 A. Yes.

3 MR STEYNBERG: I think we can come back to the significance of that after the lunch  
4 adjournment. Thank you, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Steynberg, how much time do you need  
6 with this witness?

7 MR STEYNBERG: Your Honours, we are progressing quite well I'm happy to say. I do not  
8 anticipate proceeding beyond tomorrow so I will finish the evidence of the witness by close of  
9 business tomorrow.

10 PRESIDING JUDGE EBOE-OSUJI: So that leaves the Defence two days to cross-examine  
11 because we intend to complete this witness this week.

12 MR STEYNBERG: Well, your Honours, I'll hear from my learned friends, but I will be  
13 surprised if they would be able to complete in that time.

14 MS ALAGENDRA: Your Honours, for the Ruto Defence we do have significant questions  
15 for this witness, your Honour, and we expect we'll take at the minimum two-and-a-half days  
16 to three days. We do have quite a bit, your Honour.

17 MR KIGEN-KATWA: Mr President, my estimate is that I will need two sessions.

18 PRESIDING JUDGE EBOE-OSUJI: We are scheduled to start the next witness when? Isn't it  
19 on Monday as it currently stands?

20 MR KHAN: Mr President, if I may, what I propose, as Dato' Shyamala Alagendra and my  
21 learned friend Mr Kigen have said, there are significant questions for this particular witness.

22 Given my learned friend's time scale, it looks like we'll be starting on Thursday. It seems  
23 that the best we're going to do is finish by close of business on Monday. I would ask that in  
24 those circumstances we be given that time to cross-examine and we start with the next witness  
25 on Tuesday the 25th. Your Honour, the -- Mr Ruto will be in attendance and if we start on

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1 the 25th, it will give us time to finish this particular witness, if that finds favour with the  
2 Bench. That's my application.

3 PRESIDING JUDGE EBOE-OSUJI: We will rise now for the luncheon break.

4 And, Witness, you will join us at 2.30. You will rejoin us at 2.30.

5 The blinds down, please, to usher the witness out of the courtroom.

6 \*(Closed session at 1.04 p.m.) Reclassified as Open session

7 THE COURT OFFICER: We are in closed session, Mr President.

8 (The witness stands down)

9 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

10 THE COURT OFFICER: All rise.

11 (Recess taken at 1.04 p.m.)

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

13 THE COURT USHER: All rise.

14 Please be seated.

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

16 Witness, welcome back.

17 MR STEYNBERG: Thank you, your Honours.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you are ready to continue, right?

19 MR STEYNBERG: I am ready. I just wanted to bring to the Chamber's attention

20 that I had a brief discussion with my learned friends and my learned friend for

21 Mr Ruto wants to make a short application, but it's best to be done in the absence of

22 the accused. I suggested that rather -- sorry, the witness.

23 PRESIDING JUDGE EBOE-OSUJI: The witness.

24 MR STEYNBERG: I suggest that rather than interrupt the witness I should stop five

25 minutes earlier and we can deal with that at the end of the day, if it pleases the Court.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Let us move into the private session  
2 for just one announcement, or one direction rather. Private session.

3 \*(Private session at 2.38 p.m.) Reclassified as Open session

4 THE COURT OFFICER: We're in private session, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Mr Steynberg, it's about a pending Defence request for the disclosure of a certain  
7 witness's psychological report. Do you know what I'm talking about?

8 MR STEYNBERG: I do, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Yes. We don't want to identify too much what  
10 it is. You know what I'm talking about. And in your response you attached the  
11 annexed, the particular document that the Defence was immediately requesting. In  
12 reviewing it, we noticed a reference to three other documents that were not attached,  
13 or were they, or annexed? If not, we will -- the Chamber directs you to forward  
14 those to the Chamber before the end of today so that we can review it before making  
15 our decision.

16 Also indicate in the same vein whether those other documents or any of them were or  
17 was disclosed to the Defence. So we take that into account as well.

18 MR STEYNBERG: Thank you, your Honours. I will ask my colleague to -- to  
19 inform the people upstairs to get working on that right away.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 We will go back to the public session.

22 MR STEYNBERG: As the Court pleases.

23 (Open session at 2.40 p.m.)

24 THE COURT OFFICER: We are in open session, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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(Open Session)

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1 Mr Steynberg, your suggestion we will follow, that we wait until -- we will take up  
2 whatever matter Mr Khan wishes to speak to towards the end of today's proceedings.  
3 Thank you.

4 MR STEYNBERG: Thank you, your Honours. Perhaps about five minutes before  
5 the end I will stop then. I -- I noticed we started a bit late so we should have some  
6 spare tape after that too.

7 Q. Mr Witness, before we move on to a new matter, there are just two or three  
8 aspects I would like to clarify with regard to your evidence before the lunch-break  
9 about a certain speech that Mr Ruto made on 26 December in the vicinity of Eldoret  
10 police station. The first matter is that you mentioned that Mr Ruto said he was  
11 aware that the administration police will be used to rig the elections. My question is  
12 by whom would the administration police be used to rig the elections? What did  
13 you understand the situation to be?

14 A. The PNU, your Honour.

15 Q. You then mentioned a Kalenjin phrase which you translated to mean, "We will  
16 do to them what we do to the witches," and again my question is who was Mr Ruto  
17 referring to in the context in which you heard it when he said, "We would do this to  
18 them"? Who is "them"?

19 A. I understood it to mean the Kikuyu, your Honour.

20 Q. All right. And in Kalenjin culture and Kalenjin tradition, what is done to  
21 witches?

22 A. They are burnt.

23 Q. Just one further clarification. You mentioned that earlier on that day, when  
24 you were at Brookside, you were together with person number 6 on the PIS. Where  
25 was person number 6 when these speeches were being made near the Eldoret police

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1 station?

2 A. He was there, your Honour.

3 Q. All right. Now, Mr Witness, unfortunately our time is short in the courtroom,  
4 so I'm going to have to concentrate on the most important aspects of your evidence  
5 and at certain times skip over other parts. So I want to move forward in time to the  
6 date of the announcement of the presidential -- of the winner of the presidential  
7 elections which date we all agree to be 30 November -- December, I beg your pardon,  
8 30 December 2007. Do you follow?

9 A. Yes, your Honour.

10 Q. Now, with reference to the PIS form, the locations on the PIS form, where were  
11 you on that date? Well, perhaps -- perhaps without reference, in which area were  
12 you on that date? You can just say that without referring to the form.

13 A. In Eldoret, your Honour.

14 Q. All right. And where were you, referring to the form if necessary, when you  
15 heard the election results?

16 A. In (Redacted), your Honour.

17 MR STEYNBERG: All right. Your Honours, I would like to just establish some  
18 geography which will be difficult to do in -- in public session. It shouldn't take me  
19 more than three or four minutes. If I could ask to briefly go into private session just  
20 to establish specific locations?

21 PRESIDING JUDGE EBOE-OSUJI: Private session then.

22 \*(Private session at 2.46 p.m.) Reclassified as Open session

23 THE COURT OFFICER: We are in private session, Mr President.

24 MR STEYNBERG: Thank you, your Honours.

25 Q. Now, you've told the Chamber that (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 Q. All right. I'd like to draw your attention then to the PIS so we can proceed in
- 14 public session. We already have (Redacted) at location number 8. You'll notice that
- 15 (Redacted) is location 7. (Redacted) is location 6. (Redacted) is location 4. (Redacted)
- 16 doesn't appear on this, so be careful. I think it's all right to mention (Redacted)
- 17 (Redacted) as long as you don't mention it in relation to (Redacted) You understand?
- 18 A. Yes, your Honour.
- 19 Q. So if you need to refer to any directions, please refer to the numbers on the PIS.
- 20 Your Honours, public session please.
- 21 PRESIDING JUDGE EBOE-OSUJI: Open session now.
- 22 (Open session at 2.49 p.m.)
- 23 THE COURT OFFICER: We're in open session, Mr President.
- 24 MR STEYNBERG: Thank you.
- 25 Q. Mr Witness, having established that geography, while you were at location 8,

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1 when the presidential results were announced, what did you observe at that time?

2 What happened then?

3 A. At that time, I could see heavy smoke from the other side of town at  
4 location -- at location number -- number 5 and also in location number 6, shouting of  
5 people and others running through Eldoret town.

6 Q. Did you say "others" or -- "others" or "arrows" running through Eldoret town?

7 A. Others.

8 Q. Others.

9 A. Yeah.

10 Q. And do you know who these people were who were running to Eldoret town?

11 A. Your Honour, I heard them shouting and speaking in Kikuyu. I know they  
12 were Kikuyu people.

13 Q. And do you know what was the cause of the smoke that you saw, or did you  
14 later find out what the cause of that smoke was?

15 A. Your Honour, I found out that houses for the Kikuyu people had been burnt  
16 immediately after announcement of presidential elections and also found out that  
17 people who were running towards the town were heading to the Eldoret police  
18 station for their rescue.

19 Q. And do you know who was responsible for the burning of these houses?

20 A. Yes, your Honour. The Kalenjin were responsible for the burning of these  
21 houses.

22 Q. And bearing in mind we're in public session, how did you find out what was  
23 responsible for the smoke and who was responsible for the burning of the houses?

24 A. Your Honour, I saw the Kalenjin running, and out of how they were dressed I  
25 could actually tell that they are the Kalenjins.

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1 Q. How were they dressed?

2 A. They had a pair of shorts and smeared their faces, and also the kind of weapons  
3 they were carrying, bows and arrows, I knew they were all Kalenjins.

4 Q. All right. With reference to the PIS, where did you stay that night? That's  
5 30 December.

6 A. At this night I was in Hill School, your Honour.

7 Q. Tell us how you came to be in Hill School.

8 MS ALAGENDRA: Your Honour, just a -- just a reminder we're in public.

9 PRESIDING JUDGE EBOE-OSUJI: Private session for a quick minute.

10 \*(Private session at 2.55 p.m.) Reclassified as Open session

11 THE COURT OFFICER: We're in private session, Mr President.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MR STEYNBERG: Your Honour, perhaps I might ask one or two clarifying  
21 questions. I think it will make it more apparent to the Bench.

22 Q. Mr Witness, Hill School, is that -- is that an educational facility, or is that an area,  
23 or both?

24 A. Your Honour, Hill School, there is a school named by name Hill School on your  
25 way to Kapsabet, and that area where the school is is named after the school, it is

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1 called Hill School area.

2 Q. And when you say you stayed in Hill School for the night, were you referring to  
3 the school itself or just the area?

4 A. I'm referring to the area.

5 MR STEYNBERG: Your Honours, as long as the witness doesn't (Redacted)  
6 (Redacted) I think we can safely deal with that in public session.

7 PRESIDING JUDGE EBOE-OSUJI: Indeed.

8 So, Witness, we will go back to the open session. Just be mindful of the need to  
9 protect your identity, (Redacted)  
10 (Redacted)

11 (Redacted) So keep  
12 that in mind as well. All right?

13 THE WITNESS: Yes, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)  
15 (Redacted)

16 knowing that sort of information and testifying about that, it would be better for us to  
17 hear that sort of testimony in private session. Keep that in mind.

18 We will now go back to the open session.

19 (Open session at 2.59 p.m.)

20 THE COURT OFFICER: We are back in open session, Mr President.

21 MR STEYNBERG: Thank you, your Honours.

22 Q. So we've established, Mr Witness, that Hill School is in fact an area, and I'll  
23 come back to that. But firstly I'd like to know, you mentioned that on 30 December  
24 you were at location 8 when the presidential elections were announced, what caused  
25 you to leave that area?

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1 A. Your Honour, I want to state that during the day I went to the town with  
2 intentions of going home.

3 Q. All right. Just stop there for a second. What caused you to go to town with  
4 the intentions to go home? Why did you have that idea or desire?

5 A. Because I had been called by my parents that there was more tension back at  
6 home.

7 Q. All right. And we're in public session, but are you referring to location number  
8 9?

9 A. Yes, your Honour.

10 Q. And what was the cause of that trouble in location number 9?

11 A. Because of the results of the president -- of the elections, your Honour.

12 Q. All right. So let me just see if I understand the sequence. You received a  
13 phone call from your parents to say that there was trouble at location 9 because of the  
14 results of the elections; is that right?

15 A. Yes, your Honour.

16 Q. Are we referring to the presidential elections?

17 A. Yes, your Honour.

18 Q. So what date did you receive that call? Or let me phrase it this way if you are  
19 not certain of the date: How soon after the announcement of the presidential  
20 election results did you receive that call?

21 A. Soon after, your Honour.

22 Q. Can you be any more specific than that?

23 A. Your Honour, even before these presidential announcements, already there  
24 were tensions and some of the houses had already been -- been burnt in location -- in  
25 location number -- number -- number 9. So there was even more tensions and that is

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1 why I was called to go back home.

2 Q. All right. So you say you received this call soon after the announcement of the  
3 presidential election results. What did you do as a result of that call?

4 A. Having received the call, I went to the stage with intentions of going -- of  
5 going -- of getting a vehicle to go (Redacted).

6 Q. And when you refer to "the stage" are you again referring to a bus station or a  
7 transport hub?

8 A. A bus station for vehicles going to location 9.

9 Q. Which bus station was that?

10 A. The Borcadero.

11 Q. I believe that's Borcadero; is that correct? I can't seem to find the spelling at the  
12 moment. Can you just spell that for us, please, Mr Witness?

13 A. B-O-R-C-A-D-E-R-O.

14 Q. Thank you. And what time of day was this that you went there? Morning,  
15 afternoon, evening?

16 A. Your Honour, I remember I went there before the announcements were made.

17 Q. Which announcements?

18 A. The presidential announcements.

19 Q. All right. And what happened then?

20 PRESIDING JUDGE EBOE-OSUJI: One second. Presidential announcements or  
21 something else? Presidential elections announcements?

22 THE WITNESS: Yes, your Honour. And that is when -- when I was there, tensions  
23 were mounting and people were grouping themselves even in the -- even in the stage  
24 because of the delay of announcements of these elections.

25 MR STEYNBERG:

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1 Q. And what happened? Did you get your bus back (Redacted)?

2 A. No, your Honour. I remember I was -- I was told by -- I remember I was told  
3 by the driver of the vehicle that was to take me to location number -- number 9 that  
4 already there were roadblocks. There were roadblocks in location --

5 Q. If it's not on the list and it doesn't identify you, you can tell us the location.

6 A. I think it will identify me, your Honour.

7 Q. All right. We can come back to that when we're in private session. Is it not on  
8 the list?

9 A. It's not.

10 Q. All right. We'll bookmark that and come back to that. What happened then?

11 A. That is when I remember the Kalenjin people starting to throw stones  
12 towards -- to -- to vehicles which belonged to the Kikuyu and the commotion started,  
13 people were running up and down. I got into -- into a bus that took me and I  
14 stepped -- I got out of the bus at -- at Hill School and (Redacted)  
15 (Redacted)

16 Q. Now, I just need to clarify something about the dates. You told us earlier that  
17 you were in location 8 when you heard the election results. We know, and it's not in  
18 dispute, that those results were announced on the evening of 30 December. Now,  
19 you've just told us about travelling to Hill School on the day of the announcement of  
20 the results, so can you see that there's a problem there? They can't both be correct.

21 A. Yes, your Honour. I want to make clarification on that matter that when  
22 presidential elections was announced, I was (Redacted)  
23 (Redacted) as I had earlier stated.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Ms Alagendra is on her feet.

25 Let's go into private session for a minute.

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1 \*(Private session at 3.12 p.m.) Reclassified as Open session

2 THE COURT OFFICER: We're in private session, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 MS ALAGENDRA: Your Honours, I'll renew my earlier observation that perhaps  
5 this should be done in private session.

6 PRESIDING JUDGE EBOE-OSUJI: Yes, I sensed that.

7 MR STEYNBERG: Thank you, your Honours. We will send the necessary  
8 redaction (Redacted)

9 Q. Perhaps while we are then in private session, let's try and get some clarity.  
10 You mentioned earlier then that while you were in location 9 you saw smoke  
11 coming - and we're in private sessions - from -- sorry, location 8, (Redacted), you saw  
12 smoke coming from (Redacted) and (Redacted) and you saw Kikuyu people running  
13 towards Eldoret town. When did that happen?

14 A. These -- these people, your Honour, I saw them running while I was in Hill  
15 School.

16 Q. And you mentioned also that you had observed certain Kalenjin and you  
17 described their clothing. What else did you see the Kalenjin doing?

18 A. The way they were handling -- the way they handled their -- their bows and  
19 arrows also made me to note that they were the Kalenjins.

20 Q. Is there any other reason why you believed they were Kalenjin?

21 A. The language they were talking during this time.

22 Q. What did you hear them say?

23 A. I will hear them talk in Kalenjin saying, "Let us go to the right," or, "Let us go to  
24 the left." When they were going to the right they were saying "oseip tai." When  
25 they were going to the left they say "oseip katam" and that language made me know

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1 that the people who were talking and doing all this were the Kalenjins.

2 MR STEYNBERG: All right. And I see the spelling of the transcript appears to be  
3 correct.

4 Q. And is there anything else you observed on that evening when you were  
5 (Redacted) relating to violence?

6 A. I could see women and children running towards -- towards -- towards Eldoret  
7 from the other side of -- of -- of Langas. I could also see police Land Rover carrying  
8 corpses.

9 Q. How do you know the police Land Rover was carrying corpses?

10 A. From (Redacted) and it was  
11 easy to see.

12 Q. How do you know that what you saw -- how do you know that there were dead  
13 people? You say there were corpses. How do you know that?

14 A. The body -- the bodies will be identified from the Land Rover because it was  
15 swollen and to me I knew that the poisonous arrows had been used to hit  
16 the -- the -- to hit the people because when they used this poisonous arrows, the body  
17 swells and therefore when I saw the Land Rover carrying bodies that were swollen, I  
18 knew the Kalenjin had really used their weapons.

19 Q. Just some details. These Land Rovers, can you describe them? What type of  
20 Land Rovers are they? Are they -- well, try to describe them. I don't want to lead  
21 you on this.

22 A. The police Land Rovers in Kenya are always one -- do you call Land Rover 110?

23 Q. I guess what I'm -- I want to know is are these enclosed vehicles? Are they  
24 open vehicles? What is the format of these vehicles?

25 A. Oh, no, your Honour. The vehicles -- behind at the back of the vehicles are not

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1 closed.

2 Q. And where were the bodies that you saw?

3 A. Behind, your Honour.

4 Q. In the back of the vehicle?

5 A. Yes.

6 Q. Right. What time of day was it that you saw the women and children fleeing  
7 and you saw the bodies in the Land Rover?

8 A. I saw the women fleeing and children in the -- in the day when I (Redacted)  
9 (Redacted), it was around -- around -- past midday, around 2 or 1 -- past 1 o'clock,  
10 and later in the evening at around -- at around 5.30 is when I was seeing the Land  
11 Rover carrying these people.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we don't want to overstay in the  
13 private session, so if we can just get the identifying clarifications, we can move out  
14 and get the details of the story connected to that.

15 There's also, while we're in private session, some information you had bookmarked  
16 somewhere. Something about the roadblock.

17 MR STEYNBERG: Thank you, your Honours. I'll come to that and then I just want  
18 to get the next destination on record and then we can I think proceed in public  
19 session.

20 Q. You mentioned earlier that the driver - the bus driver - at Borcadero stage had  
21 told you about a certain roadblock. Where was that roadblock he spoke about?

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. That's a different location.

5 Q. All right. Perhaps I can ask you then to take a pen, have you got a pen there,  
6 and add as location 15 (Redacted)?

7 PRESIDING JUDGE EBOE-OSUJI: What is the spelling again, Mr Steynberg?

8 MR STEYNBERG: Your Honours, (Redacted)

9 (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: Then you might want to see the spelling we have  
11 at line 9.

12 MR STEYNBERG: Line 9?

13 PRESIDING JUDGE EBOE-OSUJI: Never mind. So the -- yes.

14 MR STEYNBERG: Yes, your Honours. Well, I think the transcribers will correct  
15 that in due course.

16 PRESIDING JUDGE EBOE-OSUJI: While we are adding things to the location list, if  
17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MR STEYNBERG: Thank you, your Honours. I don't really anticipate it, but it's  
21 possible that we might get to it in cross-examination too.

22 Q. So, Mr Witness, can you add as location 16 (Redacted)

23 (Redacted)

24 MS ALAGENDRA: Your Honour, I'm not sure whether this will assist my learned  
25 friend, but if the location 1 here on the PIS (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: The witness did say this is a different location,

5 (Redacted)

6 (Redacted)

7 MR KIGEN-KATWA: Those are two separate locations. I can confirm that,

8 Mr President.

9 But while on it, Mr President, so that we don't have to go to closed session, I would

10 suggest that we have (Redacted) as location 17 so that

11 we don't have to go back.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, do you have difficulty with that

13 suggestion? It seems sensible.

14 MR STEYNBERG: No, your Honour, no difficulty. As I say, I don't intend to return

15 to that, but it may crop up in the course of the next few days.

16 PRESIDING JUDGE EBOE-OSUJI: So, Witness, we have added three new locations

17 on the list by hand. We have now (Redacted) as 15, (Redacted) as location 16 and

18 (Redacted) as location 17. Do you have those as well written in?

19 THE WITNESS: Yes, I have written, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: All right. So when we go back to the public

21 session, if you need to refer to any of these other locations for any reasons, please

22 don't forget that we have now written them in and use the location numbers for the

23 newly added ones, okay?

24 THE WITNESS: Yes, your Honour.

25 MR STEYNBERG: Thank you, your Honour.

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. All right. So I'm going to deal with that journey briefly. And please remember  
6 to use the -- use the PIS where necessary, all right? And if there are any other  
7 locations you need to mention that are identifying, please let us know. If not, you  
8 can mention them in public.

9 Thank you, your Honour. Public session, please.

10 PRESIDING JUDGE EBOE-OSUJI: Court officer, we go back to open session.

11 (Open session at 3.26 p.m.)

12 THE COURT OFFICER: We're back in open session, Mr President.

13 MR STEYNBERG: Thank you, madam.

14 Q. Mr Witness, you in private session gave us some details of events you observed  
15 while at location 16 and you mentioned that the next day you departed again for  
16 location 15. How did you travel to location 15?

17 A. Sorry, your Honour. I departed to location number 1.

18 Q. Right. Sorry, these pronunciations are catching me out. You departed to  
19 location number 1. And how did you travel?

20 A. I got a private -- I hired a private vehicle to take me to this location number 1  
21 and I took the rough road that goes to that location via location number 6, via location  
22 number 6, your Honour.

23 Q. Why did you take the rough road?

24 A. Because, your Honour, there were now roadblocks everywhere and I could not  
25 take the road -- the main road.

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(Open Session)

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1 Q. And on this journey to location 1 along the rough road, did you encounter any  
2 obstacles?

3 A. Yes, your Honour. There were roadblocks in location number 6. There  
4 were -- there was another one in location number 1 and number 2.

5 Q. And tell us about these roadblocks. Who was manning these roadblocks?

6 A. Group of Kalenjin youths.

7 Q. And what happened when you passed through these roadblocks?

8 A. When you arrive at the roadblocks, you are being asked -- well, I was being  
9 asked to identify myself as a Kalenjin.

10 Q. And how did you do that?

11 A. I answered questions that they were posing to me. These were codes that were  
12 used by the Kalenjin community.

13 Q. What sort of codes?

14 A. You are asked questions like, "How do we know that you are a man? How do  
15 we know? What do men use to drink milk?" and such questions. They were  
16 cultural questions that were being asked by the -- by the people.

17 Q. I see. And can you describe the Kalenjin who were manning these roadblocks?  
18 What were they wearing? What were they carrying? What details can you give us?

19 A. They were carrying -- others had spears. Others had bows and arrows.  
20 Others had rungu or heavy sticks that were -- and others just  
21 carried -- were -- were -- were busy carrying stones. And on the roadblock  
22 they -- there was -- there was fire. They -- they -- they -- they were -- they  
23 were -- there was -- they lit fire in the middle of the road.

24 Q. I see. And where did you eventually alight? Where did you get off this  
25 vehicle? What location with reference to the PIS if necessary?

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(Open Session)

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- 1 A. To location number 1, your Honour.
- 2 Q. And where did you proceed to from there?
- 3 A. I proceeded to location number 10, which is in location number 2.
- 4 Q. Very well. And after you arrived at location number 10, did you observe any
- 5 further violence that day?
- 6 A. Not on that day, your Honour.
- 7 Q. When did you next observe any violence?
- 8 A. I don't remember the exact date, your Honour, but I remember there was
- 9 violence that I personally saw.
- 10 Q. Tell us about that. Where was it?
- 11 A. In the neighbourhood of location number 10.
- 12 Q. And what did you see?
- 13 A. While I was in location 10, I heard a group of youths singing and coming
- 14 towards that location. They were heading to one house which was neighbouring
- 15 location 10 and that was a target, your Honour.
- 16 Q. What did you do?
- 17 A. I followed the multitude from behind to see what was going to happen, your
- 18 Honour.
- 19 Q. And who were these youths? Can you describe them?
- 20 A. These were the Kalenjin youths, your Honour.
- 21 Q. You referred to them as a "multitude." Can you estimate the number, please?
- 22 A. Around 100, your Honour.
- 23 Q. And can you describe what they were wearing or carrying?
- 24 A. They were carrying bows and arrows, rungus and singing their war songs.
- 25 Q. Where did they go?

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1 A. They headed to that house, your Honour.

2 Q. And the house they headed to -- we'll come to the owner of the house, I think  
3 we might need to do that in private session -- but what happened at that house?

4 A. They found that there was no one in the house, but they burnt the house, your  
5 Honour.

6 Q. Do you know who the owner of that house is? Without giving us an identity at  
7 the moment, do you know?

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Private session. One second.

12 \*(Private session at 3.37 p.m.) Reclassified as Open session

13 THE COURT OFFICER: We're in private session, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MR STEYNBERG: Yes, thank you, your Honour. I see that the witness was  
16 uncomfortable with that answer.

17 Q. Who did you ask?

18 A. I asked (Redacted), your Honour.

19 Q. And who did (Redacted) the owner of this house was?

20 A. I was told the house belonged to a -- to a -- to a Kisii man who was a teacher and  
21 had stayed there for a very long time.

22 Q. And why was his house burnt, do you know?

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, before you continue, I note that  
5 before I intervened to move us into private session in the nick of time that I made that  
6 intervention, the witness seemed -- had already taken off and it may well be that one  
7 could hear "(Redacted) It doesn't appear on the transcript now, but the court officer  
8 should ensure that the audio takes -- delayed audio takes care of that so it doesn't  
9 come out.

10 MR STEYNBERG: Thank you, your Honour. We haven't obviously given the  
11 location of (Redacted), so I think it might be all right, but it's better to be on the safe  
12 side.

13 I see my learned friend is on her feet.

14 MS ALAGENDRA: Yes. Your Honour, perhaps the difficulty also could have been  
15 because it's not in the PIS so he could not have pointed it out on the PIS, so we could  
16 perhaps add that as well, your Honour.

17 MR STEYNBERG: Very well. We can do that.

18 Q. Mr Witness, perhaps as person number 24 you can just add (Redacted)  
19 (Redacted)

20 A. No, your Honour. (Redacted)

21 Q. All right. And before we go back to public session, I would just like to  
22 establish again some geography. (Redacted)

23 (Redacted)

24 (Redacted)

25 A. (Redacted), your Honour.

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1 (Redacted)

2 (Redacted)

3 MR STEYNBERG: Approximately (Redacted). All right.

4 Thank you, your Honours. Public session, please, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Public session now.

6 (Open session at 3.42 p.m.)

7 THE COURT OFFICER: We are in open session, Mr President.

8 MR STEYNBERG: Thank you, your Honour.

9 Q. Now, I know you said you weren't sure of the exact date of this incident of the  
10 burning of the house that you described, but can you give us an idea of how long this  
11 was after the announcement of the presidential results? How many days,  
12 approximately?

13 A. Around two or three days, your Honour.

14 Q. Thank you. Now, you've mentioned the burning of a house. You've mentioned  
15 seeing dead bodies in a police Land Rover. Did you yourself ever see anyone being  
16 killed during that period?

17 A. Yes, your Honour. In location number 2 there was a roadblock, and then it is  
18 at this roadblock that I heard people shouting and I heard -- I -- I -- and others were  
19 running towards the roadblock and I went there to see what was happening, your  
20 Honour.

21 Q. And how far was that roadblock from location 10?

22 A. Around 500 metres, your Honour.

23 Q. When you arrived at the roadblock, what did you observe?

24 A. Children were crying and shouting. They were being pulled from the -- from  
25 the -- from the -- from a vehicle and their mother too was screaming and speaking in

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1 Kikuyu.

2 Q. And what language were the children speaking in?

3 A. Kikuyu, your Honour.

4 Q. How many children?

5 A. Two children, your Honour.

6 Q. Besides the two children and the mother, was there anybody else in that  
7 vehicle?

8 A. Yes, your Honour. At the other side I saw a man who was being beaten by  
9 these youths. He was beaten until he died.

10 Q. And what were the mother and children shouting? What did they say?

11 A. They were screaming saying, "Spare us."

12 Q. Who were these youths who were beating the father?

13 A. The Kalenjin youth who were manning the roadblock and others who had  
14 joined.

15 Q. Do you know why the man was beaten?

16 A. Because he was a Kikuyu, your Honour.

17 Q. What became -- what became of the mother and the children, do you know?

18 A. They were taken by the Land Rover for the police who just arrived at the scene  
19 and I followed up to ask person number 24 and she told me that the mother was  
20 taken to hospital.

21 Q. Did you see anything happen to the mother while you were there?

22 A. At that scene, your Honour, he was also -- she was also beaten but not like the  
23 man.

24 Q. You say the man was beaten to death. How do you know he was dead?

25 A. Because I saw, your Honour, and also people at the scene confirmed that he was

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1 dead.

2 Q. How many people were present when this happened?

3 A. More than a hundred, your Honour.

4 Q. And how many took part in the assault on the man and the mother?

5 A. Around 30 or 40, your Honour.

6 Q. How far were you from the scene of the assault when you observed this?

7 A. Approximately 7 to -- 5 to 7 metres.

8 Q. What time of day did this happen, Mr Witness?

9 A. At around -- at around noon, your Honour.

10 Q. And can you give us the approximate date in relation to other events you've  
11 described, so the election results, the burning of the house of the man you've  
12 described? When did this take place?

13 A. I think around five days after elections were announced, your Honour.

14 Q. So that would be early January, approximately 4 January; is that right?

15 A. Yes, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, we had reserved time. I know  
17 you did say five minutes, but consider whether this would be a good time to release  
18 the witness for the day.

19 MR STEYNBERG: Yes, your Honour. I was just considering whether or not I  
20 needed to traverse another issue, so perhaps I can give it some thought overnight.  
21 We can wrap it up for the day.

22 PRESIDING JUDGE EBOE-OSUJI: So we can relieve the witness at this point, you  
23 are saying?

24 MR STEYNBERG: Yes, your Honour. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: All right.

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1 Witness, we will release you for the day and you rejoin us tomorrow at 9.30. The  
2 blinds will come down.

3 While I didn't give you this reminder yesterday, but I'll do it now. Do not discuss  
4 your testimony overnight with anybody. Thank you.

5 \*(Closed session at 3.52 p.m.) Reclassified as Open session

6 THE COURT OFFICER: We're in closed session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 (The witness stands down)

9 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, do we go straight to open or do we  
10 stay in private?

11 MR KHAN: Stay in private, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: In private, okay.

13 Private session then.

14 \*(Private session at 3.53 p.m.) Reclassified as Open session

15 THE COURT OFFICER: We're in private session, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Mr Khan?

18 MR KHAN: I'm most grateful, Mr President, and I'm grateful to my friend,

19 Mr Steynberg, as well.

20 As my learned friend indicated, we had a discussion just prior to your Honours

21 returning after the lunch-break. At the lunch-break, I received a phone call and I

22 was informed by Mr Ruto that he had just received information that the

23 President -- the President of the Republic of Kenya has an official State visit that was

24 recently confirmed and he's leaving for the United Arab Emirates, I believe it's

25 actually Abu Dhabi, on Friday and he is to come back - the President is to come

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1 back - on Wednesday, the 19th.

2 Your Honour, the application is that of course there's an order of the Court that

3 Mr Ruto needs to be here for the testimony of (Redacted) The application would

4 simply be that either the Court would consider allowing Witness (Redacted) to start

5 his testimony on Thursday. Mr Ruto says that the minute the president comes back

6 he will get on a plane and come here. We either delay the commencement of Mr -- of

7 Witness (Redacted) - until Thursday, or we start on Tuesday but he be excused for

8 Tuesday and Wednesday.

9 Your Honour, my learned friend was kind enough to say the Prosecution have no

10 view - no objection and no agreement - to that. They were cognizant of the fact that

11 it was the Chamber's order that Mr Ruto be here. He is willing to be here, but I'd ask

12 that the Bench please consider one of the two options I've put forward.

13 Your Honour, I can say for Mr Kigen and myself, given the amount of disclosure

14 we're trying to deal with, if there was an extra day in-between it would come in very

15 handy anyway, but that's an ancillary matter. In other words, the time would be put

16 to good effect.

17 PRESIDING JUDGE EBOE-OSUJI: All right.

18 Mr Steynberg?

19 MR STEYNBERG: Yes, your Honours.

20 As my learned friend has correctly stated, the Prosecution has no strong views on this.

21 We would prefer not to lose the time if possible, bearing in mind we still have quite a

22 lot of evidence to cover in what's not a very long session. So although our

23 preference would be for Mr Ruto to be present, given the choice between the two we

24 would prefer to start without than not to start at all.

25 MR KHAN: Mr President, if it assists, regarding there's one additional witness,

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1 (Redacted). We don't know if the summons has been served, hopefully, but I know  
2 the Sang team and the Prosecution have been in contact with the witness and so have  
3 the Victims and Witnesses Unit. So it looks like there's a willingness there.  
4 But, your Honour, I can undertake that as we look at matters it does seem that we will  
5 be able to finish that witness if he answers the summons by the 12th. We're going to  
6 be quite short in our cross-examination of that witness, if at all, but we'll see how  
7 things go. So I don't think it will impact upon the intention that we finish the three  
8 witnesses this session.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, what's your view on that added  
10 observation?

11 MR STEYNBERG: Yes, your Honours.

12 The concern of the Prosecution is less with Witness (Redacted). We've not yet had  
13 confirmation of the service of the summons, but as my learned friend correctly  
14 observes the Defence, in consultation with the Prosecution, (Redacted)  
15 (Redacted). We're hopeful that the summons will  
16 be served. I don't think that will be a particularly long witness.  
17 The delay is more likely to be with Witness - (Redacted)  
18 (Redacted)- 658, who will be quite a lengthy and possibly a difficult witness; difficult  
19 in the sense of the evidence which will have to be traversed with him.

20 I remain hopeful that we would -- one day is not going to push us over the limit.

21 PRESIDING JUDGE EBOE-OSUJI: All right. As I indicated earlier, (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted). Even if it doesn't make sense, it does work.

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- 1 All right. We will rise now and we will resume tomorrow and at that stage we will
- 2 give you our position.
- 3 The Court will adjourn.
- 4 THE COURT USHER: All rise.
- 5 \*(The hearing ends in private session at 3.58 p.m.) Reclassified as Open session
- 6 RECLASSIFICATION REPORT
- 7 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 8 2013, the version of the transcript with its redactions becomes Public.