

Trial Hearing
Witness: KEN-OTP-P-0658

(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
7 and Judge Robert Fremr
8 Trial Hearing
9 Thursday, 27 November 2014
10 (The hearing starts in open session at 9.41 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, the case, please.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR GARCIA: Good morning, Mr President, your Honours.
23 For the Prosecution, Mr Anton Steynberg, senior trial attorney; right behind me,
24 Mr Lorenzo Pugliatti; as well Mr Pierre Belbenoit; and our case manager, Grace Goh.
25 I am Lucio Garcia for the Prosecution.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, I need to announce that we have granted
2 your request to appear for the testimony of this witness on behalf of the victims. We will
3 release our written reasons later. Put your appearance on the record, please.

4 MR NDERITU: I thank you, your Honours.

5 I am appearing for the victims and I'm assisted by Mr Orchlon Narantsetseg from the
6 Office of the Public Counsel for Victims and my case manager, Mr James Mawira, and
7 our intern, Amanda Wilmot.

8 Thank you.

9 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present and his team
10 remains the same. Thank you, Mr President.

11 MR KHAN: Mr President, your Honours, good morning. Mr Ruto, who is present in court,
12 is represented by Mr Essa Faal, Mr David Hooper of Queen's Counsel, Dato' Shyamala
13 Alagendra of counsel and Ms Grace Sullivan, Mr Andrew Mura and myself, Karim Khan.

14 PRESIDING JUDGE EBOE-OSUJI: I understand there is a duty counsel for Witness 658?

15 MR BOURGEOIS: Yes. Mr Bourgeois, duty counsel appointed in conformity with Rule
16 74(10) for assisting the witness.

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

18 Some matters for the record, matters of procedure.

19 During the testimony of the last witness there was a bit of din in the courtroom, especially
20 towards the end of it. That shouldn't happen again. We understand that counsel may have
21 their views on whether or not a witness is testifying correctly or according to the truth, but
22 counsel must keep their views to themselves either in terms of the voice, indication of those
23 views, or body language.

24 Similarly, I've also noticed from time to time that when I'm making rulings, I see nodding of
25 heads. That also shouldn't happen. I don't need approval of counsel that they like what I'm

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1 ruling on. So let's just keep it as professional as possible.

2 Now, we will go to the private session to attend to some matters connected to this
3 witness.

4 *(Private session at 9.45 a.m.) Reclassified as Open session

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

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 (Redacted)

8 MR GARCIA: (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

15 MR GARCIA: (Redacted)

16 (Redacted)

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18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

20 (Redacted)

21 MR GARCIA: (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

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24 MR GARCIA: (Redacted)

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- 12 MR GARCIA: (Redacted)
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- 18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 20 MR GARCIA: (Redacted)
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- 23 PRESIDING JUDGE EBOE-OSUJI : (Redacted)
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- 25 MR KHAN: (Redacted)

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- 2 MR KIGEN-KATWA: (Redacted)
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- 4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 5 MS BUISMAN: (Redacted)
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- 8 MR KHAN: (Redacted)
- 9 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 16 MR STEYNBERG: (Redacted)
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- 3 MR KHAN: (Redacted)
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- 23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 14 MR STEYNBERG: (Redacted)
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- 20 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 22 MR STEYNBERG:(Redacted)
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- 3 MR BOURGEOIS: (Redacted)
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- 12 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.
- 13 We will then take our submissions on the second matter before us, which is the matter
- 14 of the in-court protection of this witness during testimony.
- 15 Mr Garcia?
- 16 MR GARCIA: Yes, your Honours.
- 17 For the most part, the Prosecution relies on the written submissions. They're well
- 18 supported and we've indicated all the facts which we believe at this point would
- 19 justify an in camera -- total in camera sessions for the witness. However, what I
- 20 wanted to do simply and briefly is just to outline what I consider are the most
- 21 important points in regards to our submissions for in camera testimony.
- 22 Now first of all this witness, I understand that the -- it's obvious that the Chamber has
- 23 already in the past granted total in camera session for one other witness and it was in
- 24 special circumstances. I'm not saying obviously that the circumstances are identical,
- 25 but there are certain parallels. The case with this witness is also special in its own

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- 20 And we wouldn't ask it for any other witness, but this witness has special
- 21 circumstances and we feel that we can draw a parallel with the witness - the prior
- 22 witness - before, the Prosecution witness, for which the Chamber did grant total in
- 23 camera session.
- 24 Now the witness has indicated on various occasions that he wishes for it to be in
- 25 camera, the Chamber obviously and the Court has an obligation to protect the

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- 1 psychological well-being of the witness (Redacted)
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- 9 There is a question obviously of whether this would unduly prejudice the Defence.
- 10 As was done with the prior Prosecution witness, it's not impossible obviously to
- 11 disclose transcripts - redacted transcripts - afterwards so that the public can have an
- 12 idea of who the witness was and what he came to testify about in general terms and
- 13 so that might assuage those concerns on the part of the Defence, (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted) I understand that the Defence for Mr Ruto has agreed for this witness to
- 18 testify in camera completely. I understand that the Defence for Mr Sang -- this
- 19 probably is the position, as of this date, is contesting this. So my submissions are in
- 20 regards to the opposition of this in camera session by the Defence of Mr Sang.
- 21 MR KHAN: Mr President, I won't make submissions now. My learned friend, Dr Buisman,
- 22 will first, but if my friend wishes to raise it, we're not conceding closed session. The
- 23 previous correspondence from the Prosecution was at a time we were not aware that the
- 24 (Redacted) So, your Honours, we are not agreeing to closed session.
- 25 If my learned friend wishes to address it, he can do so now with your leave, but otherwise I

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1 will deal with submissions with the Court's permission after Dr Buisman.

2 MS BUISMAN: Yes. Mr President, it's true we are contesting. We are objecting in the

3 strongest terms to this application. We do instead ask that the VWU, who asked for the

4 in-court -- normal in-court protective measures, we ask that they will be implemented instead.

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3 So yes, there is this precedent, but we say it's (Redacted) and that is at best,

4 it's a (Redacted) There still needs to be an objective

5 standard.

6 We would implement in camera proceedings for the entire testimony --

7 PRESIDING JUDGE EBOE-OSUJI: Your starting point is you support the usual menu, but
8 not a blanket in camera?

9 MS BUISMAN: Indeed.

10 PRESIDING JUDGE EBOE-OSUJI: Okay.

11 MS BUISMAN: And I just want to highlight that the objective institute here, as you've often
12 stated yourself, is the VWU, and they themselves are aware of this request from the witness
13 for -- a long outstanding request, this is not a new request, to have his testimony heard in
14 entire closed session. They're aware. And notwithstanding that, they're also aware of all
15 (Redacted) they consider that the normal in-court protective
16 measures are sufficient. (Redacted)

17 (Redacted)

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12 And to sort of speak about in camera protective measures, I can see only two situations where
13 that should be granted. And first, as was already pointed out, if that's the only way to
14 protect his identity because, as I stated, we accept the in-court protective measures and we
15 will, of course, do everything possible to ensure that his identity will not be disclosed, not to
16 insiders, nor to the public at large.

17 We do think there is a way of doing that without hearing the entire testimony in
18 camera; one way, of course, is by using pseudonyms and using it very thoroughly
19 and be all very cautious that when there is a question of doubt, when there is a
20 moment of doubt we go into closed session. But in particular, the
21 cross-examination - and you know what is the nature of our cross-examination - a lot
22 of that can be done in public without identifying him.

23 (Redacted)

24 (Redacted)

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- 14 PRESIDING JUDGE EBOE-OSUJI: Mr Khan.
- 15 MR KHAN: Mr President, your Honours, I can do no better than adopt my learned friend's
- 16 submissions on this issue and --
- 17 PRESIDING JUDGE EBOE-OSUJI: We then leave it -- can we leave it at that then?
- 18 MR KHAN: Indeed. And commend the recommendation of the Victim and Witness Unit.
- 19 I'm grateful.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 21 Reply?
- 22 MR GARCIA: Just a brief reply, your Honour. I'm quite surprised that Mr Khan going
- 23 back on his word. In his undertaking, I understand there was even a discussion with senior
- 24 trial attorney on this side as to the fact that there was no opposition to the in camera session.
- 25 I understand Mr Khan has said that he's revised his position in light of the fact of obtaining

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1 information (Redacted)

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5 Our last filing on the matter, in which we reiterate the fact that Mr Khan had no

6 opposition to Mr Ruto's Defence team, was filed on 15 October 2014. So I'd like to

7 just put that on the record. I think it's unfortunate that Defence counsel backtracks

8 on an undertaking that was given at a time and I think that -- correct me if I am

9 wrong, but --

10 PRESIDING JUDGE EBOE-OSUJI: Can you speak to the issue --

11 MR GARCIA: On -- on the issue --

12 PRESIDING JUDGE EBOE-OSUJI: -- let's leave the sentiment and emotions out of it. If

13 there was an agreement between both of you, and you feel that that agreement is relevant and

14 may be brought in -- that it was not without prejudice agreement, then argue the point

15 specifically. Forget about the being surprised part. Just deal with the issue, please.

16 MR GARCIA: (Redacted)

17 (Redacted)

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22 PRESIDING JUDGE EBOE-OSUJI: To what extent is that concern specific and not

23 speculative? And to what extent is that concern beyond the usual ability of the Court to go

24 into private session to deal with very unique testimony of a particular witness that we've

25 always been concerned not to have given in public, if it is a unique story, that only the witness

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1 could have given or amongst a few people in a position to tell that type of story? We've
2 usually gone into private session for those aspects. That concern had not in the past
3 warranted a blanket testimony behind closed doors, as it were.

4 MR GARCIA: Indeed, your Honour. (Redacted)

5 (Redacted)

6 (Redacted)

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12 (Redacted)

13 (Redacted)

14 Obviously, the Chamber indicates that there is a certain amount of speculation and I

15 agree with that. In all of these evaluations and assessments there is a certain spice of

16 speculation that goes into it, but it is based, your Honour, on (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, let me stop you now. Maybe I wasn't clear

22 enough in my last question. We're looking at this scenario: Whenever you've brought a

23 witness to testify, you have not as I recalled it failed to ask a witness about the atmosphere at

24 the time -- to the extent that the witness was in a position to testify, failed to ask them general

25 information, background information, things of that nature in addition to asking the witness

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1 in other aspects specific questions about what -- some unique angles they may have.

2 What you're now saying is if this request for blanket testimony in closed session is

3 granted, even those aspects of the testimony about who was the president in 2005, if

4 that is -- something like that would come up would have to be testified in closed

5 session; isn't that what that means?

6 You know, I just use that as a specific example. I'm sure you know what I mean.

7 MR GARCIA: I'd agree, your Honours, that that would be the end result, but the reason

8 why --

9 PRESIDING JUDGE EBOE-OSUJI: Why is that justified?

10 MR GARCIA: Your Honours, it would be justified in this situation because of (Redacted)

11 (Redacted) I understand obviously that we've dealt with this kind of

12 problem with the prior witness by disclosing or publicising afterwards redacted transcripts so

13 that indeed certain parts of the information that the witness does testify about can get out to

14 the public on issues such as who was the president at this time or what political party.

15 But what I'm concerned about in this case and the reason why I'm suggesting -- I'm

16 submitting that in camera session would be justified with this witness is because the

17 (Redacted) after all. And this

18 is a matter that we need to be concerned about.

19 The witness has what I view as objective -- (Redacted)

20 (Redacted). He has indicated that it would be

21 his preference to testify completely in camera so he can --

22 PRESIDING JUDGE EBOE-OSUJI: We understand his preference, but you as counsel

23 preparing him should also be in a position to tell the witness you're preparing that, "Look,

24 there are some stories that are so commonplace that anybody can tell them, so for that part

25 you need not worry about, you know, testifying behind closed doors."

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12 Obviously the witness understands and I've explained it to him that ultimately it's for
13 the Chamber to decide and he will have to adapt to the circumstances, so that has
14 been explained to him, and the fact that certain of the events that he is -- will be
15 relating need not be in closed session.

16 But those are -- those are my submissions on the matter, your Honour.

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

18 We will leave -- Mr--

19 MR KHAN: Mr President.

20 (Redacted)

21 (Redacted)

22 MR KHAN: Your Honour, I wondered if the Bench wished to be addressed on my learned
23 friend's contention that I went back on my word. Your Honours, if you wish to hear
24 submissions, I can do that.

25 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

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1 MR KHAN: Your Honour, it's my submission of course no --

2 PRESIDING JUDGE EBOE-OSUJI: But before we do that, Mr Garcia, did you express
3 yourself fully on that issue? Sorry. I know I stopped you. The reason -- I didn't stop you
4 really. I was saying let's deal with issues in specificity without the emotion, and then you
5 stopped at that point. I do not know whether you addressed the matter of whether you feel
6 it's relevant or you want to pursue it.

7 MR GARCIA: Your Honour --

8 MR STEYNBERG: Your Honour, if I may come in, your Honours, I don't wish to pursue it
9 any further.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 MR KHAN: Your Honour, it's --

12 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Steynberg says he does not want to pursue
13 it any further.

14 MR KHAN: Your Honour, I'll leave it in that case.

15 PRESIDING JUDGE EBOE-OSUJI: We'll leave it at that.

16 MR KHAN: If my learned friend withdraws that accusation, then I will have nothing in
17 response. I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: We will leave it at that. We will leave it at that.

19 MR KHAN: And, your Honours, could I thank my learned friend, Mr Steynberg.

20 (Trial Chamber confers)

21 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, now that you are with us, the Chamber
22 would like to hear from you quickly, please, and briefly.

23 (Redacted)

24 (Redacted)

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- 12 I do appreciate of course that your Honour has raised the question as to whether
- 13 every issue should go into in camera proceedings, but there is a need to strike a
- 14 balance, because what is likely to happen -- I'm just trying to anticipate what may
- 15 happen, and I see a situation where there would be so many interruptions moving in
- 16 and out of closed session that it may not be very easy to appreciate the evidence and
- 17 the flow of the evidence that would be taken. That for me I think is an important
- 18 risk, particularly in view of the importance of the evidence of this witness.
- 19 PRESIDING JUDGE EBOE-OSUJI: Whose appreciation of the flow are we worried about
- 20 now?
- 21 MR NDERITU: Mr President, your Honours, not just of the Trial Chamber itself, but also of
- 22 the parties, that the interruption between closed session and -- and open session will
- 23 necessarily affect the parties in the courtroom who have a primary interest in getting the
- 24 evidence in a manner that is properly digestible for the purpose of establishing the truth and
- 25 justice in the process.

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1 PRESIDING JUDGE EBOE-OSUJI: You're not worried about the public's appreciation of the
2 flow.

3 MR NDERITU: Mr President, your Honours, I am worried about that as well, and of course,
4 the public would be interested in a public session that also gives them information regarding
5 the evidence. And I see that the very nature of the evidence in this case will drive at -- I
6 mean the utility of it to the public given the likelihood that we would be in closed session
7 anyway for long periods of time would be very little.

8 PRESIDING JUDGE EBOE-OSUJI: So your point has to be that if we were in closed session
9 for the entirety, the public would necessarily be excluded from appreciating anything, but
10 that if we are in public but to go in and out repeatedly it might affect the flow of the public's
11 appreciation, that we might as well be in private for the duration of the testimony. That has
12 to be your argument, isn't it?

13 MR NDERITU: In a sense, yes, Mr President, your Honours, but I think there is the other
14 way out, that ultimately it is possible to have a redacted version of the testimony being made
15 available to the public. But --

16 PRESIDING JUDGE EBOE-OSUJI: How is that different from having them hear it at the time
17 with those redactions being done live as it were?

18 MR NDERITU: Quite different on the ground, I must say, in the sense that what normally
19 will happen is -- and I think we -- I can -- I can confidently say that even within the public
20 gallery here I have seen situations where when there is too much closed session and nothing
21 that is not in the public domain that is coming out in open session, then people leave. And I
22 think it may be a bit of speculation, but I would not be surprised that those who leave then do
23 not go on to find out what then happens by looking at a redacted version.

24 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it at that. The Chamber will
25 rise and we will --

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- 1 (Trial Chamber confers)
- 2 PRESIDING JUDGE EBOE-OSUJI: We might as well take our morning break now and come
- 3 back at 11.30 so that gives us enough time to deliberate on this issue, including all the -- as
- 4 you know, there have been some special arguments made so we want to be sure that we
- 5 deliberate fully on them.
- 6 We will rise and reconvene at 11.30.
- 7 THE COURT USHER: All rise.
- 8 (Recess taken at 10.33 a.m.)
- 9 (Upon resuming in open session at 11.40 a.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 13 I note that we are in open session.
- 14 A quick direction on housekeeping matters. In light of the time frame we are facing
- 15 involving the testimony of this witness and the next one we are looking at also taking
- 16 in during this session, the Chamber will direct the parties to make written
- 17 submissions on the in-court protective measures for the next witness after this so that
- 18 we can do it in terms of in an oral ruling.
- 19 If we can make those submissions by the end of the week or the middle of next week.
- 20 I think the middle of next week should be a good time frame to make the written
- 21 submissions from both sides.
- 22 We will go into private session and deliver our ruling on the requests, or the
- 23 submissions we had on the two items we took submissions on in private session
- 24 earlier.
- 25 Private session, please.

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- 1 *(Private session at 11.42 a.m.) Reclassified as Open session
- 2 (Redacted)
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11 We next deliver our ruling on the in-court witness protection measures.

12 On 12 November 2014, the Prosecution sought to vary the protective measures
13 requested in its fifth application and requested that due to the peculiar circumstances
14 of Witness 658 that the Chamber should authorise that the witness's testimony be
15 heard entirely in camera.

16 In the alternative, the Prosecution requests that the Chamber grant the following protective
17 measures: (1) image and voice distortion; (2) use of pseudonyms during testimony; and (3)
18 in camera sessions; and, finally, (4) redactions to public records where necessary.

19 On 24 November 2014, the VWU provided its own assessment for in-court protection
20 measures submitting that it has credible information that certain individuals are
21 trying to discover the identities of witnesses and that the interim protective measures
22 that the VWU implemented for the witness's dependents may be compromised if the
23 witness were to testify in public session.

24 It recommended the following in-court protection measures: Voice and image
25 distortion; use of pseudonyms during testimony; use of closed or private session

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1 when needed and redactions of any identifying information from any record that may
2 be disseminated to the public.

3 The Chamber has heard submissions from all sides and the Chamber grants the
4 Prosecutor's request in the alternative prayer, that is in-court protective measures in
5 the usual menu granted to other witnesses.

6 The Chamber notes that the Defence did not object to that manner of protective measures for
7 the witness -- this particular witness when testifying in court.

8 The Chamber does not consider that it is warranted in the circumstances to permit the
9 testimony of the witness entirely in camera.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 That concludes the ruling of the Chamber on the in-court protection measures.

23 Unfortunately, we have to rise again for shall we say 15 minutes or -- that should be
24 enough time for both Mr Bourgeois and the Prosecution to meet with the witness,
25 inform the witness of the ruling of the Chamber, as well as the VWU, who also,

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- 1 I understand, has a practice of meeting with witnesses and explaining to the witness
- 2 the Court's ruling on in-court protective measures. It is not something we like to do
- 3 rising, but unfortunately we have to do it.
- 4 The Court will rise and we'll come back at 12.15.
- 5 THE COURT USHER: All rise.
- 6 (Recess taken at 12.01 p.m.)
- 7 (Upon resuming in open session at 12.23 p.m.)
- 8 THE COURT USHER: All rise.
- 9 Please be seated.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 11 Mr Garcia, for the record, did you do the Rule 66(3) and 74(1) advisories?
- 12 MR GARCIA: Yes, your Honour. Both were done during the witness preparation session.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 14 Please, the solemn declaration to the witness.
- 15 WITNESS: KEN-OTP-P-0658
- 16 THE WITNESS: I will declare that I will speak the truth, the whole truth and nothing but the
- 17 truth.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness, and welcome
- 19 back -- welcome to the Court.
- 20 I will give you an advisory that I have given to every witness who has appeared
- 21 before us, and I begin that advisory by telling the witness that this courtroom belongs
- 22 to the witness. That means this courtroom belongs to you, as well as it belongs to
- 23 anybody else in here, the Judges and the lawyers. The reason I say that is because
- 24 I want you to feel completely at ease during your testimony.
- 25 Do you understand?

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1 THE WITNESS: (Microphone not activated)

2 PRESIDING JUDGE EBOE-OSUJI: Can you come closer?

3 THE WITNESS: Okay.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. That's much better. Thank you very
5 much.

6 THE WITNESS: Okay.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you for coming to join us in our work in our
8 inquiry about what happened at the end of 2007 and 2008 in Kenya during the post-election
9 violence.

10 The way we get about the work is through questions of lawyers. There will be lots
11 of questions, beginning with the lawyer or the side that called you, that would be the
12 Prosecutors. They will begin asking you questions in examination-in-chief.

13 When they finish, then the Defence lawyers will take turns. On this side Mr Sang's
14 team, represented by Mr Kigen-Katwa and Mr -- and his colleague. I believe it will
15 be Ms Buisman in this case. I don't know if it's Ms Buisman that will be asking you
16 questions, but all right -- will be asking you questions.

17 And then next to them would be the lawyer for Mr Ruto. Mr Khan, leading the team,
18 will I believe be asking you questions. He nods.

19 And the victims' counsel, Mr Nderitu, has requested for us to allow him opportunity
20 to ask you some questions as well. We have not made a decision on that. We will
21 consider our decision but, if we do grant it, it means he will also ask you questions.

22 The point of all that is that there will be a host of questions coming to you from all
23 these lawyers, and from time to time the Judges may also have a question or two to
24 ask.

25 In all of this, I would urge you to stay relaxed, concentrate on the question that is

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1 being asked you and understand it.

2 THE WITNESS: Yep, yep.

3 PRESIDING JUDGE EBOE-OSUJI: The key to the whole thing is understand the question
4 that is being asked of you one at a time. Once you understand a question, just answer that
5 question briefly and then -- as briefly as possible, but yet giving the answer you had in mind
6 or you have in mind to give and then wait for the next question to come. One question at a
7 time.

8 It is often the case that there may be a little pause between the completing of your
9 answer and the next question coming to you. That's all right. That's normal. We
10 want that pause to be there. It is something we call "the five-second pause." It's to
11 enable the interpretation to finish from the last person who was speaking. For
12 instance, as I'm speaking now what I'm saying is being interpreted by interpreters
13 and, as I finish talking, the interpretation may continue for a little while without me
14 knowing and you knowing that.

15 That also happens when there is question and answer between the witness and a
16 lawyer. When the witness finishes answering a question and the lawyer pauses, he's
17 pausing because he wants to have interpretation happening in the background to
18 finish before he asks you another question.

19 It may be that when that happens to a witness, who is unfamiliar to what's going on,
20 they might think that he or she has not answered enough to the answer given and
21 they may continue talking some more. Try to avoid that.

22 The point I make there is answer your question briefly, stop, there's a pause of five
23 seconds at least and then the next question will come to you. Just like that we will
24 proceed and keep going.

25 You are not to consider that because you're a witness you must know everything, or

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1 remember everything. If you do not know, if you don't have an answer, just say so,
2 say, "I don't know." If you do not remember, say you don't remember. The lawyers
3 will know how to come at the matter again if they believe that maybe they have not
4 made themselves clear, or for some reason they believe that there's some more
5 opportunity to allow you to remember, or to know, or remember what you know.
6 So they have a way of coming again at it, but that's not to say that you must feel that
7 you must remember everything at all times.
8 As I say, if you remember, you answer the question briefly and to the point. If you
9 do not remember, say so and we can move on.
10 We're interested in what you perceived as a witness; that is what you yourself saw
11 with your own eyes, or what you heard with your own ears, that go to the facts in the
12 case. Try to avoid guessing at the answer if you don't know it. Also try to avoid
13 giving an answer on the basis of what somebody else told you without making clear
14 that that is what is going on.
15 So if it is the case that the information you're -- the answer you're giving to the Court
16 is based on information you heard from somebody else, try and make that clear, but
17 we will try to avoid too much of the testimony being on the basis of what somebody
18 else said. We call that hearsay.
19 There may be times where it may be important for the person asking you the question
20 to bring out the fact that it is something that you heard from somebody. It may be
21 important from time to time but, unless that is the desire of the person asking the
22 question, we will try to avoid what we call hearsay from you.
23 The Prosecutor had requested some protection measures for you and part of the
24 protection measures requested was that you were to testify entirely in private session.
25 We rejected that request. We believe that there should be part of the testimony that

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1 you can give in public because there are some parts of the testimony that will not
2 identify who you are.

3 We give protection measures to witnesses who testify primarily to avoid the witness
4 being identified; that means their names, names of relatives, that sort of thing. We
5 do not want to have that sort of information given in public for protected witnesses.
6 We also do not want witnesses testifying in the public session to certain unique events
7 that either they only witnessed, or that they're amongst a very limited number of
8 people who were there and witnessed that event, and in the course of time the
9 witness may have relayed that information to somebody else. So that if the witness
10 is now testifying in public about that unique event, that somebody else the witness
11 might have told the story will then say, "Ah, it is this person that is testifying." We
12 will try to avoid that and it is for information, matters like that, that we go into
13 private session.

14 It's not to say you're not to talk about those things, we still want you to talk about
15 them, but we will talk about them in a manner that will not identify who you are and
16 then we go into private session for that sort of testimony so that members of the
17 public don't get to hear about it.

18 But we try not to have witnesses testifying in private session about something that
19 anybody else could have testified to, something of general knowledge, for example,
20 "Who was the president of Kenya in 2007?" Things like that. Anybody can answer
21 that sort of question. Or "What political parties were vying for election during that?"
22 Anybody can answer that question. Or "Did violence happen at certain -- in Kenya
23 at that time?" Anybody can answer questions like that. So for that sort of
24 information we will not be receiving them in the private session, as I said, but
25 information that will necessarily identify you those we will be doing in private

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1 session.

2 In addition to letting you know why we rejected the request to have you testify
3 entirely in the private session, I think it's also important that you know what I've
4 just -- to tell you what I've just told you about the need to protect your identity
5 because it also bears some relation to what I told you earlier about listening to a
6 question, understanding it and just answering that question and that relationship is in
7 this way: The lawyer who is asking you the question knows -- either knows the
8 answer he expects, because they have a witness statement you might have given to
9 the Prosecution in the past. Both sides have it. So they may ask you a question on
10 the basis of that statement, knowing what they expect you to -- what they expect the
11 answer to be, and they know that it is safe to ask you that because perhaps you would
12 tell them who the president was in 2008.

13 But if you don't answer that and you start answering something else about how you
14 knew who the president was in 2008, that other information you're giving might be
15 one that identifies who you are. That is for that reason that it's important that you
16 listen just to the question and answer just that question.

17 If you feel that maybe there is something else you want to add that all along next
18 questions have not allowed you an opportunity to add that, then you can let me know,
19 and if it is something that would identify you, an answer that may identify you, we
20 will go into private session. You can also tell us that, "Look, I would like to answer
21 this question more fully, but if I answered it more fully, it may identify me, can we go
22 into private session?" You make requests like that, we will accommodate them. Do
23 you understand?

24 THE WITNESS: I understand.

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

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1 And we have already told you about the need to observe the five seconds pause. We
2 call it five seconds pause between two speakers. The person asking you the question
3 finishes, you wait for about five seconds so that the interpretation in the background
4 can be completed and then after five seconds you start answering the question. Just
5 count one to five in your mind at a moderate pace, one, two, three, four, five, there
6 you have your five seconds and then you start answering.
7 It is very important because it allows the court reporters, without whom we cannot do this
8 work successfully, to record what you're saying, and interpreters as well, so that allows them
9 time to interpret and record the events because they are not inside the body of the courtroom,
10 inside the well of the court, as we say. They are in closed compartments on the sides and the
11 only way they can hear what's going on down here is through the microphone and their
12 headsets. That makes it important that two people do not crowd the microphone at the same
13 time; they cancel out each other and makes it difficult for the court interpreters to interpret
14 and the court reporters to report.
15 So keep in mind the need then to pause for five seconds, it's very important.
16 Also the need to speak at a moderate pace, don't speak too fast. That makes their work
17 difficult as well. So speak at a moderate pace. Not too slow in a way that also, you know,
18 we'll stay here forever. Just a moderate pace would be what we ask.
19 The Prosecutor has informed me that he has advised you about your responsibility to
20 speak the truth and that it is an offence to speak -- to tell falsehoods after you've
21 promised to tell the truth, and things like that, so I will not be taking you through that
22 matter. So just keep in mind the need to tell the truth, the whole truth and nothing
23 but the truth, as you have promised and solemnly declared to do.
24 Thank you very much.
25 We will have about 20 minutes of questioning to you in this session and Mr Garcia

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1 will start.

2 Mr Garcia, you will, of course, organise your questioning so that those that
3 necessarily need to be in private session are kept together. Thank you.

4 Witness, thank you very much again.

5 MR GARCIA: Indeed, your Honour.

6 I'd ask for the assistance for the court officer to distribute the CV/PIS of the witness.

7 Your Honours, I'd also ask for a private session for 10 minutes to go through information in
8 the CV regarding the witness.

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 *(Private session at 12.43 p.m.) Reclassified as Open session

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

12 MR KHAN: And, Mr President, can I just say that we agree to the CV, the only correction on
13 page 5 under "Work Experience" at bullet point five is that (Redacted)

14 (Redacted) With that my learned
15 friend can lead.

16 MR GARCIA: I'm grateful for that, your Honours. And just for the record, I've also
17 distributed a copy of the CV and the PIS to the translators so that -- to ease in case there's any
18 problem with the spelling of names.

19 QUESTIONED BY MR GARCIA:

20 Q. Now, Mr Witness, I understand you have a document before you. We spoke briefly
21 about the PIS form which is the form where there are locations and persons and organisations.
22 I'd like you to go to page 5, please. It's the last page.

23 THE COURT OFFICER: I'm sorry to interrupt, but I would like to remind the parties and
24 participants to be very careful with their PIS, please. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: Not wave it around.

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1 MR GARCIA:

2 Q. Now, Mr Witness, you have before you a page, page number 5, and it says at the top
3 "CV/Personal Information." Do you see that?

4 A. Yeah, I can see that.

5 Q. Now, I just want to confirm the accuracy of the information on this CV and then
6 afterwards I'll ask you more questions. I understand that your ethnicity is Kalenjin; is that
7 correct?

8 A. Yes.

9 Q. And you're a member of what subtribe?

10 A. Nandi.

11 Q. So, Mr Witness, since we are just starting, I'll remind myself and I'll remind you at the
12 same time that when I do ask you a question, I'll try and go as slowly as possible to aid the
13 translators, and take a couple of seconds after listening to my question to respond to it so that
14 we don't cross on the microphone.

15 It says here as well that the languages that you can -- that the languages that you
16 know are Kalenjin, Swahili and English; is that correct?

17 A. Yes.

18 Q. Am I correct in saying as well that you can -- you both understand these languages and
19 you can speak them; is that correct?

20 A. Yes, I can understand.

21 Q. Now, it says as well under the heading "Personal Background" that you were born on (Redacted)
22 (Redacted) is that correct?

23 A. It is not (Redacted) but it's (Redacted)

24 Q. All right. So simply for -- simply for the record, (Redacted)
25 that's correct?

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1 A. Yeah.

2 Q. And it also says --

3 PRESIDING JUDGE EBOE-OSUJI: Witness, two things. Remember the five-second rule.

4 THE WITNESS: Okay.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. And also try to answer questions by "Yes"
6 or "No." The reason is we have a transcript and "yeah" can mean different things, but "yes" is
7 clearer and "no" is clearer as required. Do you understand?

8 THE WITNESS: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR GARCIA:

11 Q. It also says here, Mr Witness, under "Personal Background" that (Redacted)
12 (Redacted); is that correct?

13 A. Yes, I do.

14 Q. Now, under the heading "Education" it says that (Redacted)
15 (Redacted) is that correct?

16 A. Yeah -- yes.

17 Q. And just remember, Mr Witness, and I know that it's difficult because I forget to myself,
18 just to wait at least five seconds before you do respond to my question.

19 It also says here that from (Redacted)
20 (Redacted); is that correct as well?

21 A. Correct.

22 Q. Now, we move on to the heading "Work Experience." It says here that from (Redacted)
23 (Redacted); is that correct?

24 A. Correct.

25 Q. It also says that from (Redacted) you worked as (Redacted); is that correct?

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1 A. Yes.

2 Q. It also says that from (Redacted) you worked as (Redacted)

3 (Redacted) is that correct?

4 A. Yes.

5 Q. Also that from (Redacted) approximately, you worked

6 as (Redacted); is that correct?

7 A. Yes.

8 Q. Just remind you, Mr Witness, to take a couple of seconds before you respond. I'm sure
9 we'll get it right.

10 Also it says here that from (Redacted)

11 (Redacted) is that correct?

12 A. Yes.

13 Q. Also it says that from (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted) is that correct?

17 A. Yes.

18 Q. And last it says that from (Redacted)

19 (Redacted) is that correct?

20 A. Yes.

21 Q. Now, I just have one additional question, Mr Witness. If you notice under (Redacted)
22 you confirm that you worked as (Redacted)

23 (Redacted)

24 A. Yes.

25 Q. Now, I'd like to know after (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MR KHAN: Mr President, I think, just for the record, at line 14, my learned friend will

6 correct me if I'm wrong, (Redacted) but your Honour that

7 perhaps can be clarified. (Redacted)

8 MR GARCIA: I'm -- I'm grateful to my colleague. (Redacted)

9 (Redacted)

10 Q. Mr Witness, after (Redacted)

11 (Redacted)

12 A. Yes.

13 Q. -- is that correct?

14 A. Yes.

15 Q. What year was that approximately?

16 A. (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 Q. Just a reminder of the five-second rule when I ask you a question, but could you inform

23 us or give us a little bit more detail as to what exactly you would do working for (Redacted)

24 (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 Q. Now, I'd like to know, Mr Witness, during the --

9 A. I want to clarify here again about my children.

10 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

11 MR GARCIA: Go ahead.

12 THE WITNESS: Okay. With me, (Redacted) and that

13 is -- I want to clarify that.

14 PRESIDING JUDGE EBOE-OSUJI: So the correction is that you have (Redacted)

15 (Redacted)

16 THE WITNESS: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MR GARCIA:

19 Q. Now, Mr Witness, I have a more specific question for you. During the time preceding

20 the post-election violence, were you still working for (Redacted)

21 (Redacted)

22 A. (Redacted)

23 Q. Now, just for the future, and maybe this might help, you notice that there's a red light

24 when I'm speaking. When you see it go off, then count a couple of seconds, five seconds,

25 and then you can respond, and in this way we won't be crossing over on the microphone.

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1 Thank you.

2 Now, Mr Witness, I'd like to start by asking you questions regarding the post-election
3 violence, and I'd like to bring you to a time, we've all understood that the election day
4 in Kenya in 2007 was on 27 December; that's correct, Mr Witness?

5 A. That's correct.

6 Q. I'd like to ask you questions on what you saw and what you did during those days
7 preceding the post-election violence, and I'd like us to start on 26 December.

8 Before I get to that, I'd like to know as for information where you were residing.

9 Where were you living at that time on 26 December 2007? The locations are at page
10 number 2 of your PIS at the top.

11 A. Location number 7.

12 Q. And you were living there with whom exactly?

13 A. (Redacted)

14 Q. Just remember the five-second rule, Mr Witness.

15 So you're living there with (Redacted). And just so that we can understand,
16 what is the distance from location number 7 and Eldoret centre? Can you tell us that
17 approximately what the distance is?

18 A. Yeah, maybe I cannot say exactly, but maybe (Redacted)

19 MR GARCIA: Your Honour, I'm looking at the time. I'd like to start the subject of 26
20 December, but I don't want to cut off the witness immediately upon starting. I wonder if we
21 can take our pause now and continue after the lunch-break?

22 PRESIDING JUDGE EBOE-OSUJI: We, indeed, we will do that. We will take our
23 lunch-break now and we'll come back at 2.30.

24 MR GARCIA: Thank you, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: We will go to closed session to usher the witness out of

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1 the courtroom.

2 *(Closed session at 12.58 p.m.) Reclassified as Open session

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

4 MR KHAN: Your Honour, just a short matter. It doesn't need to be --

5 PRESIDING JUDGE EBOE-OSUJI: One second. Let the witness be ushered --

6 MR KHAN: I'm grateful.

7 PRESIDING JUDGE EBOE-OSUJI: -- out and then we can take your matter.

8 (The witness stands down)

9 PRESIDING JUDGE EBOE-OSUJI: I understand that the message has been communicated to
10 the parties that the time to send the written submissions will be 4 p.m. on Tuesday. That
11 message has been communicated?

12 MR KHAN: I believe it has, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 MR KHAN: I'm grateful.

15 PRESIDING JUDGE EBOE-OSUJI: Okay.

16 MR KHAN: Mr President, just a small matter for the Bench to consider if you consider it
17 appropriate. My learned friend, Mr Steynberg, was kind enough to indicate that a summons
18 has been served in relation to (Redacted), and that witness is due to start on the 8th and this
19 session is due to finish on the 12th. Your Honour, I see where we are Thursday afternoon,
20 examination-in-chief really is about to substantively start, and I wonder if we're to finish this
21 witness and finish the next witness if the Bench could consider extending the hours either by
22 shortening the lunch-break for the next week? Otherwise we may be in difficulties to finish
23 (Redacted) next week. And I just raise it now for court planning and so it can be considered if
24 there is merit in that suggestion.

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

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1 Mr Steynberg.

2 MR STEYNBERG: Thank you, your Honour, I just want to correct a mistake of mine, if I can
3 say this. I had understood from the VWU that the summons had been served on the next
4 witness, but they clarified the matter yesterday. Apparently the summons has not formally
5 been served on the witness, however, the witness is cooperating with the VWU and has
6 agreed to attend court on the dates ordered. I just wanted to make that small correction.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you both sides. We will now rise and
8 meet again at 2.30.

9 THE COURT USHER: All rise.

10 (Recess taken at 1.01 p.m.)

11 (Upon resuming in open session at 2.34 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

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

15 Witness, welcome back.

16 Mr Garcia, we are in open session.

17 THE WITNESS: Private session before we proceed?

18 MR GARCIA: Your Honours, I'd ask that we go into private session, I think we left
19 off on private session, and then I can go into public session afterwards.

20 PRESIDING JUDGE EBOE-OSUJI: But how much more time do you want to remain
21 in private session?

22 MR GARCIA: Two minutes, your Honour.

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

24 *(Private session at 2.35 p.m.) Reclassified as Open session

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

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1 MR GARCIA:

2 Q. Now, Mr Witness, just before I do continue putting my questions to you, I
3 notice that you asked to go into private session. Is there something you wanted to
4 say to the Court?

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 THE WITNESS: Thank you.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 MR GARCIA:

4 Q. Now, Mr Witness, just before we do go into a public session, I'd like to ask you
5 on 26 December 2007 where were you that morning?

6 A. Around -- around Eldoret.

7 MR GARCIA: Thank you.

8 Now, your Honours, I'd ask that we go into a public session.

9 Q. Now, Mr Witness, I'm asking the Court obviously that we can go into public
10 session so that you can relate and testify as to what you observed on that day, 26
11 December, all right?

12 A. Okay.

13 Q. So if there's any concerns obviously as you know you can use the PIS sheet, the
14 sheet that you have before you, if you need to refer to any names or any locations that
15 might identify you.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, we will now go into a public session as
17 the counsel has reminded you. The reason why you were given that sheet that is
18 entitled "Protected Information Sheet" and "Confidential" -- the word "Confidential"
19 watermarked across the sheet is so as to enable you to testify in the public session as
20 much as possible without mentioning identifying information.

21 So you will refer to the numbers. For when a location is being discussed, a location
22 that is indicated here, you just refer to it by numbers, "Location 1," "Location 2" and so
23 on and so forth. Similarly for persons, "Persons number 1" and "Person number 3"
24 and so on and so forth. We will do that in private session but, if you need an
25 extended answer that -- if you need to give an extended answer that you feel might

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1 reveal who you are, let us know and we will see what we can do to accommodate
2 that.

3 THE WITNESS: But I can't see the centre of the town.

4 MR GARCIA: Your Honours, just to help the witness.

5 Q. Mr Witness, in regards to 26 December, for most of the questions that I'll be
6 asking you you can testify publicly stating the names that you saw and the people
7 that you saw. When I will ask you more specific questions that might be identifying,
8 I will ask you to take a look at the PIS form that's in front of you and to indicate to us
9 the numbers that are applicable of the people or places, all right?

10 A. Okay, yes.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, briefly?

12 MR KHAN: Yes, Mr President. If my learned friend could provide us as usual
13 with two copies of the PIS? Normally we get two copies, one for us and one for my
14 friends and Mr Ruto behind, but your Honour we only have one copy and so a
15 second would be very helpful. I'd be grateful.

16 MR GARCIA: We have another copy right here.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Garcia.

18 We will go into public session now.

19 (Open session at 2.41 p.m.)

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Mr Garcia, please.

23 MR GARCIA:

24 Q. Now, Mr Witness, in regards to this day, 26 December 2007, can you please tell
25 the Court what you did upon awakening that morning? When you first woke up,

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1 what did you do?

2 A. I went straightaway from the house to the city centre or town centre, where it is
3 a public place, and stayed there, but during that day there was a lot of activities
4 going -- going -- taking on, especially the -- the people were around the town
5 marching and waiting for the activities that is going on that day.

6 Q. All right. And exactly what activity were they waiting for?

7 A. Actually, it was like the last day before the election and actually the
8 transportations of the ballot papers and many other voting materials should have had
9 to take place the following -- that particular day.

10 Q. All right. Then just so that we can understand that, who was doing the
11 transportation of the ballot papers on that day?

12 A. Of course it has to be official of the Electoral Commission of Kenya, ECK.

13 PRESIDING JUDGE EBOE-OSUJI: Remember the five-second pauses.

14 THE WITNESS: Okay.

15 MR GARCIA:

16 Q. I understand from your testimony that the ballots were being transported to -- is
17 it to different polling stations within your region?

18 A. Yes, I think so. It is to the nearest polling station; the nearest because it cannot
19 be taken directly until the following morning, but to the nearest collecting stations.

20 Q. Now, what were you doing in town - in Eldoret town - in the city centre on that
21 day?

22 A. Of course my daily stay in town is always -- I've been there always, but actually
23 for that particular day we were staying there for the events that is taking place and
24 especially concerning political activities which are supposed to take place that
25 particular time of day.

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1 Q. Can you tell us a bit about what political activities were supposed to take place
2 on this day on 26 December 2007?

3 A. Like preparations of the -- what a political party which I may -- I was having
4 that particular -- or if an individual could have, having some preparing for their
5 readiness for the election.

6 Q. Now, what did you observe on that particular day?

7 A. During morning hours, there was a rumour which already take place along all
8 over that there is a ballot papers which might be coming out, transported from
9 Nairobi to the areas which might be used for the rigging of the elections.

10 Q. Now, you said that there was a rumour. Where did this rumour come from,
11 do you know that?

12 A. Of course by the public and many individual political leaders, and mainly it was
13 announced on the radios that people should take -- take care or to be prepared to
14 protect -- to make sure that they are -- they are -- they look on it.

15 Q. Now, when you say it was the radio, can you be a little bit more precise? What
16 radio?

17 MR KHAN: Mr President, can I just clarify? The answer was "on the radios"
18 plural.

19 MR GARCIA:

20 Q. Mr Witness, when you say "... on the radios ...", can you be more precise?

21 A. When I say "radios" we -- we have -- I can't -- we have national radios which
22 actually could not be used, but there was a vernacular language radio stations and
23 I could say, yeah, the radio stations that I always listening in is what I could
24 understand very well; that is Changei and also Kass FM.

25 PRESIDING JUDGE EBOE-OSUJI: At line 2 the word is "vernacular language radio

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1 stations."

2 MR GARCIA: Most grateful, your Honour.

3 Q. Now, Mr Witness, you mentioned Changei and Kass FM. On which radio
4 station did you hear these rumours on?

5 A. As a Kalenjin I could switch every time to both of them, because it is listeners
6 who might call in to express their dissatisfactions about how the election might be
7 rigged and especially Kass FM.

8 Q. What radio station -- so you say "... especially Kass FM." What did you hear on
9 Kass FM?

10 A. There was announcements in the morning that people should be ready to -- to
11 see that -- actually they could block the roads because there are some vehicles which
12 might carry the -- the -- the ballot papers to the -- wrong ballot papers to the areas.

13 Q. Now do you recall, Mr Witness, who on Kass FM was saying this? You don't
14 actually need to refer to the -- to the document before you, but if you have an answer
15 you can give it?

16 A. Joshua Sang.

17 Q. Now can you tell the Court if you recall if Mr Sang was saying this generally, or
18 was it on a show? Can you tell us that?

19 A. I think it was in the morning when he was announcing that there is -- we heard
20 that there is a vehicle which are carrying the fake ballot papers, so people be alert on
21 that. I think it was a morning show but, you know, I stayed there until only around
22 8 and then I could not listen again.

23 Q. And in the morning do you remember what the name of the -- of the
24 programme was in which this was announced?

25 A. I think on that particular day Sang was at the radio stations and I think his only

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1 morning programmes is Lene Emet, but I can't remember exactly what was the
2 programme.

3 Q. Now can you tell us this programme, Lene Emet, from what time to what time
4 did it used to run?

5 A. It was around 6.30 to almost 10 o'clock in the morning.

6 Q. And correct me if I'm wrong, but I think from your testimony you're saying that
7 you heard at 8 o'clock in the morning; is that correct?

8 A. If I say that, around -- around 8 o'clock.

9 Q. And on that particular morning you had heard the programme from what time
10 to what time?

11 A. Morning hours, but -- and then after it I went to town.

12 Q. And when you say "morning hours," it's from what hour to what hour?

13 A. Waking up time is always 6.30 on to 8.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, the correction that was made at line
15 15 should be done by questions, not by leading.

16 MR GARCIA: Certainly, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed, when it -- next time that sort of
18 thing happens.

19 MR GARCIA:

20 Q. Now you say, Mr Witness, that there was announcement in the morning that
21 people should be ready?

22 A. Yes.

23 Q. And that you had heard "... there is a vehicle that is carrying the fake ballot
24 papers, so people be alert on that"?

25 A. Mmm-hmm.

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, remember to say "yes" or "no."

2 "Mmm-hmm," "yeah," things like that don't work with a transcript.

3 THE WITNESS: Okay.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR GARCIA:

6 Q. Now, could you explain to us exactly what was the message that was being
7 conveyed when you say "People, be -- people, be alert on that"? What exactly was
8 meant?

9 A. It was said that -- repeat again the question.

10 Q. You mentioned in your response, I think it was in the morning, when he was
11 announcing, "We heard there is a vehicle that is carrying the fake ballot papers. So,
12 people, be alert on that."

13 So my first question is: What people was he referring to?

14 A. Supporters of the -- or those who are listening to the radio.

15 Q. And when you say "supporters," these are people of what ethnicity?

16 A. Because he was talking in Kalenjin, it must be the Kalenjin community.

17 Q. And you said that he would have said, "People, be alert on that." What did
18 that mean to you when you listened to that?

19 A. Because if there is a rumour that vehicles are carrying the -- the fake ballot
20 papers and going towards the regions, then people should be called to the road to
21 put -- if need be, to block those vehicles from bringing those ballot papers to the area.

22 Q. Now, was there any mention about what type -- about what type of vehicles?

23 A. Mololines Shuttles, which is public transport vehicles, and also some buses
24 called City Hoppers.

25 PRESIDING JUDGE EBOE-OSUJI: "City Hoppers," you said?

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1 THE WITNESS: Yes.

2 MR GARCIA:

3 Q. Now, in regards, Mr Witness, about this Mololines, what can you tell us about
4 Mololines vehicles?

5 A. It is, the way I understand these vehicles is I think play the routes of
6 Nairobi-Eldorets and some other roads I cannot explain at the moment, but which
7 I know is playing Eldoret-Nairobi.

8 Q. Do you know who owned this Mololine vehicles?

9 A. I don't know exactly, but a rumour is that it's owned by Kikuyu.

10 Q. And when you say "a rumour is," where did you hear this rumour?

11 A. It's speculations that this vehicle is owned by Kikuyu.

12 Q. And as for City Hoppers, do you know what -- people of what ethnicity own
13 that line?

14 A. Also I heard that it is owned by Kikuyus, especially former MPs and MPs from
15 central Kenya.

16 Q. Now, you also said in response to my question that there was announcement in
17 the morning that people should be ready to see that actually they could block roads,
18 because there are some vehicles which might carry the ballot papers to the
19 wrong -- ballot papers to the areas.

20 Now, what was it with these ballot papers? What was the rumours exactly?

21 A. Mmm?

22 Q. What was the problem with the ballot papers that were allegedly being brought
23 in?

24 A. This was allegedly that it will be used to rig the elections. It is not going to be
25 real ballot papers from the Electoral Commission, but fake ballot papers which can be

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1 used to rig election. I don't know how it will be done, but ballot papers to rig
2 election.

3 Q. And you also mentioned that there was a question of blocking the roads. Was
4 there any mention of any specific roads?

5 A. Yeah, like Eldoret-Nairobi roads, Kabarnet, Iten, Eldoret -- Eldoret Roads, all
6 roads through Kerichos. That is areas which I can understand is areas mainly
7 populated by Kalenjin communities.

8 Q. I'd like us just to go through those. How many main roads are there leading
9 into Eldoret?

10 A. There is Iten.

11 Q. Let's just take them one by one. So Iten, I-T-E-N?

12 A. Iten, I-t-e-n.

13 Q. All right. And what is --

14 A. Eldoret Road, yeah.

15 Q. So the Iten-Eldoret Road. I'd ask you to just wait a couple of -- at least five
16 seconds after I ask my questions so we don't have any problems in that regard.
17 Now, second major road leading into Eldoret?

18 A. There is one Eldoret-Kapsabet-Kisumu Road.

19 Q. So it's Eldoret-Kapsabet?

20 A. Yeah.

21 Q. And the last place you mentioned is? Is it --

22 A. Kisumu.

23 Q. So it is K-I-S-U-M-U, is that correct?

24 A. Yeah.

25 Q. Are there any other major roads leading into Eldoret?

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1 A. And of course the one main road transit to get into Uganda, that is

2 Nairobi-Eldoret Roads or Uganda-Eldoret Road.

3 Q. All right. So just to be clear, there's a Nairobi-Eldoret Road, that's correct?

4 A. Yeah.

5 Q. And you also mentioned a Uganda-Eldoret Road?

6 A. It is still the same road from Nairobi to Uganda, but I use it -- the other line,

7 Uganda -- Eldoret-Uganda Roads is also coming to the town from the other side.

8 Q. Are there any other major roads leading into Eldoret?

9 A. There is none. No other but small roads.

10 Q. Now, once you've heard this, you said you heard this rumour on Kass FM, can

11 you tell us what was the effect of that on the people?

12 A. I think the information incite the public much and then they are

13 (indiscernible) -- and most people came to the town to -- to -- to do what they have

14 been informed to do.

15 PRESIDING JUDGE EBOE-OSUJI: Line 8.

16 MR GARCIA:

17 Q. I'm sorry, Mr Witness.

18 Yes?

19 PRESIDING JUDGE EBOE-OSUJI: One second. Line 8, the word "incite" is

20 somewhere in there. "I think the information incite," I'm quoting and unquoting,

21 "the people much."

22 MR GARCIA: I think it was "the public much," but I can ask the witness.

23 Q. Mr Witness, just to be clear, I think I heard the word -- I think I heard you say

24 that "the information had incited" --

25 A. Mmm-hmm.

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1 Q. -- "the public." Is that what you said?

2 A. Yes.

3 Q. And you say that most people came to town to do what they are informed to do;
4 that's correct?

5 A. Of course.

6 Q. Now, when you say that "the information" --

7 MS BUISMAN: Be careful, leading. "Is that correct?" The judge already warned
8 you earlier.

9 MR GARCIA: Your Honour, I'm reciting the answer of the witness just to be clear
10 that what is on the record is accurate. So it is leading, but just for that precise
11 purpose.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, that was different from the
13 admonition given Mr Garcia the last time. The last time was whether the witness's
14 subsequent answer appeared to have been different from what he had said before,
15 and Mr Garcia directly corrected it. That is what I said that needed to be done with
16 questions. But on this occasion where the information had already been given and
17 counsel is bringing it back in as indicated earlier, that wasn't precisely what I had in
18 mind last time.

19 Let's proceed.

20 MR GARCIA:

21 Q. Now, Mr Witness, can you explain to us and give us more details on how this
22 incited the public? Can you explain that to us?

23 A. I have explained that people were incited that ballot papers will be bringing to
24 Eldoret, and people were actually having that information, and then they were ready
25 to block the roads or to do some rioting in the town and to make sure that

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1 they -- those ballot papers would not reach Eldoret.

2 Q. And you're mentioning the people here. And these are people of what
3 ethnicity, Mr Witness?

4 A. The people who were complaining actually at that particular time were mainly
5 Kalenjins and -- and mainly supporters of the Orange Democratic Movement, which
6 is also -- their main tribes which are supporting the ODM, who are Luos, Luhyas and
7 some other small other tribes.

8 Q. Just to be clear on that last response, Mr Witness, when you say that the people
9 were incited, what was the predominant tribe or ethnic group that was incited
10 because of what was being said on the radio on Kass?

11 A. That is Kalenjins.

12 Q. And just -- just one more clarification, Mr Witness, just in regards to the
13 supporters of the ODM, what were the ethnic groups that were supporting the ODM
14 at that point in time in 2007?

15 A. Mainly many supporters of the -- no all -- nearly all tribes could not have
16 supported a particular party, but main supporters of ODM by then were Kalenjins
17 and Luos from Nyanza and they are also living in Eldoret.

18 Q. Now, you also said that most people came to town "to what they are informed
19 to do." Can you give us -- can you explain that a bit more? What did the people
20 come to town to do?

21 A. People from the villages around areas could come to town to -- to clog the roads
22 or to -- to hear from people who are -- because town is a populated area, and many
23 people could be there so that they can do some action when they are in groups.

24 Q. And when you say "to do what -- to do -- to what they are informed to do," who
25 was informing them to do this?

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1 A. I heard Sang talking, using his radio station to announce that, and that's what
2 I -- also there was public -- there was a -- a personal car which was mounted a
3 loudspeaker on it and some -- some two people were announcing in it that "Let us be
4 ready" and just going around Eldoret town.

5 Q. We're going to get to that in a minute. I would like to know what were your
6 observations on the ground in Eldoret centre after you had heard on Kass FM
7 Mr Sang saying these things, the rumours about the ballots?

8 A. Any day -- information was that people were actually having a belief that the
9 election will be rigged, and now they were ready to use all their available means
10 to -- to stop it not to happen.

11 Q. And when you see the people were ready to use all available means, when
12 you're talking about "people," you're speaking about people of what ethnicity?

13 A. I don't want to mention a particular community all the time, but I say mainly
14 supporters of the ODM by then and which I say Kalenjin were in majority and Luos
15 and some other tribes.

16 Q. Now, you yourself, while you're in town in Eldoret on that day --

17 A. Yeah.

18 Q. -- what did you observe? Did you see any people?

19 A. Yes. I saw many people were running from another street to another, but
20 listening -- running and saying what -- causing some ruckus in town, sort of like a
21 protest in town.

22 Q. And once again I have to ask you when you're saying people who were running
23 from one street to another, these are people -- were you able to tell us what ethnicity
24 they are?

25 A. Just a few minutes ago I tell you majority of mainly Kikuyu -- Luos and

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1 Kalenjins.

2 Q. And when you're saying they were causing some ruckus, what were they doing
3 exactly?

4 A. You say what?

5 Q. You said that they were causing some ruckus in town.

6 A. Fracas, fracas, yeah, making some -- burning tyres and also running from street
7 to street, making noises, singing some songs around the town.

8 PRESIDING JUDGE EBOE-OSUJI: I believe the word is "fracas." He said "fracas."
9 We shouldn't quibble about pronunciation but it's --

10 MR GARCIA: I was reading from the transcript which says --

11 PRESIDING JUDGE EBOE-OSUJI: I saw that, but the first time I heard him I
12 thought the word would have been fracas.

13 MR GARCIA: I can clear it up with the witness, your Honour, but --

14 PRESIDING JUDGE EBOE-OSUJI: I think he cleared it up now.

15 MR GARCIA: I think, yes.

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

17 MR GARCIA:

18 Q. You said as well that these people were causing -- were doing a protest. Do
19 you remember what they were protesting about?

20 A. About rigging which is -- had been announced by the leadership of ODM by
21 then and some leaders and even that radio.

22 Q. I think the word at line -- 72, line 25 of page 72 is about rigging and not
23 wrecking. Is that correct, Mr Witness?

24 A. That's correct.

25 Q. And when you say that had been announced -- about rigging that had been

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1 announced by the leadership of ODM by then, who are you referring to exactly in the
2 leadership of ODM?

3 A. In previous rallies before the elections we could hear some leaders announcing
4 that these people are planning to rig elections and they might see fire if they try to.

5 Q. And what leaders are you referring to, what leaders within the ODM? Can
6 you give us their name?

7 A. Majority were big leaders of the party.

8 Q. All right, but what are their names?

9 A. What I've heard from them as -- I say the leadership of the ODM, the
10 presidential candidates were -- then was the Honourable Raila Odinga and the
11 pentagon members were the Honourable Musalia Mudavadi, Charity Ngilu, Najib
12 Balala and Honourable William Ruto.

13 Q. You said that leaders were announcing that these people are planning to rig
14 elections and they might see fire if they try to. When you're mentioning "these
15 people" or they were mentioning "these people," who are they referring to?

16 A. The government or the PNU or Kikuyu in particular.

17 Q. And which person in particular would have said that they will see fire?

18 A. I heard the -- Raila was saying that maybe people are planning to rig, but he
19 didn't talk much about it, but I heard Mheshimiwa Ruto saying that we heard that
20 these people are planning to rig elections and he talks in Swahili saying that (speaks
21 Swahili).

22 Q. Can you translate for that -- that for us? What did you hear him say?

23 A. I don't know really the translate on that word. Maybe I can say they will see
24 fire. Maybe that's what I use it.

25 PRESIDING JUDGE EBOE-OSUJI: Can you speak the Swahili words themselves

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1 slowly, one word at a time so we can -- and Mr Garcia will be writing, so will other
2 people, see if we can capture the words themselves and read the words onto the
3 record.

4 MR GARCIA: It could be useful, as well, your Honour, if we could just give the
5 witness a -- and he can write it and I think he might be much more comfortable and it
6 might be more efficient.

7 PRESIDING JUDGE EBOE-OSUJI: Good suggestion. Can the witness be given a
8 sheet of paper and a pen as we've done with the other witnesses.

9 (Pause in proceedings)

10 THE WITNESS: Yes.

11 MR GARCIA: If we could possibly have that document and I can actually read it
12 into the transcript or we can have it produced as an exhibit.

13 Your Honour, I'm going to read it into the transcript or we can have it more simple
14 and just have it produced as an exhibit in the court record.

15 PRESIDING JUDGE EBOE-OSUJI: Read it onto the transcript so -- if you can.

16 MR GARCIA: Yes, well, I'm going to spell it out actually. So the first word is
17 T-U-N-A.

18 Q. And, Mr Witness, you can correct me if I make a mistake at any point. So first
19 word is T-U-N-A. Second word, S-I-K-I-A. Third word, W-A-N-A-T-A-K-A.

20 Fourth word, K-U-I-B-A. Fifth word is K-U-R-A. Sixth word is W-A-J-A-R-I-B-U.

21 Seventh word is W-A-T-A-K-I-O-N-A. And the last word is

22 C-H-E-M-C-H-A-K-U-N-I.

23 Is that correct, Mr Witness?

24 A. Yes.

25 PRESIDING JUDGE EBOE-OSUJI: Can you say it again yourself, Witness.

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1 THE WITNESS: Tuna sikia wanataka kuiba kura wajaribu watakiona chemchakuni.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 MR GARCIA:

4 Q. So, Mr Witness, we will come back on that later on in your testimony.

5 For the moment I'd like us to go back and you were saying that there was a -- you also
6 mentioned that there was a personal car with loud speakers. What can you tell us
7 about that?

8 MR KHAN: Mr President, before that, I wonder if the note written by the witness
9 can just be shown as a courtesy to the Defence.

10 PRESIDING JUDGE EBOE-OSUJI: Yes, please. It looks like we will have to put
11 that thing into the record after all.

12 MR KHAN: Indeed.

13 PRESIDING JUDGE EBOE-OSUJI: All right. Let's put it onto the record as
14 Prosecution --

15 MR GARCIA: (Microphone not activated)

16 PRESIDING JUDGE EBOE-OSUJI: -- as a Prosecution exhibit.

17 THE COURT OFFICER: The document produced by the witness KEN-OTP-P-0658
18 will bear the number EVD-T-OTP-00249.

19 The document will get an ERN number and will be uploaded in eCourt a posteriori.

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

21 Please, proceed.

22 MR GARCIA:

23 Q. Now, Mr Witness, you mentioned as well during your testimony a personal car
24 with loud speakers. What can you tell us about that?

25 A. Yes, it was going round announcing the same information that there is some

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1 vehicles, let us gather together around to make sure that we block certain vehicles
2 from entering town. And I don't know if I can mention their names or one of their
3 names who are in this vehicle or --

4 Q. I will be asking you the question.

5 So just to be clear, because I'm seeing here that it's unclear at page 76, line 14, this
6 vehicle was going around where?

7 A. Eldoret town. Sometimes goes beyond Eldoret going -- taking route of
8 Kapsabet or Iten Road.

9 Q. Now, did you yourself observe this vehicle while it was going around Eldoret?

10 A. Yes.

11 Q. Now, you said that there were loud speakers on this vehicle?

12 A. Yeah.

13 Q. Were they being used?

14 A. To announce.

15 Q. And more specifically what was being announced by this vehicle on the loud
16 speakers?

17 A. People to go around to make sure that they blocked -- they make sure that they
18 could block these coming vehicles from entering the -- the town bringing fake ballot
19 papers.

20 Q. And just to be clear as well, when you're saying "block these vehicles," what
21 vehicles were -- was he speaking about?

22 A. Mololines Shuttles.

23 Q. Now, did you recognize that vehicle that was going around with the loud
24 speakers?

25 A. Yes.

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1 Q. I'd ask you just -- just be mindful of the five-second delay from my question to
2 your answer.

3 Now, you've responded "Yes" to that. What can you tell us about the vehicle that
4 was going around?

5 A. I can't remember the number of the vehicle, but I think it was -- if I'm not wrong
6 it's -- it was a Nissan Patrol, dark blue in colour or something like that, I cannot
7 remember (indiscernible) and I can't remember if -- if I say the number, maybe it was
8 KAG600Q, but I'm not sure about it.

9 Q. Now, you're referring -- you're referring to the number plate on the vehicle?

10 A. Yes.

11 Q. And what we have here on the transcript is KG600Q.

12 A. Yeah.

13 Q. KG600Q?

14 A. Yes.

15 PRESIDING JUDGE EBOE-OSUJI: K or --

16 THE WITNESS: KA --

17 PRESIDING JUDGE EBOE-OSUJI: KG or KAG or KHG?

18 THE WITNESS: KAG.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR GARCIA: Thank you, your Honour.

21 Q. So it's KAG600Q?

22 A. Yes.

23 Q. Now, had you ever seen this vehicle before?

24 A. Yes.

25 Q. Where had you seen this vehicle before?

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1 A. In Eldoret.

2 Q. Do you know who it belonged to?

3 A. It belonged to Mheshimiwa Honourable William Ruto.

4 Q. Now you say you had seen it in Eldoret prior to that. Can you tell us about
5 what context or what circumstances you had seen this vehicle?

6 A. Mmm-hmm?

7 Q. In what context had you seen this vehicle before; before that day?

8 A. It was only I knew it as a personal vehicle of Mheshimiwa, but I don't know
9 beyond that point.

10 Q. Are you able to tell us how many times before you had seen this vehicle?

11 A. Several times, but I can't tell how many times.

12 Q. I'm sorry, we didn't hear you because obviously I asked you the question and
13 you didn't wait 'til five seconds, but the question was how many times before have
14 you seen --

15 A. I'm saying --

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

17 MR GARCIA:

18 Q. Just one minute, Mr Witness. Take your time, wait a couple of seconds - I
19 know you want to answer the question - and then answer.

20 A. I'm saying several times. I cannot remember the times which I can specifically
21 say it how many times.

22 Q. And how do you know that it belonged to Mr Ruto?

23 A. Because I'm always seeing -- I sometimes see him in that vehicle and the drivers
24 is -- is -- is his drivers.

25 Q. Now on that particular day, on 26 December, who was in the vehicle?

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1 A. There is one person I cannot know his name, but he's a brown man, but another
2 guy was David Maswai.

3 Q. Just on line --

4 MR KHAN: Sorry, Mr President. I wonder if we could clarify if the witness said at
5 line 5 "proud man" or "brown man"?

6 PRESIDING JUDGE EBOE-OSUJI: And also was it "another car," or "another guy"?
7 Witness, see what appears from the transcript. I want you to listen carefully and
8 see -- and tell us what you were saying. Well, you were reported as saying, quote,
9 "There is one person I cannot know his name, but he's a proud man, but there was
10 another car that was David Maswai"?

11 THE WITNESS: No, I'm meaning the driver of this third vehicle was a brown guy, a
12 brown man, if I can use my --

13 PRESIDING JUDGE EBOE-OSUJI: Brown?

14 THE WITNESS: Yeah, brown. Yes.

15 PRESIDING JUDGE EBOE-OSUJI: As in the colour brown?

16 THE WITNESS: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: Okay.

18 THE WITNESS: But the person who was with him in the same vehicle is called
19 David Maswai.

20 PRESIDING JUDGE EBOE-OSUJI: All right. By "brown man" you mean he was
21 light in complexion?

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: He was an African --

24 THE WITNESS: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: -- but a lighter complexioned person?

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1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Proceed, please.

4 MR GARCIA: I see that the spelling is correct for David Maswai.

5 Q. Now, Mr Witness, can you tell us how the people were reacting to this vehicle
6 going around and saying these things?

7 A. As it was -- it was making announcement, people were listening to it that they
8 follow it from behind to go the direction where they announce it.

9 Q. And in which direction were they heading?

10 A. Around 11, they were heading to -- to --

11 Q. You can simply say it, Mr Witness. You don't need to refer.

12 A. To Eldoret police station.

13 Q. Now this person that you've identified as Mr David Maswai, can you tell us
14 what ethnicity he is?

15 A. He's a Nandi.

16 Q. Had you ever seen him previously?

17 A. Yes, I've been seeing him. I know him.

18 Q. Can you tell us if he had other occupation --

19 A. He was --

20 Q. -- at the time?

21 A. I don't know if he was still working, but he was formerly working with the
22 Kenya Post and Telecommunications in Eldoret.

23 Q. Now, you say that the vehicle was heading over to the police station. What
24 police station would this be?

25 A. Eldoret police station.

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1 Q. And what happened after that?

2 MR KHAN: I do apologise, Mr President. My learned friend has had details -- a
3 list of details of David Maswai, but it would be useful, as we've talked about two
4 individuals in the car, to have on record anything about the brown man, whether or
5 not the brown man has been seen before. It would be useful to have that in-chief
6 because it clearly is relevant. I'd be grateful.

7 PRESIDING JUDGE EBOE-OSUJI: I will leave that to Mr Garcia.

8 MR GARCIA:

9 Q. Now, Mr Witness, can you tell us what happened afterwards? You saw this
10 vehicle with loud speakers making announcements, people as well. What happened
11 afterwards? What did you observe?

12 A. I've clarified that people -- after -- after announcing this such -- there is real
13 ballot papers -- there are some vehicles which are coming towards Eldoret, so they
14 just run towards the main road from Nairobi to see if that vehicle is coming actually
15 carrying the ballot papers.

16 Q. And just -- just to give us an idea about how many people were running
17 towards the main road going to Nairobi? Wait a couple of seconds before you
18 answer.

19 A. That one I could not count because it was so many people. Like in town you
20 cannot count peoples because it is a town and so so many people.

21 Q. Just -- just so we get an idea, is it more or less than 500 people?

22 A. I think it could not be even 500. It can be much (indiscernible). It's a town
23 and you know a town. If anything happen, many people will come. You cannot
24 count them. It's in thousands, I think so. It's more than a thousand, even I can say.
25 No, it's five or three thousand.

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1 Q. Just before we move on to another question, these people that you saw running
2 towards -- towards the main road, do you know from where they came from?

3 A. They are already in town, in different location in town, and they were running
4 up and down in town in the streets of Eldoret.

5 Q. Were these people -- from your knowledge, were these people from Eldoret?

6 A. Because I think from the surrounding villages and mainly from the town. Luos
7 are from the town and some of the Kalenjin are from the town, but majority were
8 coming from the nearby areas.

9 MR KHAN: Mr President, can I say it's very difficult for me to follow this. I think
10 one critical question is missing that we're entitled to: Where is the witness when he's
11 seeing these different things? Is he in one location, or different?

12 And, your Honours, in my respectful submission of course these can be clarified in
13 cross-examination, but your Honours it's only right that the Prosecution elicit this
14 evidence. Otherwise, we can't follow the evidence that the witness is giving. We're
15 seeing these snapshots, but we can't tie it together with his own movements.

16 So the normal question of course is "What did you see? Where are you?" or the other
17 way round, and in relation to each item that the witness has given evidence about.

18 And I'd ask that my learned friend do that so that the record is clear and so that we
19 can prepare cross-examination and understand it.

20 MS BUISMAN: And just if I may as well? At page 81, line 11, I think we need to
21 clarify that because it says "... he was family working ..." I think that was "formally
22 working," but maybe I just make this comment.

23 PRESIDING JUDGE EBOE-OSUJI: The second observation is something different
24 from the first one. Ms Buisman's was that if there's testimony it needs to be clear in
25 what it is saying, in terms of what it actually says, but Mr Khan's own concern is

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1 about making sure the storyline is clear to him.

2 That I will not be compelling Mr Garcia to do. It's his case to make and he needs to

3 be allowed to conduct his examination-in-chief. Anything that's not cleared up in

4 that way will be up to cross-examining counsel to seek to clarify it if they want to, but

5 for now I will leave it up to Mr Garcia. That's why I say some things are up to him

6 to clear up.

7 The question about the brown man is -- I will be asking the witness some questions

8 about that for your benefit, Mr Khan, but I will not interrupt Mr Garcia's flow to do

9 that.

10 MR KHAN: I'm obliged.

11 PRESIDING JUDGE EBOE-OSUJI: Yes. But he wants to clarify --

12 MR GARCIA: I will clear that up, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 MR GARCIA:

15 Q. Now, Mr Witness, just so we can get a clear picture of what's going on that day,

16 when you're observing these things, you said you -- you observed the crowd heading

17 into the road, the Nairobi road, where were you at this point?

18 A. I cannot say I was in specific place because Eldoret town is not a big area.

19 I was in the street of Kenyatta Street, at the corner, and then following up from

20 behind and towards the directions they were announcing. So it was in Kenyatta

21 Street, also Kinga (phon) Street, so I cannot be -- say I stayed in a specific place just to

22 observe. I was just walking around.

23 Q. All right. You say you were walking around?

24 A. Yes.

25 Q. And in respect -- and in respect to the crowd what were you doing?

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1 A. I was just following what is -- and I could hear also what is being announced
2 from the vehicle and also following up from behind, going towards the same
3 directions there, and people were singing. Also were -- yeah, I was in
4 the -- that -- yeah, following from behind.

5 Q. And just to be even more clear, all these things that you've related to us that
6 you -- is this things that you've seen firsthand?

7 A. Yes, I see it in particular. I was in town until late in the evening that particular
8 day.

9 Q. All right. When we left off you were speaking about this car with the loud
10 speakers that was heading towards the police station, if I'm right. What happened
11 afterwards?

12 A. After these announcements by the vehicle and some time putting the sing
13 Luhya songs in the -- during the round, when he was going round, he put even the
14 song, that Luhya song called Luwere. That is to mean it's a -- it's a funeral. I think
15 it is a mourning song, people who mourns during their -- they were singing that,
16 "Luwere. Luwere."

17 Q. All right. Just --

18 A. And -- yeah?

19 Q. And I just didn't want to interrupt you for the minute, but just Luwere. Could
20 you spell that for us for the record?

21 A. I'm not a Luhya, but it is L-U-W-E-L-R. "Luwere. Luwere. Kwaheri Kibaki."
22 "Goodbye, Kibaki."

23 Q. Okay. And what was the -- you're saying -- what is the translation of what was
24 being said in the song?

25 A. "Luwere" I don't know the meaning, but "kwaheri" is "Goodbye, Kibaki." It's to

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1 say goodbye to the former president of Kenya. Yeah.

2 Q. And you say that is was -- that is to mean a funeral. Can you explain that, a
3 mourning?

4 A. That song is always singed by Luhyas when -- when -- during the funeral time,
5 when somebody has died. Yeah.

6 Q. So at line 10 of page 86, the first word should be, "That song is always sung by
7 Luhyas when during the funeral times." Is that correct, Mr Witness?

8 A. Yes.

9 Q. Now, you said that you were following this crowd. What happened
10 afterwards?

11 A. Actually around 11, or 11 something in the morning, another car which
12 was -- belongs to the same company which was being announced, Mololine, came in
13 from the direction of Nairobi and the people shout at it and they were following it
14 from behind. It ran straight to the police station, and that was when the people say,
15 "Now this is the vehicle we have been waiting for."

16 Q. Now, you say that this car which belongs to the Mololine arrived. Where were
17 you when you first saw this Mololine car arrive?

18 A. I was at the end of Kenyatta Street, which is opposite municipal council
19 (indiscernible) and also going toward the police stations.

20 Q. So you were able -- were you able to observe the Mololine --

21 A. Yes --

22 Q. -- shuttle arrive?

23 A. -- because, yes, I just see it but by a distance, but when I -- I confirm but it was
24 just people shouting that there -- there is a vehicle already entering this -- I just follow
25 from behind. I see it speeding up but I didn't see it directly on -- on the spot, but

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1 I was just seeing it ahead of where I was coming from.

2 MR KHAN: Mr President --

3 PRESIDING JUDGE EBOE-OSUJI: Witness, remember the pause. You see you
4 often forget about the need to wait for five seconds after Mr Garcia's finished asking
5 the question. Keep that in mind always. Keep in mind wait until he's finished.
6 Wait -- you see when he finishes --

7 THE WITNESS: Mmm-hmm.

8 PRESIDING JUDGE EBOE-OSUJI: -- he'll turn off his microphone, that's an
9 indication that he has finished and then you wait for five seconds and then you start
10 answering.

11 THE WITNESS: Okay, sorry.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Mr Khan.

14 MR KHAN: Mr President, just a reminder to my learned friend this aspect of the
15 testimony is very much in dispute and to remind him, of course, that I'd be grateful if
16 he doesn't lead on any respect.

17 PRESIDING JUDGE EBOE-OSUJI: Has he led already?

18 MR KHAN: Your Honours, I raise it in relation to one of the answers -- one of the
19 questions that he put forward --

20 PRESIDING JUDGE EBOE-OSUJI: All right. Let's leave it at that. So --

21 MR GARCIA:

22 Q. So, Mr Witness, when you speak about the Mololine car what kind of -- what
23 kind of a car are we speaking about?

24 A. Public transport shuttle, Nissan.

25 Q. Now, when the when this Mololine Shuttle arrived what was the reaction of the

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1 people? Can you give us more detail in that regard?

2 A. Because there was already announced that in the morning through Kass FM and
3 then through this vehicle and also it was a -- clear that this Mololine might be having
4 the ballot papers, the fake one.

5 Q. All right. Now, listen to my question, you say that you were there with the
6 crowd. What was the reaction of the crowd upon seeing this Mololine Shuttle?
7 And remember take five seconds once I close my microphone. Take your time and
8 answer the question.

9 A. People were following it from behind, the vehicle, and the driver actually was
10 co -- take -- driving the cars with high speed (indiscernible) safety side because they
11 were shouting on the vehicle that their IDs and the driver managed to enter into the
12 police station in time before they reached on -- on him -- on -- on them -- on him.
13 Yes, actually.

14 Q. Just to be more clear what were the people shouting?

15 A. They are saying there is a vehicle coming, this already Mololine, so we are -- it's
16 carrying the ballot papers so people were actually convinced that it's the same vehicle
17 were carrying the -- the fake ballot papers. And if they could catch him before
18 that -- reach the -- the station, maybe something else could happen, maybe that
19 vehicle could be burned down before even confirm that it he was car -- it was carrying
20 the fake ballot papers.

21 Q. So just to be -- just to correct, your Honours, it's line 2 of page 89. I think it's
22 the driver managed to enter into police station in time and not mention to enter. Did
23 the driver indeed manage to enter?

24 A. (Overlapping speakers)

25 Q. Now, just so we understand the police -- now, that police station or police

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1 department, how -- how is it exactly -- what is the configuration?

2 A. Like you --

3 PRESIDING JUDGE EBOE-OSUJI: Wait a minute, please. Was there an answer to
4 the question ending at line 14?

5 MR GARCIA: I think the answer of the witness was "Yes". The question was
6 whether the driver managed to enter the police station on time.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, you see what's happening is
8 a lot of your -- your evidence is being -- we're having difficulty getting all of it on the
9 transcript the first time, it is because of that five-second rule, that's why we're having
10 all these difficulties. So like now the last answer was "Yes" but it didn't come in at all
11 because you answered immediately. So try and observe the pauses, please.

12 MR GARCIA:

13 Q. Can you just, Mr Witness, describe the police station for us, Eldoret Police
14 Station.

15 A. In which way? Location or?

16 Q. I understand you've mentioned that the driver managed to make his way or to
17 enter the police station. Where did he go exactly in respect to the police station?

18 A. Just entered into the gate of police stations and drive to the -- behind of the
19 police station and parked there.

20 Q. Now, Mr Witness you said -- at line 12 you said "just into the" something "a
21 police station." What was the word?

22 A. Into the police station. Gate.

23 PRESIDING JUDGE EBOE-OSUJI: Into the gate.

24 MR GARCIA: Into the gate.

25 THE WITNESS: Gate of the police station, yeah.

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1 PRESIDING JUDGE EBOE-OSUJI: Yes, he said "into the gate of the police station."

2 THE WITNESS: Yep.

3 MR GARCIA:

4 Q. So the vehicle managed to get into the gate and parked in the back. What
5 happened afterwards?

6 A. Um --

7 Q. Just remember the five seconds, Mr Witness.

8 A. Um, people actually were going towards the police station and the same people
9 in the vehicle were announcing that Mheshimiwa will be coming soon to the -- to the
10 station so that we can go and see together what is there.

11 Q. Did you manage to see what happened to the driver of this Mololine?

12 A. I -- I didn't reach there before -- I -- I didn't know him even in person because
13 I was just seeing from behind so I cannot say even what ethnicity or what. I just see
14 the vehicle what's Mololine.

15 PRESIDING JUDGE EBOE-OSUJI: The word --

16 MR GARCIA: Mheshimiwa.

17 PRESIDING JUDGE EBOE-OSUJI: Mheshimiwa -- was that word Mheshimiwa?

18 THE WITNESS: Mheshimiwa is honourable.

19 PRESIDING JUDGE EBOE-OSUJI: Honourable?

20 THE WITNESS: Yep.

21 PRESIDING JUDGE EBOE-OSUJI: And you were referring to who?

22 THE WITNESS: We were saying that Mheshimiwa will be coming, that is
23 Honourable William Ruto.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR GARCIA:

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1 Q. Just to be --

2 PRESIDING JUDGE EBOE-OSUJI: Just one second, please. The word has occurred
3 in your testimony a few times. It's based on Ruto or was he the only one to whom
4 that word was used, Mheshimiwa, or were there more than one persons to
5 whom -- who were referred to by that title or that reference?

6 THE WITNESS: Because I've -- I believe but I cannot say honourable -- the word
7 "Mheshimiwa" is ever a -- a person who is elected as a member of parliament or
8 somebody who have been elected as a member of parliament who have such a title to
9 be Mheshimiwa, but this I think people were referring certainly Honourable Ruto but
10 because he's -- it was in his vehicle.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Please, proceed.

13 MR GARCIA:

14 Q. And just to be clear, Mr Witness, when you say the people, the same people in
15 the vehicle were announcing that Mheshimiwa would be coming what vehicle are we
16 speaking about here?

17 A. KAG 600Q. The person who was announcing was David Maswai and the
18 driver was the other car, he was brown.

19 Q. Now, in regards --

20 PRESIDING JUDGE EBOE-OSUJI: Did you say the other guy who was brown?

21 THE WITNESS: Mmm-hmm.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 THE WITNESS: It was a -- it was a driver.

24 PRESIDING JUDGE EBOE-OSUJI: The driver?

25 THE WITNESS: Yep.

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1 PRESIDING JUDGE EBOE-OSUJI: All right.

2 MR GARCIA:

3 Q. Now, just before we move on, Mr Witness, in regards to this other person, the
4 driver, what do you know about -- do you know anything about him?

5 A. I know him as a driver of Mheshimiwa for quite a longer time.

6 Q. Can you tell specifically of what subtribe he is?

7 A. Kalenjin.

8 Q. Has he --

9 A. Kalenjin.

10 PRESIDING JUDGE EBOE-OSUJI: Are we talking about the brown man?

11 MR GARCIA: Yes, indeed, your Honour.

12 Q. So, Mr Witness, now you left us off the Mololine, the car had parked in the back.
13 What happened afterwards?

14 A. After around 12 or somewhere there actually people were gathered at the
15 stations, went to -- to see what is inside the vehicle, but because it was police -- police
16 station anyway, there was a -- a order, people were being -- announcing that anyway
17 let's wait and see first before we act on what is -- to see what is there in the vehicle.

18 Q. What were they -- what were they looking for in the vehicle?

19 A. They -- actually they were -- wanted to know if it was carrying fake ballot
20 papers.

21 Q. And while all of this is going on where were you?

22 A. Already -- we were already in the station next to -- not far from the police
23 station anyway -- not far from the police station, just opposite the police station.

24 Q. Now did the people get access to the Mololine car eventually?

25 A. Yes, after around -- I don't remember the time, but somewhere before 1, the two

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1 honourables arrived and the meeting were in order and then they were saying that
2 they will go and see for themselves with -- accompanied by OCPD to see if they could
3 find the fake ballot papers and then they could bring back the information to the
4 people, to the public.

5 Q. Now, you say that before 1 two honourables arrived. Who exactly arrived?
6 Can you give us the names of the people?

7 A. It was the Honourable Henry Kosgey of Tinderet and Honourable William Ruto,
8 Eldoret North.

9 PRESIDING JUDGE EBOE-OSUJI: At line 21 the letters are OCPD.

10 MR GARCIA: And, your Honours, at line 25 it is Tinderet, T-I-N-D-E-R-E-T.

11 Q. Now, do you remember, Mr Witness, how both Mr Kosgey and Mr Ruto
12 arrived?

13 A. I can't remember the time, but between 12 there or somewhere before 1.

14 Q. Can you be a little bit more clear in my question, but did you observe them?
15 Did you see them arrive, Mr Ruto and Mr Kosgey?

16 A. Yes --

17 Q. Just take --

18 A. -- they --

19 Q. -- take the five seconds, Mr Witness. Just remember that. Take a couple of
20 seconds right after I ask my question.

21 A. Yes, I saw them coming in by foot. They were not using the vehicles.

22 Q. Do you remember from what direction they were coming?

23 A. I just seen them entering the station. I didn't know where they came from,
24 maybe from the side of Uganda Road, so I just see them when they have
25 already -- and then people were shouting "Mheshimiwa, Mheshimiwa" and then I did

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1 know which direction, but till I was around there (indiscernible).

2 Q. And what happened afterwards?

3 A. The people were now trying to speak from the top of the car and then some two
4 councillors were the one who were controlling the public and talking, and later on
5 they gave it to the two honourables to talk and then they went to see the -- what was
6 in the vehicle accompanied by the OCPD.

7 Q. All right. Now, I'd just like to add a -- I'd just like to go back on that a bit.

8 You've mentioned that two councillors were there. Who are these two councillors?

9 A. Um, one was Farouk Kibet, a nominated councillor; and another one was Mutai.
10 I can't remember his name, but he was called Mutai, former chairman. I don't know,
11 Wilson or -- I cannot remember the other name. At least Mutai.

12 PRESIDING JUDGE EBOE-OSUJI: Did you say Mr Kibet was a nominated
13 councillor?

14 THE WITNESS: Yes.

15 MR GARCIA:

16 Q. Now, Mr Witness, in respect to when you saw Mr Kosgey and Mr Ruto arrive
17 when did these two councillors arrive, can you tell us --

18 A. They were in the group of who were demonstrating (indiscernible) from -- from
19 around 10 in the morning, so they didn't arrive, so they were with a group of people
20 in town.

21 Q. Now you said that there's some two councillors who were the one who were
22 controlling the public and talking and later on they gave it to the two honourables to
23 talk." Now, can you give us --

24 A. Yes.

25 Q. Can you give us more details on that? Which one of the councillors was

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1 speaking?

2 A. I've already mentioned the two councillors.

3 Q. Now, you've mentioned Mr Kibet and Mr Mutai. Which one of both started
4 speaking, do you recall that?

5 A. Farouk.

6 Q. Do you recall exactly where he was when he was speaking?

7 A. At the top of this vehicle, KAG 600Q.

8 Q. Now, when Mr Kibet was speaking, at what distance were you from him?

9 A. It was just opposite the same area, yeah. You could listen to them, but the
10 same area, just after the tarmac, and there is a petrol station around there, so I was
11 standing there.

12 Q. And in terms of distance, if you look at this courtroom, where would Mr Kibet
13 have been in respect to you?

14 PRESIDING JUDGE EBOE-OSUJI: Or if it is longer than the courtroom also, keep
15 that in mind.

16 THE WITNESS: I think it is tarmac is like this road, it is like the house, from where
17 you are now here and then some few metres, 2 metres away from the road. So it's
18 just up -- like, if I can say, from here to where you are now I can say maybe 8 metres
19 or so.

20 PRESIDING JUDGE EBOE-OSUJI: So from where you are sitting as in the witness
21 seat?

22 THE WITNESS: Where I was standing.

23 PRESIDING JUDGE EBOE-OSUJI: One second. We want to get on the record the
24 distance estimate. And you say it's -- the distance is approximate to between where
25 you are sitting as a witness and where I am sitting now.

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1 THE WITNESS: Yes, yes.

2 PRESIDING JUDGE EBOE-OSUJI: All right.

3 THE WITNESS: And maybe another 2 metres away from where you are, behind
4 your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: And 2 more metres behind me?

6 THE WITNESS: Yes.

7 PRESIDING JUDGE EBOE-OSUJI: Okay.

8 MR GARCIA: I would say, your Honour, that would maybe be 8, 9 metres,
9 approximately. I'm not --

10 PRESIDING JUDGE EBOE-OSUJI: Fair enough, but we get the point.

11 MR GARCIA:

12 Q. Now, Mr Witness, are you able to recall what Mr Kibet would have said on that
13 day?

14 A. He was referring anyway to the Kikuyu who were actually having their
15 leader -- their leaders in the -- in the -- in Uasin Gishu and said that these people
16 should inform Kibaki that they will not steal the vote from us, and they were -- he
17 was mentioning that OCPD back then was a Kikuyu, and the DC was a Kikuyu, and
18 he was mentioning several Kikuyus, that is to say that Kikuyus must see and they
19 have to go. They will not steal our vote.

20 Q. Did he say anything else?

21 A. I just talked that way, and then the people wanted to give the other
22 councillor pick it up, but then before he talk, he could talk few words, and then the
23 public wanted to -- Mheshimiwas to talk. They didn't give him more chance to talk,
24 the second councillor. But he was just saying we have to go and see what is there in
25 the vehicle.

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1 Q. Now, you started out by saying that he was referring anyway to the Kikuyu
2 who were actually having their lead -- their leaders in Uasin Gishu. Can you explain
3 that to us?

4 A. By then actually the majority of the -- especially the officer commanding
5 divisions, who was OCPD by then, was a Kikuyu and then the DC was a Kikuyu.
6 I don't remember somebody else was a Kikuyu.

7 And so Farouk was actually angry to show that Kikuyus actually -- especially Kibaki
8 was not balancing. He's just making his people, Kikuyus, to be in positions.

9 Q. And what was the reaction of the crowd to what Mr Kibet was saying?
10 Remember the five --

11 A. (Overlapping speakers)

12 Q. Remember the five seconds, Mr Witness.

13 A. Because he was saying Kikuyus must go, the group was supporting saying yes,
14 they must go. They were listening to him and saying when Farouk said Kikuyus
15 must go.

16 Q. And when Mr Kibet was saying that "they will not steal the vote from us," do
17 you know why he was saying that?

18 A. Because the -- the -- the message which was there was that rigging is going to
19 happen. So they were saying Kikuyus will not rig elections, yeah.

20 Q. Now, you said --

21 MR KHAN: I'm sorry, Mr President, I don't want to interrupt, and I may be wrong,
22 but at line -- page 98, between lines 7 and 11, what I noted is not recorded. And I
23 thought the witness said that Farouk was complaining that Kibaki was not balancing
24 his positions. I thought I heard the word "balancing his positions," and I don't see
25 that in the transcript, unless I'm mistaken. It says "inaudible." I don't know if that's

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1 the bit that's missed, but I thought I'd rise to raise the point.

2 MR GARCIA:

3 Q. Mr Witness, can you help us with that? Did Mr Kibet say something about
4 Mr Kibaki not balancing his positions?

5 A. It's exactly what Khan said.

6 Q. Thank you, Mr Witness, for that.

7 Now, Mr Witness, you mentioned that Mr Kibet was a -- can you explain to us who he
8 was at that time. Did he have any specific functions?

9 A. I will just say that he was a nominated councillor and there was no specific
10 functions. It was depending how we talk first, and Farouk, because he was a
11 councillor had opportunity to talk.

12 Q. And he was a councillor for what party? What party was he supporting at that
13 point in time?

14 A. He was KANU, KANU.

15 Q. Now, you say he was a nominated councillor. For what area?

16 A. A nominated councillors doesn't have a specific area but is representing the
17 whole county.

18 Q. Which county would that be?

19 A. It was Wareng county.

20 Q. So it is W-A-R-E-N-G, correct?

21 A. Yes.

22 Q. Can you tell us since what year he had been nominated councillor for that area?

23 A. He was nominated immediately after the election of 2002.

24 Q. And can you tell the Court who nominated him to that position?

25 A. I cannot know exactly who nominate him. But his political party, KANU.

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1 MR GARCIA: Your Honour, I see the time.

2 PRESIDING JUDGE EBOE-OSUJI: I will crave everyone's indulgence, but let's go on
3 for another 15 minutes.

4 MR GARCIA: Certainly, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Yes.

6 MR GARCIA:

7 Q. Now, Mr Witness, after Mr Kibet --

8 PRESIDING JUDGE EBOE-OSUJI: One second, please.

9 (Trial Chamber confers)

10 PRESIDING JUDGE EBOE-OSUJI: And we will leave just then just to be sure, so you
11 cannot take it beyond that, quarter past 4, I meant.

12 MR GARCIA: Pardon me?

13 PRESIDING JUDGE EBOE-OSUJI: In 15 minutes we'll be done and that's it.

14 MR GARCIA: That's fine.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR GARCIA:

17 Q. Now, Mr Witness, after Mr Kibet, who spoke?

18 A. Mutai, the councillor Mutai.

19 Q. And can you tell us something about Mr Mutai, what ethnicity was he?

20 A. Nandi.

21 Q. And at that point in time, what political party was he supporting?

22 A. By then he was councillor of KANU, but already the people have shift from
23 KANU to ODM, and both of them which was started in 2005 and then which was also
24 political party for who was competing with the other parties.

25 Q. So at that point in time in 2007, on the 26th of December, what political party

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1 was he supporting, Mr Mutai, to your knowledge?

2 A. Orange Democratic Movement.

3 Q. Now, do you recall what Mr Mutai would have said on that day?

4 A. He just talk a few words, that we have to see -- we must see what was in the
5 vehicle. And he said maybe they must have take it somewhere else, not in the
6 vehicle. And then the public were not listening to him anymore. They wanted
7 to -- to give it to the Mheshimiwa there (indiscernible).

8 Q. And what happened after that?

9 A. I can't remember very well, but Mheshimiwa was given a chance to speak,
10 Honourable William Ruto, and he was just said to people to be patience, and they will
11 go and see themself what is there and then they will come to tell them.

12 Q. Would you be able to tell us exactly what Mr Ruto would have said on that day?

13 A. I can't remember exact word, but he was telling people to be patient a little bit
14 (speaks Swahili), what was inside the vehicle, and then they're going to come back to
15 tell them. And that is exactly what also Honourable Kosgey repeated and then they
16 went together with OPCD.

17 Q. And at that time, the OPCD you said was a person of Kikuyu ethnicity. Do
18 you remember his name?

19 A. I can't remember his name exactly, but if I can still remember he's called
20 Mr Kalistas Kakuru (phon) or somewhere there. I can't -- I can't remember very
21 well.

22 Q. So what happened afterwards, Mr Witness?

23 A. After they go and confirm that there was nothing in the -- in the vehicle really, it
24 was just a transport vehicle, they just come and announce to the people. But the
25 people were not convinced that there was nothing. So they just assume that maybe

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1 there was no truth about it. Maybe there was hidden by some police officers or
2 whatever. But anyway they decided to move from that place to another location.

3 MR KHAN: Your Honour, before we go on, the witness had helpfully given in
4 Swahili some words. It hasn't been recorded in the transcript. And like we've done
5 previously, I'd ask that the witness be requested to put it on a piece of paper the exact
6 words he said he heard Mr Ruto say when he says that he said people to be patient a
7 little bit.

8 So, your Honours, the Swahili words should be recorded as well for the record.
9 They were uttered, but I couldn't write them down.

10 PRESIDING JUDGE EBOE-OSUJI: One second. Unless if nothing turns on it, we
11 can move on. If it is something that you really feel must be cross-examined upon,
12 then we can do that.

13 MR KHAN: Your Honour, we can leave it.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, thank you.

15 THE WITNESS: And --

16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, the witness wanted to add something.
17 Do you want to continue or give him the chance to do that?

18 MR GARCIA: Certainly. I'd rather give the witness a chance if he wants to add
19 some clarification.

20 THE WITNESS: To me that what Mr Khan had just said --

21 PRESIDING JUDGE EBOE-OSUJI: It's all right. Let's not.

22 THE WITNESS: Okay.

23 PRESIDING JUDGE EBOE-OSUJI: If it is the Swahili word --

24 THE WITNESS: Okay.

25 PRESIDING JUDGE EBOE-OSUJI: -- we can move on, yes.

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1 Proceed.

2 MR GARCIA:

3 Q. Now, Mr Witness, just before we move on, you stated that initially the -- that
4 Mr Kibet spoke, Mr Mutai. Do you know where Mr Ruto or Mr -- Mr Ruto was
5 when Mr Kibet was speaking?

6 A. It -- they was just arrived from where they came from, I don't know where, and
7 they were the same -- they were just in the area.

8 Q. When you say they were in the area, in respect to --

9 A. Around police station, around that police -- Eldoret police station.

10 Q. I understand that Mr Kibet was speaking in the car or on top of -- on the car.

11 A. Mmm-hmm.

12 Q. Where was Mr Ruto at that point?

13 A. They was just standing by, next to the car.

14 Q. And can you tell us, if any, if there was any reaction on the part of Mr Ruto to
15 what Mr Kibet was saying?

16 A. I can't explain because I told you I was 500 -- 800 -- 8 metres away so -- but the
17 reaction was that people were charged, were really angry what is going on, they were
18 supporting what Mr Kibet was saying, but I cannot say -- I don't know the reaction of
19 Mheshimiwa because I was not standing next to him.

20 Q. Just to be clear for the record, Mr Witness, at page 104, line 13, you said, "I told
21 you I was 500 -- 800 -- 8 metres away." Which one of the three?

22 A. No, I said 8 metres, I said before. Just a confusion.

23 Q. Thank you for that, Mr Witness.

24 A. Yeah.

25 Q. Now, just in regards to Mr Kibet, can you tell us if he had any other functions at

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1 that time in 2007?

2 A. I have just said he was a councillor and I cannot explain further his function.

3 As a councillor he has so many responsibilities.

4 Q. And to your knowledge, apart from councillor, did he do anything else?

5 A. I cannot explain that. I cannot know.

6 Q. Could you tell us what, if any, was his relationship with Mr Ruto?

7 A. Because he usually being with him and his -- I think by being his area of
8 parliament he is the one -- I think he's very close to him, I can say that, but I cannot
9 say have any relationship, but they have -- I think I can -- I don't know which word I
10 can use, as friends or political -- they are in the same political party, word I cannot say
11 specifically, his relationship.

12 Q. I understand that --

13 A. By then. I said by then.

14 Q. I understand your answer, Mr Witness, but you said that "I think he's very close
15 to him"?

16 A. Yes, they were together all the time.

17 Q. And when you say "they were together all the time," can you give us examples
18 of times they were together that you would have seen?

19 A. Yes. Whenever any function Mheshimiwa is around, he's also -- Farouk is
20 there and he's talking as a councillor and I think he's (indiscernible) -- a councillor
21 who is -- I think is very close to Mheshimiwa the way I can see that.

22 Q. Okay. What makes you think that he is very close to Mr Ruto?

23 A. Depending on the function they are together, I think he was the one who
24 proposed him for nomination to be nominated to council, and that is make me to
25 believe that he's a very close person to him.

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1 PRESIDING JUDGE EBOE-OSUJI: Did you say you think he is the one who
2 nominated -- who nominated whom?

3 THE WITNESS: Who nominated Farouk to the council.

4 PRESIDING JUDGE EBOE-OSUJI: That Mr Ruto nominated Mr --

5 THE WITNESS: Yes, though it was through a political party which he was then
6 appointed as secretary general of the party, national (indiscernible) general.

7 PRESIDING JUDGE EBOE-OSUJI: And you said you think. What made you think
8 that?

9 THE WITNESS: Because I cannot specifically say he was the one nominating him,
10 but I say that I think because I just assume he is the one who nominate him.

11 MR GARCIA:

12 Q. You said that you had seen him together. Since when had you seen them
13 together at functions?

14 A. I cannot explain the time because all the time that -- from since I know -- I know
15 Farouk, I was seeing him with Mheshimiwa.

16 Q. And since when do you know Farouk? Approximately what year? I'm not
17 searching for a month or a day. Approximately what year?

18 A. From '97, '96 I -- I used to know him, yeah.

19 Q. And when you say that you would see them together at functions, what type of
20 functions would you see them at?

21 A. We have harambees, we have any development projects that is taking place,
22 many other things that is going on, even political rallies, yes.

23 Q. And when you would see them together at these functions, what was Mr Kibet
24 doing?

25 A. Initially he was talking as a councillor and he has contributors as a councillor

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1 and many other things that he could do as a leader, yeah.

2 Q. And you're saying Mr Ruto would have been there also at the same time as
3 Mr Kibet at these functions?

4 A. Yes.

5 Q. And when you say that he is very close - you use those words - to Mr Ruto,
6 what is that based on?

7 A. Based on the closeness with -- you can see them all the time and also his
8 nomination. You can hear this population that he was nominated by him, by
9 Mheshimiwa.

10 Q. And now when you say their closeness, what would they do together?

11 A. No, political activities and many other things.

12 MR GARCIA: I see the time, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Yes, we have to rise now.

14 Witness, we will be adjourning for the day now and we will reconvene tomorrow at
15 9.30 and you will meet us then.

16 Please do not discuss your testimony with anybody overnight. Counsel appointed
17 to assist you may discuss specifically the Rule 74 matters if he needs to do that, but he
18 needs to get -- he needs to get leave from the Chamber to do that. So we will rise
19 now and see you tomorrow.

20 But we go first into closed session to usher the witness out.

21 *(Closed session at 4.15 p.m.) Reclassified as Open session

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

23 (The witness stands down)

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

25 MR KHAN: Mr President, just one matter. It would be useful, as has been normal,

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1 to get an indication as to - now half a day has transpired in examination-in-chief - as

2 to when my learned friend anticipates, ballpark --

3 PRESIDING JUDGE EBOE-OSUJI: We'll do that tomorrow. Tomorrow.

4 Yes.

5 THE COURT OFFICER: All rise.

6 *(The hearing ends in closed session at 4.15 p.m.) Reclassified as open session

7 RECLASSIFICATION REPORT

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

9 2013, the version of the transcript with its redactions becomes Public.