

Trial Hearing  
Witness: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang  
5 - ICC-01/09-01/11  
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia  
7 and Judge Robert Fremr  
8 Trial Hearing  
9 Monday, 24 November 2014  
10 (The hearing starts in open session at 9.35 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
15 Court officer, please, the case.  
16 THE COURT OFFICER: Good morning.  
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William  
18 Samoei Ruto and Joshua Arap Sang, case reference ICC-01/09-01/11.  
19 And for the record we are in open session.  
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
21 Appearances?  
22 MR STEYNBERG: Good morning, your Honours. The Prosecution remains the  
23 same.  
24 MR NARANTSETSEG: Good morning, your Honours. For the victims, Orchlon  
25 Narantsetseg and James Mawira.

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1 Thank you.

2 MR (Redacted): Good morning, Mr President, your Honours. The same as last  
3 week. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present and his  
6 team remains the same.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MS ALAGENDRA: Good morning, Mr President, your Honours. The Ruto team  
9 remains the same, except that Mr David Hooper, QC, is not with us today.

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

11 Witness, welcome back.

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

13 THE WITNESS: Thank you.

14 PRESIDING JUDGE EBOE-OSUJI: Your examinations by counsel will continue.

15 Ms Alagendra will continue her cross-examination.

16 Remember the advice given to you in terms of observing the pauses: Five seconds;  
17 speak at a moderate pace; listen to the questions, understand them and then answer  
18 just the questions as briefly as possible. Thank you.

19 Ms Alagendra, you indicated that you will be finishing when again?

20 MS ALAGENDRA: Your Honour, I had indicated that I will do my best to complete  
21 my cross-examination by the lunch-break tomorrow, but your Honours perhaps by  
22 the end of today I could review that and advise your Honours of where I stand in  
23 relation to that, your Honour?

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

25 Please proceed. We are in open session.

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1 QUESTIONED BY MS ALAGENDRA: (Continuing)

2 MS ALAGENDRA:

3 Q. Good morning, Mr Witness.

4 A. Good morning.

5 Q. Did you rest well?

6 A. Yeah.

7 Q. You had a good weekend?

8 A. Yes.

9 Q. Thank you, sir. Sir, I'm going to continue from where we left on Friday and, if  
10 you recall, we played for you a video where you saw Mr Uhuru Kenyatta and  
11 Mr William Ruto address a rally in Eldoret during the 2005 referendum. Is that  
12 correct, sir, that's where we stopped on Friday?

13 A. Yes.

14 MS ALAGENDRA: Sir, let me just play you -- continue playing another portion of  
15 that for you and we'll go to 15.50 seconds.

16 And, your Honours, for the record I'm playing video KEN-D09-0042-0553. The  
17 transcript, your Honours, is at tab 3 of the Defence bundle. That will be  
18 KEN-D09-0042-0554.

19 (Viewing of the video excerpt KEN-D09-0042-0553)

20 MS ALAGENDRA:

21 Q. Sir, did you listen to what Kalonzo Musyoka said there?

22 A. Yes.

23 Q. And did you hear him mention that the rally was taking place at 64 Stadium?

24 A. Yes.

25 Q. Thank you. Do you agree with me now, sir, that that rally I played for you was

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1 taking place in 2005 at the 64 Stadium in Eldoret?

2 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, do you particularly need him to  
3 admit it --

4 MS ALAGENDRA: No, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: -- or can you move on without him admitting it?

6 MS ALAGENDRA: Indeed, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Because proceedings started yesterday and we  
8 are now looped over a weekend and, apart from everything else, it might be a  
9 difficult question for the witness to answer.

10 MS ALAGENDRA: I will -- I will move on, your Honour. Thank you.

11 Q. Sir, will you agree with me that the "No" team during the 2005 referendum they  
12 were representative of the various ethnicities in Kenya?

13 A. Yes, they were leaders from different regions in Kenya.

14 Q. And you will also agree with me that their campaign theme was seeking the  
15 support of all Kenyans across all ethnicities; is that correct?

16 A. The leaders in various -- in various regions were seeking support of their people  
17 and that is why they had to come from different -- from -- from different regions.

18 Q. And as a whole, Mr Witness, the "No" team, so to speak, the national team, what  
19 they were looking for was the support of all Kenyans across all ethnicities. Am I  
20 correct?

21 A. I've answered that leaders in various regions sought votes from people at their  
22 particular regions.

23 Q. And at a national level, Mr Witness, they wanted the votes of all Kenyans across  
24 all tribal divides, yes?

25 A. They used any means to make sure that they won.

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1 PRESIDING JUDGE EBOE-OSUJI: The question Ms Alagendra is asking is it correct  
2 to say that those on the "No" side wanted all Kenyans to vote no regardless of  
3 ethnicity of those Kenyans voting?

4 THE WITNESS: If we look it -- if we look at it from the national level, we will say  
5 that they wanted to get votes from all -- from the whole country.

6 MS ALAGENDRA:

7 Q. Thank you for that, sir.

8 Sir, before we continue with the 2005 period, I would just like to go back to an issue  
9 we had been discussing regarding your meeting with P-22.

10 And, your Honours, I would ask that we go into private session, please.

11 PRESIDING JUDGE EBOE-OSUJI: For how long?

12 MS ALAGENDRA: I anticipate 15 minutes or so, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Private session.

14 \*(Private session at 9.44 a.m.) Reclassified as Open session

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

16 MS ALAGENDRA: Thank you.

17 Q. Sir, during the hearing on 20 November, on Thursday, and I'm referring to page  
18 7 of that transcript, lines 10 to 16, His Honour, the Presiding Judge, asked you this  
19 question. He said: "Are you saying then even in those situations where you might  
20 have been in a public place and (Redacted)

21 (Redacted) Is that what -- is that what

22 you were saying or not?"

23 And your answer was, "That's what I was saying, your Honour." Do you recall that,  
24 sir?

25 A. Yes.

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1 Q. Now I'd like to go back to the dates of (Redacted) when you were

2 having these meetings with (Redacted), okay?

3 That's the time period now that I'm going back to. And I'd like to take you to your

4 statement that you made to OTP.

5 And, your Honours, that would be tab 25. And I'm looking at KEN-OTP-0111-0140.

6 PRESIDING JUDGE EBOE-OSUJI: Tab 25 of OTP's bundle?

7 MS ALAGENDRA: Indeed, your Honour, the OTP bundle. And if I could have the

8 document on the screen, please, and zoomed into paragraph 33, and that is at page

9 0146.

10 Q. Sir, let me read that for you. Paragraph 33, the statement says this, and I quote:

11 "Between this time and my meeting with (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 and the next page, 0147 at the top, please, and I continue reading and I quote "... and I

17 see that the (Redacted). I do not know how this may have occurred."

18 End of quote.

19 Sir, (Redacted)

20 (Redacted)

21 A. I don't know.

22 Q. Or is it, sir, because (Redacted)

23 (Redacted)? Was that

24 the reason?

25 A. No, because my plans was not to deceive the OTP in any case. Where I met

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Your answers to the learned Judge's question is on record, so I will move on.

6 Sir, let me go back to an issue we were discussing relating to your conversation with

7 (Redacted) Do you remember we were

8 discussing that on Friday? Do you recall that testimony?

9 A. I recall.

10 Q. Sir, isn't it the case that you were so at ease talking to (Redacted)

11 (Redacted)

12 (Redacted); isn't that what

13 happened, sir?

14 A. No, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MR KIGEN-KATWA: With your permission, Mr President, may I request for a

12 correction of page 6, line 21, where my learned colleague was reading something to

13 the effect that, referring to (Redacted)

14 I think the word is (Redacted) and I'm saying this because of the significance of what

15 the question was.

16 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, your words, wasn't it, that's what

17 you meant? You said (Redacted)?

18 MS ALAGENDRA: Indeed, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Very well. So we'll move on.

20 MS ALAGENDRA:

21 Q. And, sir, in fact, you panicked so badly that (Redacted)

22 (Redacted), didn't you?

23 A. No. I have already explained the way I left that -- that location and the way I

24 (Redacted). I have no fear of discussing that, because I want to be open. And I

25 have already explained in detail what transpired and (Redacted)



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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. Thank you. And, sir, isn't it the case the OTP did not see you again 'til

20 (Redacted); yes or no?

21 A. I don't recall the dates, but afterwards, we were -- we were able to talk with

22 OTP.

23 Q. You did not meet the OTP again, sir, 'til (Redacted), do you agree?

24 MR STEYNBERG: Your Honours, the witness has already said he doesn't remember

25 the dates. Asking him again is not going to help.

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1 MS ALAGENDRA:

2 Q. Would you agree with me, sir, you met the OTP again (Redacted); yes or no?

3 A. I don't remember the dates, but I met the OTP after what had happened.

4 Q. Several months later?

5 A. I don't recall.

6 Q. It was only in (Redacted)?

7 A. I'm sorry, I don't recall.

8 Q. Well, I'll put it to you, sir --

9 MR STEYNBERG: Your Honours, the Prosecution will stipulate that the meeting  
10 occurred in (Redacted) if that will assist my learned friend.

11 MS ALAGENDRA: Thank you very much. I appreciate that.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I need to clarify something. It's  
13 probably already on the record, but while we're at it I might as well ask the witness.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 THE WITNESS: (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 MS ALAGENDRA:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. And you recall, sir, that after you went back, around (Redacted) you had a  
3 phone conversation with (Redacted)?

4 A. I remember I had conversation with (Redacted), but I don't remember the dates.

5 PRESIDING JUDGE EBOE-OSUJI: (Redacted) needs to be spelled for the record.

6 MS ALAGENDRA: Indeed. It's (Redacted), your

7 Honour. I think I have the spelling right.

8 PRESIDING JUDGE EBOE-OSUJI: Except you meant -- you spelled (Redacted)  
9 (Redacted).

10 MS ALAGENDRA: With an (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MS ALAGENDRA: Indeed.

13 Q. And, sir, this is how the OTP came to contact you. Let me go directly to the  
14 document, in fact. I go to tab 87 of the Defence bundle, and that will be  
15 KEN-OTP-0138-0626 and you can put it on the screen, please.

16 Sir, we have here an investigator's report again and it says that on (Redacted) an SMS  
17 came from (Redacted), and this is what he informed the OTP.  
18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: You're quoting now, are you?

20 MS ALAGENDRA:

21 Q. I quote, (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE EBOE-OSUJI: (Redacted) being the associate investigator?

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1 MS ALAGENDRA: Indeed, your Honour.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Now, on the next day, on (Redacted) -- and let me go to the next page first so we take  
10 it in chronology of time. That will be 0627, please, and the first paragraph. There we  
11 see on (Redacted), I'm sorry.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 And then you told (Redacted) rather, that you wanted to return  
17 to the OTP as a witness again. Do you see that, sir?

18 A. Yes.

19 Q. So it's correct, isn't it, that you contacted (Redacted)  
20 (Redacted), and told them to call the OTP and tell them you want to come back  
21 again? That's correct, isn't it?

22 A. Yes, I called (Redacted) about  
23 my intentions to get back and give my testimony.

24 Q. And you told them to pass this information to the OTP, yes?

25 A. Yes, it was the only way to reach the OTP.

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1 Q. Now, if I can go back to the previous page again, 0626, to the last paragraph.

2 On the (Redacted), after receiving all the messages, (Redacted) called you and you

3 told him that you would like to be a witness again and you were willing to meet and

4 that (Redacted) had put pressure on your parents. Do you see that, sir?

5 A. Yes.

6 Q. You said that to the OTP, didn't you?

7 A. Yes, there was a lot of pressure both to me and my parents about my

8 involvement with the ICC.

9 Q. Sir, before going any further, in fact these stories about (Redacted) putting  
10 pressure on your parents and you meeting with (Redacted), all that is in fact false,  
11 isn't it?

12 A. Meeting with (Redacted) doesn't come from me. Look at that -- at that tab.  
13 I don't know -- that paragraph in this -- in the other page.

14 Q. Sir --

15 A. Please, let us look at it first. I request that you look at that one. Let us see  
16 who is talking about meetings with (Redacted).

17 PRESIDING JUDGE EBOE-OSUJI: Let us go to that page.

18 MS ALAGENDRA: Before that, your Honour, perhaps if I clarify my question we  
19 could avoid that?

20 THE WITNESS: Let us look at that one before you clarify, because you've said that I  
21 have -- that I have been saying that we've been meeting with (Redacted). I want to  
22 make it clear before this Court that I have not said that I have met with (Redacted) at  
23 any point. I have said in this Court that I had meetings with one (Redacted) and that  
24 is my testimony.

25 MS ALAGENDRA: Sir --

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1 THE WITNESS: I have not been meeting with (Redacted), or any other person,  
2 concerning this matter apart from (Redacted). Issues of pressure is -- are issues that  
3 people were sent to go to my parents and -- and -- and so many questions and issues  
4 were -- were put to my parents so that they make sure that I don't get back to ICC at  
5 any point. That is what I reported to the OTP.

6 (Redacted) also at the other, if we were to look at the other one -- I don't know why  
7 we're not looking at it?

8 PRESIDING JUDGE EBOE-OSUJI: All right. One second, Witness. Let's -- what  
9 page? The previous page? What are we looking at now?

10 THE WITNESS: Next page. Page --

11 PRESIDING JUDGE EBOE-OSUJI: The next one, okay. Page 2 of 3. Let us go to  
12 page 2 of 3.

13 MS ALAGENDRA: Your Honours, could I pose one question which could save a lot  
14 of time?

15 THE WITNESS: Before --

16 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, let him finish. You could always  
17 pose a question.

18 Witness, is this the page?

19 THE WITNESS: The second, yes. Yes.

20 PRESIDING JUDGE EBOE-OSUJI: Is this the page you want?

21 THE WITNESS: Yes, yes.

22 PRESIDING JUDGE EBOE-OSUJI: We're looking at page 0627.

23 THE WITNESS: The first paragraph on that page.

24 PRESIDING JUDGE EBOE-OSUJI: The first paragraph.

25 THE WITNESS: Starting from line 2, you see the words that say, (Redacted)

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1 (Redacted)" and so forth. This is not me  
2 speaking. (Redacted) knew that I was to meet people who were involved in the -- in  
3 the -- in the -- in the -- in these -- in these issues of witness interruption and  
4 having -- having -- having -- having discussions with how she knew those people  
5 who were involved, but the people I personally met were not all of the people named,  
6 all these names put here, but I only met with (Redacted).

7 That is my clarification, and I don't want to be put in a -- in a -- in a manner that will  
8 bring a picture that I have been meeting other people apart from -- from these.

9 PRESIDING JUDGE EBOE-OSUJI: Witness, so let's take it in stages so that the  
10 record is clear.

11 Now this paragraph says, quote, "(Redacted)...", that is you,

12 continue quote, "... (Redacted)

13 (Redacted)" I'll end the quote there for now.

14 Now there's a list of names indicated here as people who had been met, or who had  
15 met you, and what are you telling us about who you say you met and who you did  
16 not meet, who you did not meet from this list?

17 THE WITNESS: From this list the only people that we did meet was (Redacted) and  
18 (Redacted). Those are the only two that we've had -- we did have discussions with  
19 them, but not the rest.

20 PRESIDING JUDGE EBOE-OSUJI: When you say "we," who do you mean by "we"?

21 THE WITNESS: That me and them.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Ms Alagendra, please continue.

24 MS ALAGENDRA:

25 Q. Sir, this is why I was requesting you to listen to my questions very carefully.

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1 And my question to you on this issue was very specific. I asked you: Isn't it the  
2 case that this story about you meeting with (Redacted) and (Redacted) putting  
3 pressure on your parents is not true? I'm correct there, isn't it? That story is not  
4 true, isn't it, Mr Witness, as far as the -- (Overlapping speakers)

5 A. It is true that a lot of pressure was put to my parents.

6 Q. And as far as it relates to (Redacted), that is my question, it's not true, is it?

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, so that we know the point of your  
8 question, is it about putting pressure or about meeting?

9 MS ALAGENDRA: It is both, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: All right. Can you look at the previous page  
11 0626 again at the place we were looking at.

12 MS ALAGENDRA: Indeed, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Do you see the point? All right, let me quote. I  
14 quote, "At (Redacted) called (Redacted) who advised that he'd like to be a witness  
15 again and was willing to meet, that (Redacted) and (Redacted) had put pressure on  
16 his parents." I'll stop there. You can continue if you think there is something else.  
17 But you see the point?

18 MS ALAGENDRA: Your Honour, what I would like to know from the witness is  
19 that what he told the OTP here as it relates to (Redacted) putting pressure on his  
20 parents is not true.

21 PRESIDING JUDGE EBOE-OSUJI: That's something else and that's why I asked you  
22 whether your question is about putting pressure or about meeting, because what we  
23 see here doesn't say that he met with (Redacted).

24 MS ALAGENDRA: Your Honour, what I was trying to put forward is that any  
25 information, whether it came from him or from (Redacted) as it relates



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1 to (Redacted) either putting pressure on his parents, or as (Redacted) reported him  
2 meeting (Redacted), is not true.

3 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Then proceed.

4 MS ALAGENDRA:

5 Q. Do you agree with that, sir, that that is not true as far as it relates to (Redacted)  
6 putting pressure on your parents or information from (Redacted) that you had met  
7 (Redacted), that is not true, isn't it?

8 A. About meeting (Redacted), I have stated that I have never met (Redacted).  
9 About pressure being put to my parents --

10 Q. By (Redacted), sir?

11 A. -- by (Redacted) is true.

12 Q. Sir, for now I'm only interested in (Redacted). And let's just get this clear for  
13 the record. Is it true that (Redacted) was putting pressure on your parents?

14 A. Yes.

15 MS ALAGENDRA: Okay. So let's go to your statement to the OTP, shall we, and  
16 let's go to tab 36?

17 It's tab 36 for your Honours. It's KEN-OTP-0135-0179. Your Honours, that's the  
18 OTP bundle.

19 PRESIDING JUDGE EBOE-OSUJI: Yes. Thank you.

20 MS ALAGENDRA: At page 0189 and I'm looking at lines 356 to 372.

21 Q. Let me read that with you, sir. The interviewer says at line 356, I quote, "You  
22 left us on the beginning or (Redacted)..." --

23 PRESIDING JUDGE EBOE-OSUJI: One second, Ms Alagenda.

24 There's a note here from the court officer to remind you to please try and observe the  
25 five-seconds rule, and that goes to the witness as well. It must be a concern from the

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1 interpreters being communicated. Five-seconds rule, please.

2 MS ALAGENDRA: I do apologise.

3 Q. Let me read this again from line 356, and I quote, "You left us on the beginning  
4 or (Redacted) or at least, say, the (Redacted) you had left us. This is the end  
5 of (Redacted). So, what did you mean when you said that you were getting ... your  
6 parents were getting pressure from (Redacted) because at this point (Redacted)  
7 already knew that you were on the other side, that you were back with."

8 PRESIDING JUDGE EBOE-OSUJI: And this is a question from interviewer number  
9 1?

10 MS ALAGENDRA: Indeed.

11 Q. And you respond, you are interviewee at line 360, "For me for sure I do not  
12 have ... I was not ... by the same month ... by that month I was not fully believing what  
13 we have ... talking to me. For me, I thought he was actually seeking me, from other  
14 persons because I talk with him here today, tomorrow I hear are elders at home,  
15 everyone's saying that they were sent by (Redacted) and they wanted to know why  
16 I had ... they had let me go to the ICC. Here is why I called (Redacted), to try to  
17 explain that."

18 And the interviewer says, "So, am I getting this right? You were saying not that  
19 (Redacted) was putting pressure on your parents, or (Redacted), but there was  
20 pressure being put on your parents. Did you say it was indirectly or was there -- or  
21 where was the link? Where is the link that you are saying (Redacted) and (Redacted)  
22 were involved in pressuring your parents?

23 Not only the elders are saying that."

24 PRESIDING JUDGE EBOE-OSUJI: Now, this is the interviewee -- the interviewee  
25 now?

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1 MS ALAGENDRA: The interviewee.

2 Q. "Not only the elders are saying that. They were sent by (Redacted) to come

3 and know why you left your son to go and sell out Ruto on the ICC -- in the ICC."

4 And the interviewer says, "So, essentially (Redacted) elders."

5 Do you see that Mr Witness?

6 A. Yes.

7 Q. It's only (Redacted) that you're referring to as sending elders, isn't it, sir? It's

8 not (Redacted). You accept that?

9 A. People who were sent, at one point they spoke of (Redacted), and also they will  
10 also talk of other people, but the main person at most cases who sent them was  
11 (Redacted).

12 Q. I'll move on.

13 MS ALAGENDRA: Your Honour, perhaps we can go into a public session, please.

14 PRESIDING JUDGE EBOE-OSUJI: Open session.

15 (Open session at 10.23 a.m.)

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

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Ms Alagenda.

19 MS ALAGENDRA:

20 Q. Now, sir, just going to your conversation with the OTP investigator on

21 29 August, I would like to highlight some matters there for the Honourable Judges, so

22 I'm going to take you to the transcript of that phone conversation you had.

23 And at tab 118, your Honours, is the transcript of that phone conversation.

24 PRESIDING JUDGE EBOE-OSUJI: Tab 118, Ruto Defence bundle?

25 MS ALAGENDRA: Indeed, your Honour.

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1 THE WITNESS: Your Honour --

2 PRESIDING JUDGE EBOE-OSUJI: We're in open session, Witness.

3 THE WITNESS: Yes. Did you give the name or give the person's number  
4 (indiscernible)?

5 MS ALAGENDRA: I just referred to him as an investigator and that will do for now.

6 Q. Now, sir, before I take you into the actual transcript, let me ask you a few  
7 questions. That investigator, sir, who we are talking about, he was in fact one of  
8 your friends from the OTP, wasn't he, to borrow your words?

9 A. Repeat your question.

10 Q. The investigator we are speaking about that we were discussing in closed  
11 session just now by name, he was in fact one of your friends in the OTP; am I right?

12 A. I know him as an investigator.

13 Q. Would you consider him as somewhat a friend?

14 A. All of them are good friends of mine and I don't have an enemy amongst all the  
15 investigators.

16 Q. In fact, that particular investigator, he was closer to you than most of the other  
17 investigators, wasn't he?

18 A. No. All investigators have been very close to me. I have given statements to  
19 so many of them.

20 Q. And, in fact, that was the investigator, if you could not get something done  
21 through other investigators or the VWU, he is the one you would go to and you  
22 would get whatever you wanted, isn't it, sir?

23 A. No, I've also contacted others on different occasions.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, so that the record is clear, you  
25 referred us to tab 118. That would be the transcript appearing at -- bearing, rather,

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1 bearing the ERN number KEN-OTP-0119-0141, is that it?

2 MS ALAGENDRA: Yes, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: And we don't need to mention the name of any  
4 investigator. The investigator you've been talking about, is that the one whose name  
5 appears on the cover page of this transcript?

6 MS ALAGENDRA: That is correct, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: That's the name of ICC person 1.

8 MS ALAGENDRA: Indeed, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MS ALAGENDRA:

11 Q. Mr Witness, let's -- let's go through this conversation you had with the  
12 investigator and particularly I would like to go to lines 148 onwards and that would  
13 be at page ERN-0146.

14 So let me read now from line 148. The interviewer, who is the investigator we've  
15 been talking about, he says to you and I quote, "Interviewer 1: So, regardless of what  
16 people tell you, you know I've always been there from the time we met, whenever  
17 you needed something I was always there for you."

18 And you say, "Yeah and I was also told that you had gone for a leave and you were  
19 not in the office."

20 Interviewer 1, quote, "Yes, that's true, we do from time to time, you know, get our  
21 holidays every now and then so we can see our families, but even when I'm on leave I  
22 have my work mobile and if somebody needs to get a hold of me ... they contact me  
23 and say this person needs to talk" --

24 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, we need to reflect the redactions  
25 where they appear within your quotes so that the record is clear that we don't have a

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1 continuous statement when there are gaps in the quote.  
2 MS ALAGENDRA: Your Honour, if I can just take that again.  
3 Q. I'm going to go back to lines 151 again and I'm going to quote interviewer 1.  
4 And I quote, "Yes, that's true, we do ..." in "... we do from time to time, you know, get  
5 our holidays every now and then so we can see our families but even when I'm on  
6 leave I have my work mobile and if somebody needs to get a hold of me ..." redacted  
7 "... and ..." redacted "... they contact me and say this person needs to talk to you ..." redacted.  
8  
9 Line 155, "So I'm always accessible. I was ... you know, I was disappointed to hear a  
10 few weeks ago that you just disappeared ..." like that "... just like that." Sorry.  
11 I'll move to line 157, and I'm quoting you, and I quote, "Yeah, yeah, now it was very  
12 hard for me because those people to me [unintelligible] like ..." redacted "... was not  
13 able again to listen to me, I could, talk to him and he could be very serious with me  
14 until you could not talk to him, I tried to talk to ... because he is the one I was working  
15 the next contact to him and he could not even in [unintelligible] was telling me that I  
16 have not even ..." redacted "... I was not done work and I am complaining. I'm still  
17 not taken by anyone until I sign that thing so that they can be able to address issues  
18 concerning me and so forth. So I said like something was wrong somewhere  
19 between me and those guys in ..." redacted "... and you know it is very hard to fight  
20 enemies outside and inside. Those people you think that are there to assist you and  
21 then again they turn around and tell you you have not ..." redacted "... so we cannot  
22 assist you on such and such. It became so hard and you know also that as I have  
23 told you earlier I have persevered for so long, working under 1 dollar a day. It was  
24 becoming so hard for me. Now, adding on even issues that are within the mandate  
25 of the company for them to assist and they are telling me I have not ..." redacted "...

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1 was becoming a big ..." problem -- sorry, "... a big burden. So I just decided to come  
2 because even back at home my family was not well because of issues I'm trying to talk  
3 to them in ..." redacted "...to talk [unintelligible] to them in ..." redacted "... was  
4 concerning not me in ..." redacted "... but my family in Kenya but they could not listen  
5 to me."

6 Sir, just for us to be clear, by the --

7 PRESIDING JUDGE EBOE-OSUJI: And that's the end of the quote?

8 MS ALAGENDRA: That's the end of the quote, your Honour, yes.

9 Q. For us to be clear, when you say (Redacted)  
10 (Redacted)

11 A. I'm referring to (Redacted).

12 Q. And when you say that you have not been paid for the work you've done, who  
13 was paying you?

14 A. Have I said I was not paid for the work I've done?

15 Q. Let me take you to 1 -- line 159 -- sorry, 161. It says, "... was telling me that I  
16 have not even ..." redacted "... I have not done work and I am complaining I'm still not  
17 taken by anyone until I sign ..."

18 A. Is that about payment of work?

19 Q. "... so we cannot assist you on such and such. It became so hard and you know  
20 also that I have told you earlier I have persevered for so long working under 1 dollar  
21 a day ..." What work were you talking about?

22 A. Thank you. I think the best you will ask is for me to clarify what I was talking  
23 about on this paragraph.

24 Q. Sir, all I want you is to answer my question. What work were you talking  
25 about that you were doing at that time that you were earning less than one dollar a

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1 day?

2 A. If you realise the way we are talking, the terminologies we used to mean

3 different things and -- like you've just asked about (Redacted)

4 (Redacted) the investigator will understand. When I talk about "work," the

5 investigator -- the investigator will understand what I mean. (Redacted)

6 (Redacted)

7 (Redacted) Not that -- that I'm

8 referring that I was employed or something like that. No. It is what the other

9 person will understand on phone what I mean because we could not -- we cannot

10 communicate just directly on phone because we don't know who else might be

11 listening to our conversations.

12 PRESIDING JUDGE EBOE-OSUJI: Did you get the answer to your question now?

13 MS ALAGENDRA: I'm going to ask a question in clarification, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: Yes.

15 MS ALAGENDRA:

16 Q. So, Mr Witness, by work here that you were not being paid enough for, what

17 you meant is that the testimony that you had provided, that's the work?

18 A. Not -- not that I am not paid well for. I was complaining that what I was

19 getting as allowance, because when we are in -- in -- in the safe house, we are

20 supposed to get money for food, we're supposed to get money for -- for -- for -- for

21 buying like -- like -- like -- like going to shave, like, you know, money for day-to-day

22 life, and this is what I was complaining that what you are getting is too little, it could

23 not -- it could not maintain me the way I wanted and I was complaining.

24 And issues of signing is signing of memorandum. I was told that I could not ask for

25 so many things before because we've not signed any memorandum, and that one I



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1 explained in my testimony about what transpired in that location and how I went  
2 back to Kenya. This is -- this is -- that is what I was -- I was referring to -- this is  
3 what I was referring when I was discussing with this investigator.

4 Q. I think it's quite clear to me now what you meant by "work."

5 Let me continue reading from lines 175. This is what you say, "And people in Kenya  
6 here think I am well in ..." redacted "... so I was getting pressure from those people  
7 in ..." redacted "... and also getting pressure back ..." home "... back at home from my  
8 family and at home in Eldoret. So it became very hard for me, that's why I just  
9 disappeared like that until I say that I must [unintelligible] talk to you because it was  
10 not good that you wait for me to keep quiet for so long without anyone knowing  
11 what was taking place."

12 Then let me go on to line 189. It's at 0147 of the same document. And this is what  
13 the investigator says, "Okay, I'm calling you from ..." redacted "... so what now? You  
14 know what you did was wrong, right? I mean, we were so close. I told you be  
15 patient, be patient, be patient. I was looking after your situation and we were almost  
16 there, the trial was about to begin, you know, we're like now 12 days away from the  
17 beginning of the trial, we're counting on you for that. A lot of solutions were just  
18 around the corner, for us to progress and move to the next phase with you and many  
19 others. And then you just disappeared and you know the situation, you know the  
20 context under which you disappeared, so it was not the right thing to do, so now  
21 what? What are we going to do now? Because this is the first time you tell me  
22 about these issues. I never knew about these issues now and these discussions  
23 you've had with some of these individuals that you're telling me about now. You  
24 know for me, as far as I'm concerned I was anytime you needed anything, if there was  
25 a problem, things are not good, you could always get a hold of me, so I'm surprised

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1 now that you did not let me know that things were so bad that you felt the need to go  
2 back to the place where you're running away from."  
3 And then you say, "Yeah, actually I'm sorry for that because I didn't get a hold of you,  
4 by the way, I was very much confused in ..." redacted "... and as I was thinking that  
5 now that this has happened and we [unintelligible] it's not good to start a war that  
6 you cannot finish. So I am saying that I've tried to think and I discussed to move  
7 with my family here and I've said ... we've decided that yes we should proceed but  
8 not that if we are going to go back to ..." dash "... we should not stay there for very  
9 long again because I know I'm in terms again with those people in ..." dash "... in ..."  
10 redacted, sorry "... like ..." redacted "... probably ..." redacted "... mostly because he  
11 was the person I was in direct contact with. I should not, if I'm going back to ..."  
12 redacted "... then I should not be able to stay there for so long or else if ..." redacted "...  
13 because I don't see how we will continue with ..." redacted "... and the like who cannot  
14 listen to very simple issues that they're supposed to address."  
15 Then the investigator says to you, "I mean, you know, the people you're mentioning  
16 are simply people who relay messages up to HQ so they are not in the ... they are not  
17 the ..." sorry "... and they relay message back to you. They are not the people who  
18 make the major decisions, you understand? So, like I said, the solution was not to go  
19 back, especially understand the certain circumstances, the solution was to get a hold  
20 of someone here at HQ and to address the issues. I have to discuss with my  
21 colleagues, obviously there is a lot to tell in the few weeks that you've been gone, so  
22 I'm sure there's more that you want to tell me, or I assume there's more that you want  
23 to tell me than what you're telling me now, you know, the activities or whatever  
24 you've been doing for the last few weeks since you were gone, right?"  
25 Then I move to lines 223. The investigator goes on to say, "Okay and I'm in a very

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1 awkward position now ... situation because you, you know, you and I met from the  
2 first step and I gave a very good impression about you to the team and we did a lot of  
3 good work, you know. There's been a few obstacles here and there and few mistakes  
4 made from both sides, but we were doing very well. So now it's so close to the start  
5 of the process here and I can't ... you know, as far as they're concerned something  
6 very, very strange happened when you just disappeared. When you" -- I'm moving  
7 to the next page, please 0148, and I'm continuing at lines 228, "... disappeared when  
8 you consider everything that's going on. So I have to now explain to them, you  
9 know, what ... even though you didn't give me it in detail, what the issues were.  
10 You said you weren't well, you were sick, but I mean I need a lot more detail than that  
11 to explain your situation and give some assurances as to where we're going to go  
12 from here and that we can count on you and what you are saying.  
13 And obviously what we need to discuss is not going to be resolved in ... over the  
14 phone for obvious reasons and security reasons. So I will have to discuss with the  
15 team, people above me, about your situation, what we can do and they're going to  
16 want to know more the reasons, what's been happening for the last few weeks and I  
17 have to convince them of your commitment now for us to try to engage again. If,  
18 you know what I mean, if we need to do this, I think it's best we meet and do this face  
19 to face."  
20 Then you say, "Yes."  
21 And the investigator says, "And I don't want to involve any more people, I think I  
22 have to, since you and I started from the beginning, we've always had a good  
23 relationship, I think I have to be the one coming to see you."  
24 Now, sir, you will agree with me up until this point of the conversation, you have not  
25 told the investigator you were under any threat; am I right, sir, you did not say it?

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1 A. Many things we could not discuss on the phone. That's why there was need to  
2 talk face to face.

3 Q. Sir, please answer my question. Why did --

4 A. Yes, on this conversation we've not talked about that.

5 Q. Now, without you telling the investigator anything about you being under any  
6 threat, let's see what the investigator says.

7 Let's continue, line 243, "Okay."

8 Your Honour, I think this is a typographical error. It should be Investigator, I think,  
9 or Interviewer. My learned friend can confirm that.

10 PRESIDING JUDGE EBOE-OSUJI: At 243 it's indicated "Interviewee" and you were  
11 saying it should be "Interviewer"?

12 MS ALAGENDRA: Indeed, your Honour, "Interviewer 1."

13 MR STEYNBERG: Your Honour, I've also put a question mark there. I see on my  
14 transcript it does appear to have been transposed. If one looks at the order of the  
15 conversation prior to that, I think line 242 should be "Interviewee" saying "Okay," and  
16 line 243 should be the interviewer continuing from there.

17 PRESIDING JUDGE EBOE-OSUJI: That's noted. I'm sure we can sort it out later,  
18 but continue.

19 MS ALAGENDRA: Thank you, your Honour.

20 Q. Sir, at line 243, this is what the investigator says to you --

21 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, your microphone is on.

22 MR STEYNBERG: Apologies, your Honour.

23 MS ALAGENDRA:

24 Q. Without you having said a word about you being under any threat, he says,  
25 "Okay." And I quote, "Okay, but obviously it's not safe in the country where you are,

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1 so I don't know what your security situation is now, but are you ..." redacted "... are  
2 you being monitored, whether it's your phones, I don't know what you did with your  
3 phones, if they're still on, if they're monitoring anything or what."

4 And you didn't let go of that. You picked up from there and this is what you said,  
5 Mr Witness, and I continue, line 247, you say "Yeah, that's why I went out of phone  
6 because I realised ... I suspected that they were monitoring my calls and of late I'm  
7 aware there is one Mr ..." we can see the name there, I won't mention it, and the  
8 second person's name there "... a few ..." redacted "... who went home to meet my  
9 parents wanting -- to my parents wanting them to ask me to show up and to talk to  
10 them on the issue, that's why I left Nairobi."

11 PRESIDING JUDGE EBOE-OSUJI: "... this issue ... ", it says. "... on this issue ..."

12 MS ALAGENDRA: "... on this issue ...", indeed.

13 Q. And I will skip the rest of that part and I will go to what the investigator then  
14 puts into your mind at line 260. He says, "Okay, but how do you know that your  
15 actual movements are not being monitored, that no one is watching you -- that  
16 nobody is watching you?"

17 And you again won't let that go. You say at line 262, "I know, I'm in the village so  
18 now I'm here it's monitored."

19 So then let's now continue to the next page as 0149. And I'm looking at lines 289.

20 And let me read to you about just how much you meant to the OTP. Line 289, the  
21 investigator says, and I quote, "Because what you do reflects upon you but also upon  
22 me."

23 Interviewee, "Okay."

24 And the interviewer says, "You remember I brought you into this so I feel responsible,  
25 you understand, we did a lot of good work together and this is the time now to

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1 perform, we are 12 days away and, you know, I feel responsible for our successes and  
2 I feel responsible for any failures, okay?"

3 PRESIDING JUDGE EBOE-OSUJI: Just for the accuracy it says -- I don't know if  
4 anything turns on it, but the word "success" and "failure" appear in the singular, not  
5 in the plural that you've read them out.

6 MS ALAGENDRA: Thank you, your Honour.

7 Q. Do you see that, Mr Witness?

8 A. Yeah, I can see.

9 Q. Okay. So after this conversation you've had with the investigator, the very  
10 next day, 30 August, what does your wife do, Mr Witness? It's very interesting.

11 Let's go to tab 87 of the Defence bundle, your Honour. And that will be document

12 KEN-OTP-0138-0626 and I'd like to go to the next page, 0627, please.

13 PRESIDING JUDGE EBOE-OSUJI: Just so we can understand, and this is a question  
14 for Mr Steynberg, would it be correct to say that the report we see at Defence tab 87 is  
15 a report produced following the conversation that we see the transcript of at tab 118?  
16 If you think my question is problematic, tell me so I can stop the discussion right  
17 away. It is not?

18 MS ALAGENDRA: As I see it until now, no, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: You don't see a difficulty with my question?

20 Okay.

21 Mr Steynberg, can you advise?

22 MR STEYNBERG: Indeed, your Honour. The report itself is dated 26 August 2014.  
23 The report would have been produced on the basis of contemporaneous notes made  
24 at the time when the actual conversations were happening, so it's a bit of both,  
25 although the report was compiled, if one goes to the first page of the report and it

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1 says that there was a conversation that took place on 28 August --

2 PRESIDING JUDGE EBOE-OSUJI: And the 29th.

3 MR STEYNBERG: -- and the 29th and the 30th.

4 PRESIDING JUDGE EBOE-OSUJI: So that when you say the report is dated 26th, of  
5 2014. Yes, yes.

6 MR STEYNBERG: 2014, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: 2014, almost a year later.

8 MR STEYNBERG: Indeed, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: Fair enough. So my question then is again,  
10 sorry about the back and forth, is that the transcript -- the conversation reflected in the  
11 transcript at tab 118 would have been what informed the creation of the report we see  
12 at tab 87. Is that what you're telling us?

13 MR STEYNBERG: Your Honour, that would have been one of the features. The  
14 report was put together for the purposes of disclosure, basically the contacts with the  
15 witness were reviewed for disclosable information and that was then compiled into a  
16 report.

17 PRESIDING JUDGE EBOE-OSUJI: Taking into account, amongst other things, as I  
18 say, the transcript or the conversation reflected at tab 118?

19 MR STEYNBERG: I'm sure that would have been one of the factors, your Honour,  
20 yes.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Please continue, Ms Alagendra.

23 MS ALAGENDRA: Thank you, your Honours.

24 Q. So, Mr Witness, as I was saying, you have this conversation with the  
25 investigator and the very next day this is what your wife goes and does, and if I'm

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1 looking at the second paragraph, and I'm quoting, I quote, "On 30 August 2013, there  
2 is an email from the field -- an email from the FOLC was sent to the ..." redacted "...  
3 was sent to the Kenya 1 team informing the following:" and I quote "'The spouse of  
4 the witness called VWU requesting for rent and subsistence. VWU told her that they  
5 were under instruction not to send any more money to them. The spouse then  
6 informed ...' redacted '... that they had been in contact with OTP and he should call  
7 them to confirm that the funds should be sent.' The email was from your wife."  
8 And after this, after your wife is told no more money is going to be sent to either of  
9 you, she responds by an SMS saying, "Sorry for the text. Bye bye ... forever. You  
10 have been so good to us. God bless you."  
11 And then right after you've been told this, your wife says "Bye bye," what do you do,  
12 sir? You go and sign that affidavit in Nairobi on 30 August. That's what happened,  
13 isn't it?

14 A. Your last statement, please?

15 Q. After all of this when you were told you're receiving no more money from the  
16 ICC, you go off and you sign the affidavit in Nairobi, yes? The same day.

17 A. I signed the affidavit after speaking to -- when I was speaking with the  
18 investigator, I had not signed the affidavit. And this communication you're talking  
19 about, you've stated clearly that it is not me doing the communication, so I don't want  
20 to speak on behalf of anyone, please. I know I signed the affidavit after, a few days  
21 after direct communication with the investigator.

22 Q. And very simple question, sir, it was after your wife was told no, the ICC is not  
23 going to send you any more money, correct?

24 MR STEYNBERG: Your Honour, before the witness answers the question, I ask my  
25 learned friend again to have a look at the date that is reflected on the withdrawal



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1 affidavit. It's not the date of the 30th that's been put to this witness.

2 PRESIDING JUDGE EBOE-OSUJI: Quite apart from that, Ms Alagendra, there are  
3 some questions, though they are framed as such, but they're essentially arguments  
4 with the witness. Think about that, but proceed, and also what Mr Steynberg had  
5 noted.

6 It's fair, of course, to put your proposition to a witness, and once the witness reacts to  
7 it, to move on and leave the rest to argument. Your obligation is to be fair to the  
8 witness and give them an opportunity to react to your position, but once you get that  
9 reaction, we need to move on.

10 MR STEYNBERG: If I can assist my learned friend, as far as my proposition is  
11 concerned, I refer her to KEN-OTP-0145-0554 at 0565. That is the signed version of  
12 the affidavit in the (Redacted) matter with the annexes.

13 PRESIDING JUDGE EBOE-OSUJI: What tab again are we looking at?

14 MR STEYNBERG: Your Honour, it wasn't in a tab. I was referring to -- if the Court  
15 will bear with me.

16 PRESIDING JUDGE EBOE-OSUJI: Let's try to avoid mentioning names while we're  
17 at it.

18 MR STEYNBERG: Tab 40, your Honours.

19 PRESIDING JUDGE EBOE-OSUJI: All right. I see it's time for morning break. We  
20 will take our morning break now. In the meantime, Ms Alagendra will look at the  
21 materials mentioned and then we will take it from there.

22 Witness, we will now take our morning break and then we'll be back in 30 minutes.

23 Closed session, please, so that the witness is ushered out of the courtroom.

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

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

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you. The witness will be ushered out of  
2 courtroom.

3 (The witness stands down)

4 PRESIDING JUDGE EBOE-OSUJI: And while we're on break, Mr Steynberg's  
5 mention of "(Redacted)" will be redacted from the delayed broadcast.

6 Court will rise.

7 THE COURT OFFICER: All rise.

8 (Recess taken at 11.04 a.m.)

9 (Upon resuming in open session at 11.34 a.m.)

10 THE COURT USHER: All rise.

11 Please be seated.

12 THE COURT OFFICER: Mr President, we are in open session.

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

14 Ms Alagendra, please continue.

15 Witness, welcome back.

16 THE WITNESS: Thank you.

17 MS ALAGENDRA: Thank you. For the record we are joined by our intern, Farah  
18 Al-Obaidy.

19 Your Honours, in relation to the last issue we were dealing with, I will probably deal  
20 with it through some questions, your Honour.

21 Q. Mr Witness, your wife, she communicated to the VWU requesting for more  
22 money after you had signed the affidavit, didn't she? The affidavit withdrawing as a  
23 witness in this case.

24 A. I found out about that later.

25 Q. And I put it to you, sir, you had the affidavit already signed and ready to go

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1 when your wife tried one last time to see if she could squeeze some money out of the  
2 ICC; that's correct, isn't it?

3 A. I don't know about my wife, but according to me, after talking to (Redacted), I was  
4 ready to get back. I was not -- I had -- I had -- I had decided to go on as a witness  
5 after this -- after talking to (Redacted).

6 Q. And --

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, watch the terminology in the  
8 questions. I think we're more interested in factual matters and those facts may well  
9 be clothed in certain language that may be more difficult for any witness to deal with.  
10 So let's stick with the facts.

11 MS ALAGENDRA: I'll be more careful, your Honour.

12 Q. And, Mr Witness, what happens is when the VWU tells your wife that the ICC  
13 is not going to give either of you any more money, you then gave the green light to  
14 your -- to your lawyer to send his letter dated 30 August 2013 withdrawing you as a  
15 witness? That is how it happened, isn't it, sir?

16 A. I did not know when to go and sign an affidavit, or write the letter. I was only  
17 instructed through person number 19 to go to that particular lawyer and that is how I  
18 got to meet that lawyer. I had not arranged to have any lawyer there before.

19 MS ALAGENDRA: And, your Honours, for the record, the letter dated  
20 30 August 2013 from the lawyer is at KEN-OTP-0145-0554 and it is at page 0566, your  
21 Honours.

22 And if I can go back to the document we were looking at at tab 87,  
23 KEN-OTP-0138-0626, and if we could have it on the screen, please, at page 0628.  
24 And can we zoom in on 9 December?

25 Q. And, Mr Witness, we will see there after not being able to contact you and to

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1 communicate with you, on 9 December 2013 you send a message to the same  
2 investigator we have been discussing saying, "Please p, let's talk I need to come back."  
3 You sent that message, didn't you, sir?

4 A. Yes, I did.

5 Q. And, sir, isn't it correct that you were in fact wanting to come back because you  
6 needed the money to pay your housing and your living expenses? That's why you  
7 wanted to come back, isn't it, sir?

8 A. No, that is not true.

9 Q. And, sir, you needed to come back because you were too used to living off  
10 witness protection programmes as a source of living; isn't that correct, sir?

11 A. No.

12 Q. Sir, am I right that for two-and-a-half years, from December 2010 right until  
13 June 2014 -- 2012, I beg your pardon, four months before you met the OTP, for  
14 two-and-a-half years you were in a witness protection programme in Kenya? Please  
15 just answer "Yes" or "No" without giving any details. We are in a public session.

16 A. I need -- I don't remember the dates, but I know I have been in a protection  
17 programme.

18 Q. Sir, I put it to you, sir, it was for two-and-a-half years from December 2010 right  
19 until June 2012 that you were in a witness protection programme throughout?

20 A. Being in a protection programme is not like employing a job. An assessment is  
21 done and when the people doing an assessment deem it -- deem it fit that you should  
22 be in protection, then you are -- you are absorbed for protection. Therefore, if I was  
23 for that time, it's because it was assessed by experts of the organisation that was  
24 giving protection at the moment and they decided that I was to get to their  
25 programme for reasons they found out in the assessment.

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1 (Pause in proceedings)

2 MS ALAGENDRA:

3 Q. Sir, I'll come back to your statement where you've given the dates of your  
4 protection programme. And, sir, you can confirm that during that protection  
5 programme everything was paid for by the programme, isn't it? Your living  
6 expenses, school fees, rent, everything, correct?

7 A. Yes.

8 Q. And, sir, am I correct that you own only one piece of land? Am I right?

9 A. We own. It's a joint -- it's under a joint title.

10 Q. Of yourself and your wife, correct?

11 A. Yes.

12 Q. Sir, can you tell their Honours where did you get that land from?

13 MR STEYNBERG: Your Honours, that seems to be something that might be  
14 identifying.

15 MR (Redacted): I support that, your Honour.

16 MS ALAGENDRA: Then perhaps we can go into private session for just one -- just  
17 that question.

18 PRESIDING JUDGE EBOE-OSUJI: We can go into private session. Remember you  
19 have the privilege of leading questions.

20 We go to private session.

21 \*(Private session at 11.46 a.m.) Reclassified as Open session

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

23 MS ALAGENDRA:

24 Q. Sir, that's a piece of land that you (Redacted)

25 (Redacted), isn't it?

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1 A. Yes.

2 MS ALAGENDRA: Your Honours, we can go back into a public session.

3 PRESIDING JUDGE EBOE-OSUJI: Back to public session.

4 (Open session at 11.47 a.m.)

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

6 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, perhaps I should have asked this  
7 question in private session, but let's see if we can deal with it in open session. While  
8 in private session, you referred to a certain body. Then you reference "the  
9 programme ended." Are we able to know what "the programme," quote and  
10 unquote, you are referring to there?

11 MS ALAGENDRA: Your Honour, if I may, I was referring to the witness protection  
12 programme, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 Witness, is that the case, that it was at the end of the witness protection programme?

15 THE WITNESS: Yes, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 MS ALAGENDRA:

18 Q. Okay, sir, just to assist you with my previous question -- your Honours, if we  
19 can go to tab 84 and -- of the Defence bundle and the document is at

20 KEN-OTP-0129-0573 and I'm looking at page 0574. I beg your pardon, I'm looking at  
21 page 0573 and I'm looking at the second last paragraph, please.

22 Okay, do you see that, sir, "26 December 2010"? And allow me to read, "The  
23 protection programme started, by ..." and I won't read the organisation, your Honours.  
24 It's there. "... funded possibly by USAID. It ended approximately 5 months ago,  
25 because there were no more funds, ICC cases were no longer part of their mandate

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1 and a different team was to handle those. They did not refer me to any other agency  
2 and said that the previous team did not hand them my file. Finally, they said that  
3 I had over stayed in the programme, since it should only last 9 months max and it's  
4 been more than one year-and-a-half for me. There's much misused funds in the  
5 hands of these local NGOs."

6 Do you remember telling the Prosecution that, sir?

7 A. Yes.

8 Q. Now, let me go to what happens just about one week after your interviews with  
9 Mr Garcia from the Prosecution ends on 29 October 2012.

10 And, your Honours, that's at tab 92. And the document reference is  
11 KEN-OTP-0141-0026. If we can zoom in on that paragraph starting "7th November,"  
12 please.

13 Sir, one week after you meet with the OTP, give them your statement, this is a  
14 message you sent to them. "Hi P, am still waiting for your response and also would  
15 like to introduce ..." I won't say the name. But am I correct, sir, there you are  
16 referring to number 12, person number 12?

17 A. Yes.

18 Q. "... another Kalenjin insider who ..." and you mention what he did there "... and  
19 was a very resourceful person to us, he has information on pre and post-PEV series of  
20 meetings where he personally attended and he has just been on the run. Just last  
21 week on Thursday he arrived from ..." I won't mention the place "... where he has been  
22 hiding since February this year. He contacted me and I expressed the need of him  
23 talking to you using the same approach I used when you contacted ..." dash, I won't  
24 say the name, and you give the contacts.

25 And this is what you say about your situation, "I am okay here despite the fact that it

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1 has been hard for me to sustain my business for reasons I already stated. Let me  
2 know if you have any way to assist."  
3 Then it goes on, "I also have another ..." I won't mention the nature of the person "...  
4 from ..." a place that I won't mention "... just as ..." person number 12. "She used to  
5 assist in cooking for those who attended meetings at ..." I won't mention the place "...  
6 and she gave one report that I handed to the team" and this is person number 8 and  
7 you give the contacts. And then you say, "I believe she has a lot of information ..." no,  
8 sorry "... I believe she has a lot to inform you. She has been on the run. Now she is  
9 on the protection programme of the same reasons." Then you say this about  
10 yourself --

11 PRESIDING JUDGE EBOE-OSUJI: "Protection programme because ..."

12 MS ALAGENDRA: "Because of the same reasons." Thank you, your Honour.

13 Q. And then you go on to say this about yourself. "Lastly, P, I am desperate.

14 Life is very hard here. You can imagine my situation now has even worsened since I  
15 met the team. Please I don't want to seem as if I'm pushing you so much, but on the  
16 other hand I'm not well. I remain hoping you will intervene. I have lots of debts  
17 from rent, meals and family, but my immediate problem is the 12,000 Kenyan  
18 shillings. This is causing more harm to me than ever, P. I strongly believe in you.  
19 Kindly do something."

20 You sent this message, didn't you, sir?

21 A. Yes, I did.

22 MS ALAGENDRA: Your Honour, could we go into private session for just one  
23 question?

24 PRESIDING JUDGE EBOE-OSUJI: Private session.

25 \*(Private session at 11.55 a.m.) Reclassified as Open session



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- 1 THE COURT OFFICER: We are in private session, Mr President.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 MS ALAGENDRA:
- 4 Q. Sir, could you tell us what (Redacted)
- 5 (Redacted)
- 6 A. I don't remember, but I remember (Redacted).
- 7 MS ALAGENDRA: We can go back into public session, your Honour.
- 8 PRESIDING JUDGE EBOE-OSUJI: Open session.
- 9 (Open session at 11.56 a.m.)
- 10 THE COURT OFFICER: We are in open session, Mr President.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 12 MS ALAGENDRA:
- 13 Q. And, sir, am I correct, sir, that soon after this is when you went into an ICC
- 14 Witness Protection Programme?
- 15 PRESIDING JUDGE EBOE-OSUJI: Do you mean soon after what? This email?
- 16 MS ALAGENDRA: After this communication, your Honour.
- 17 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.
- 18 THE WITNESS: I don't remember the exact dates.
- 19 MS ALAGENDRA:
- 20 Q. But would you say soon after?
- 21 A. I don't remember.
- 22 Q. And am I correct, sir, that the persons you recommended there, person number
- 23 8 and person number 12, the OTP took your recommendations, didn't they?
- 24 A. They did an assessment by talking to them and later I'm aware out of the
- 25 assessment they decided to absorb them.

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1 Q. And like you, they too were taken into the ICC Witness Protection Programme,  
2 correct, sir?

3 A. An assessment was also done to me and I was absorbed.

4 PRESIDING JUDGE EBOE-OSUJI: Witness, was it before, after or during the time of  
5 this email that you went into the protection programme of the ICC? Let me ask that  
6 question again. The reason I mentioned the different time frames is to give you the  
7 choice, but let me point you more directly.

8 By the time of this communication we just looked at, were you already in the ICC  
9 Protection Programme?

10 THE WITNESS: After speaking with investigators in protection location 1, I don't  
11 remember dates, I was under their protection.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Look at that report. Have you seen  
13 it, the report that Ms Alagendra read out to you? See if you can -- if you don't  
14 remember, that's all right. But thinking about that communication you sent to the  
15 ICC investigators, what I want to know is whether you were already in the protection  
16 programme when you sent that email, or did you send it -- did you get into the  
17 protection programme after you sent the email?

18 THE WITNESS: I think I was in the programme.

19 PRESIDING JUDGE EBOE-OSUJI: When you sent the email?

20 THE WITNESS: When I sent the email.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MS ALAGENDRA:

23 Q. So is it your testimony, sir, that you gave a statement to the OTP and one week  
24 later you were already in the Witness Protection Programme, or were you already in  
25 the programme when you were giving the statement even?

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1 A. I got into programme after giving the statement and assessment being done.

2 Q. So was it immediately after?

3 A. I don't remember the dates, but I think when I wrote this I was already part of  
4 their programme.

5 Q. Okay, I think we can do the maths for that. And, sir, just to go back to my  
6 other question, the individuals you recommended, person number 8 and 12, they  
7 were also taken into the ICC Witness Protection Programme? Am I right, sir?

8 A. Yes, they were taken.

9 Q. Sir, now after the long break in your meeting with the OTP, we have it on  
10 record that they finally met with you on 25 March 2014. Now, I don't want you to  
11 trouble yourself with the dates, we have it on record and I will come back to that later,  
12 but am I correct, sir, when you re-established contact with the OTP this time around  
13 you do it through person number 5?

14 A. At what time are you talking about? When we were on this subject, or just  
15 long time after or -- I don't get exactly what you are asking.

16 Q. What I'm asking you, sir, is when you are now back into contact again with the  
17 OTP --

18 A. After -- after discussing this issue on -- on -- on my screen?

19 Q. We are going long after that, sir, now to this year, March of this year.

20 A. I want to say that after I left, I knew I had responsibility on the victims, people  
21 who died, children who suffered in camps and my conscience never stopped. I used  
22 any means of people I knew they could re-establish my -- my -- my communication  
23 with the OTP so that I can explain myself and ensure I come to this Court to give my  
24 testimony. And I agree I also communicated to person number 5 to re-establish  
25 communication between OTP and me.

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1 Q. Thank you very much, sir, for that. And person number 5, he is an old friend  
2 of yours, isn't he?

3 A. He is a friend, I agree.

4 Q. And you also know he is a witness in this case? Am I right, sir?

5 A. I know.

6 Q. And you also know that he is living outside of Africa, don't you, sir?

7 A. I know.

8 Q. And you also know he is assisting person number 8 to get asylum outside of  
9 Africa, don't you, sir?

10 A. I don't know.

11 Q. And in fact he has told you he will assist you find a way to remain out of Africa?  
12 Am I right, sir?

13 A. That is a lie.

14 Q. Thank you, sir. I have -- I'm probably finished with this subject and I'd like to  
15 move on now and we can talk about the mushrooms that you testified.

16 PRESIDING JUDGE EBOE-OSUJI: Are you saying you're done with --

17 MS ALAGENDRA: This topic, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Okay.

19 MS ALAGENDRA:

20 Q. Sir, do you recall you told the Court about a meeting you say took place in 2005  
21 where Mr Ruto made a speech? Do you recall that?

22 A. Yes.

23 MS ALAGENDRA: Your Honour, if I can just seek some guidance on whether the  
24 name of the place was provided in private, or if there's any objections to me naming  
25 this location in public?

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- 1 MR STEYNBERG: Your Honour, (Redacted)  
2 (Redacted), but I believe -- is it  
3 not on the PIS perhaps?  
4 MS ALAGENDRA: Your Honour, perhaps we can go into private session for just  
5 one second and we can add it to the PIS, your Honour?  
6 PRESIDING JUDGE EBOE-OSUJI: Private session.  
7 MS ALAGENDRA: My learned friend's microphone is on.  
8 \*(Private session at 12.08 p.m.) Reclassified as Open session  
9 THE COURT OFFICER: We are in private session, Mr President.  
10 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
11 MS ALAGENDRA:  
12 Q. Sir, could you confirm again for the record the location where that meeting took  
13 place?  
14 A. It took place at (Redacted).  
15 Q. Do you think you could assist us and add that to your document as location  
16 number 18, please. And it's spelled (Redacted), am I correct?  
17 A. You are correct.  
18 MS ALAGENDRA: Your Honours, we can go into a public session.  
19 PRESIDING JUDGE EBOE-OSUJI: Open session.  
20 (Open session at 12.09 p.m.)  
21 MS ALAGENDRA:  
22 Q. Sir, I'm looking at your --  
23 THE COURT OFFICER: For the record, Mr President, we are in open session.  
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
25 Ms Alagendra, I take it you do not have your own PIS, do you?

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1 MS ALAGENDRA: We do, your Honour, but we thought we would use as much as  
2 possible the same PIS to make it more convenient for references.

3 PRESIDING JUDGE EBOE-OSUJI: Yes, just enquiring. Okay, thank you.

4 MS ALAGENDRA:

5 Q. Sir, I'm looking at your testimony of 17 November and I'm at a page 24 for my  
6 learned friends. You told the Chamber that -- and this is what you said, "Your  
7 Honour, Mr Ruto spoke in Kiswahili and then at some instant he switched to  
8 Kalenjin." Do you recall that, sir?

9 A. Yes.

10 Q. And those are the only two languages he spoke; am I right?

11 A. I heard him in the two languages.

12 Q. So is that a "Yes", sir? So you didn't hear any other languages, isn't it?

13 A. I heard the two languages.

14 Q. Did you hear any other languages, sir?

15 A. No.

16 Q. And you told the Court that when he spoke in Swahili he wanted people to vote  
17 against the constitution, correct?

18 A. Yes.

19 Q. And it was normal campaign speech; am I right, sir?

20 A. Repeat that question, please.

21 Q. It was normal campaign speech that he made in Swahili?

22 A. No more?

23 Q. Normal?

24 A. Yes.

25 Q. Usual?

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1 A. Usual.

2 Q. And then you said that when Mr Ruto spoke in Kalenjin, that is when he used  
3 the phrase or the word "mushrooms." Am I right, sir?

4 A. White mushrooms.

5 Q. Indeed. He said "white mushrooms," yes?

6 A. You want me to repeat what he said?

7 Q. Indeed.

8 A. That he was seeing white mushrooms that had not been uprooted or eaten.

9 Q. And you told the Court that by "white mushrooms" Mr Ruto was referring to  
10 the Kikuyu people; is that right, sir?

11 A. I understood him to mean the Kikuyu people.

12 Q. And you told the Court you understood him to be referring to Kikuyus because  
13 the Kikuyu community, they belonged to a church which requires them to wear a  
14 white scarf on their head. Is that right, sir?

15 A. I said most Kikuyu religions requires their members to wear the  
16 white -- to -- to -- to wear their white -- the white scarves on their heads.

17 Q. And actually, sir, isn't it correct that you are referring to the Akorino Church?

18 A. There are so many. Akorino, Independent, KAG. All these people do put  
19 white -- do put white scarves or tie white scarves on their heads.

20 MS ALAGENDRA: And for the record Akorino is A-K-A-R-I-N-O (sic).

21 Q. Sir, you've mentioned two other churches, Independent and KAG. What  
22 ethnic groups, sir, belong to those churches who are required to wear white scarves  
23 on their head?

24 A. Most members of the churches I have mentioned are the Kikuyu people and  
25 even those who are not Kikuyus and members of the same churches are required to

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1 still put the white scarves on their heads.

2 Q. So you are saying that these churches, they also have other communities in their  
3 membership; is that right, sir?

4 A. Yes, but minimal in number. Mostly it is believed in Kenya that members of  
5 those churches are the Kikuyu people, but any other community is free to join the  
6 church organisation.

7 MS ALAGENDRA: Okay, sir. Let me play you a video. It's KEN-D09-0042-0602  
8 and the transcript, your Honours, is at tab 164.

9 And it can be played in public.

10 (Playing of the video excerpt KEN-D09-0042-0602)

11 MS ALAGENDRA: And I've stopped the video at 00.31.

12 Q. Sir, do you recognise which group these people may belong to?

13 A. Yes, these are the Divine church.

14 Q. And for the record what we've seen is a group of people dressed in white and  
15 also wearing white headscarves and they are singing, men and women, yes?

16 A. You realise for the men they -- they -- they have the red -- when you play and  
17 see the men, you will see they have something red, not white, as you see their women.

18 Q. Sir, you are looking at the men on the screen?

19 A. Can you play it?

20 MS ALAGENDRA:

21 Q. Sir, what you see on the screen is men, sir.

22 A. Play it, please.

23 PRESIDING JUDGE EBOE-OSUJI: Witness, the lawyer is asking you do you see the  
24 men on the screen now? The picture is frozen and it shows some men.

25 THE WITNESS: Yes, there are men who are with white and others on the -- on this



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1 video has a red -- has white and red -- and red in their -- in their -- in their scarves.

2 And, your Honour, by white scarves and the way I understood to mean the Kikuyu  
3 was because of their communication of their -- of Mr Ruto concerning the referendum  
4 that was to come on the constitution. The Kalenjin and the Luyhas, who are for this  
5 church we have just been shown in this video, were together against the constitution  
6 and therefore that is why I understood Mr Ruto to mean the Kikuyu and that is why  
7 he put that one, the white scarves, because most of them and especially in that area  
8 they were not supporting. They were -- they were supporting the constitution.

9 PRESIDING JUDGE EBOE-OSUJI: Yes, but for now let's deal with the image on the  
10 screen. And Ms Alagendra's point is that you're looking at a frozen frame of the  
11 video and it is showing men. Is that the case?

12 THE WITNESS: Yes, the ones I see here are a few with the white.

13 PRESIDING JUDGE EBOE-OSUJI: White headdress, but you're saying that there are  
14 some others who are also wearing some red headdress as well.

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Let us roll the video again to see what  
17 the witness is talking about.

18 MS ALAGENDRA: Your Honour, perhaps if we can keep playing the video?

19 PRESIDING JUDGE EBOE-OSUJI: Yes, maybe.

20 (Playing of the video excerpt KEN-D09-0042-0602)

21 PRESIDING JUDGE EBOE-OSUJI: Can we start afresh, Ms Alagendra, so the  
22 witness doesn't feel anxious about the tape -- what he said and what is shown.

23 MS ALAGENDRA: Indeed, your Honour.

24 (Playing of the video excerpt KEN-D09-0042-0602)

25 MS ALAGENDRA:

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1 Q. Sir, I see you pointing to the screen. Are you pointing to that one man who has  
2 got a red band on his cap?

3 A. But you've seen that in this church they don't -- they don't wear completely  
4 white, but there is a mixture of white and red, and also for women there is also  
5 another green.

6 Q. Sir, for the record we've only seen so far only one man with red on his --

7 PRESIDING JUDGE EBOE-OSUJI: Keep playing. Keep playing.

8 (Playing of the video excerpt KEN-D09-0042-0602)

9 PRESIDING JUDGE EBOE-OSUJI: All right. Ms Alagendra, whether you need to  
10 move on, unless the witness has something else to add?

11 MS ALAGENDRA: Your Honour, perhaps I'll move on.

12 PRESIDING JUDGE EBOE-OSUJI: Yes.

13 MS ALAGENDRA: The record reflects that there was only one person with a cap  
14 wearing the red -- with the red band and everybody else the cap is white, your  
15 Honour.

16 PRESIDING JUDGE EBOE-OSUJI: I think there might have been actually a tre or  
17 tri-coloured hat.

18 MS ALAGENDRA: Indeed, your Honours.

19 PRESIDING JUDGE EBOE-OSUJI: Yes, it might have been either black and green,  
20 white and red.

21 MS ALAGENDRA: To me it looked green, indeed.

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Move on, please.

23 MS ALAGENDRA:

24 Q. Sir, in fact, this is the African Israel Nineveh Church, isn't it, sir?

25 A. Yes.

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1 Q. And the membership of this church, sir, are the Luos and the Luyhas, am I  
2 correct?

3 A. Mostly I know the membership of this church to be the Luyhas.

4 MS ALAGENDRA: Perhaps I'll turn to tab 154. That's KEN-D09-0042-0570. It's a  
5 public document.

6 Q. And, sir, I'm looking at a document from the Wikipedia encyclopedia and it  
7 says in the last two sentences, "Though the majority are members from two tribes, the  
8 Luyha and the Luo, the church has spread among many other tribes in the country.  
9 It has communities in the USA and the UK (London)."  
10 Would you agree with that, sir?

11 A. I don't know about UK, USA membership of this church, but I am talking about  
12 where I come from, most members of this church are the Luyhas.

13 Q. Well, I'll put it to you, sir, that even from the area where you come from, the  
14 membership comprises mainly of Luyhas and the Luos?

15 MR STEYNBERG: May I ask my learned friend is this also based on Wikipedia?

16 PRESIDING JUDGE EBOE-OSUJI: Witness, you can answer the question.

17 THE WITNESS: That is wrong. I wish you are my neighbour. You will see the  
18 membership being majority there Luyha. And I know even the leaders of the -- of  
19 this church in my locality.

20 MS ALAGENDRA:

21 Q. Good. So you have this church in your locality, sir?

22 A. Yes, it is there.

23 Q. Sir, are you familiar with another church called the African Church of the Holy  
24 Spirit?

25 A. No.

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1 MS ALAGENDRA: So let's go to tab 165A, and for my learned friend this is from the  
2 church's website. It's KEN-D09-0042-0607.

3 Q. Do you see there, sir, is written "The African Church of the Holy Spirit." It is  
4 based in Kenya. It has a membership of 700,000. Do you see that, sir?

5 A. I can see it.

6 Q. And if we go to the next page, ERN-0608, and I'm reading from the second line,  
7 "Members are identified by a cross on their clothes. Men wear beards and turbans."  
8 Do you see that, sir?

9 A. Yes.

10 Q. Does that assist you to remember whether you have heard of such a church?

11 A. It's not in my locality.

12 Q. Sir, do you know anyone who is a member of this church?

13 A. I don't.

14 Q. Do you -- so that would mean you don't know any Kalenjins, for example, who  
15 are members of this church?

16 A. It's not there in location number -- number 9. I have -- I have never had  
17 somebody saying he is a member of that particular church.

18 Q. What about in Eldoret North?

19 A. I know in Kenya we have so many churches, so many with different names, you  
20 will even think that they are number plates of vehicles, but actually they are churches.  
21 Like I said KAG, in Kenya, number plates start with a "K" and therefore there are so  
22 many, many churches in Kenya. But in my locality people who wear mostly the  
23 white scarves are the churches which mostly are membership is from the Kikuyu  
24 people.

25 Q. Sir, you know that this church exists in Eldoret North, don't you, sir?

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1 A. I don't know. I want to talk about where I know.

2 Q. And you say you don't know any Kalenjins who are a member of this church?

3 A. I don't.

4 MS ALAGENDRA: Your Honours, if I can request for a photograph? It is at tab  
5 165B, your Honour, and it's KEN-D09-0042-0605. If that can be put on the screen,  
6 please?

7 Q. Sir, do you recognise the man seated there with a tie?

8 A. No.

9 Q. Let me tell you, sir, that is Mr Daniel Cheruiyot Samoei, the father of Mr Ruto.

10 A. Thank you for the information.

11 Q. And what about the mushroom seated next to him, sir? Do you recognise him?

12 PRESIDING JUDGE EBOE-OSUJI: Question disallowed.

13 MS ALAGENDRA:

14 Q. What about the person seated next to him, sir, wearing the white headscarf?  
15 Do you recognise him?

16 A. I don't.

17 Q. Would you be surprised to know, sir, that is Mr Joshua Cheruiyot, the brother of  
18 Mr Ruto's father?

19 A. What is the question?

20 Q. Does it surprise you to know that is the man with the white headscarf seated  
21 next to Mr Ruto's father is Mr Joshua Cheruiyot, the brother of Mr Ruto's father?

22 A. I'm not surprised. In Kenya we have freedom of worship.

23 Q. And next to the late Mr Joshua Cheruiyot is Mr Ruto's mother, Mama Sarah.  
24 Do you recognise her?

25 A. I don't know the parents of Mr Ruto.

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1 Q. And, sir, the reason why Mr Joshua Cheruiyot is wearing the white headscarf is  
2 because he is a member of the African Church of the Holy Spirit. The late Mr Joshua  
3 Cheruiyot, I am sorry. Did you know that?

4 A. I have stated that I didn't know and there is freedom of worship in Kenya. It is  
5 not a problem.

6 Q. And you see, sir, I put it to you that it is you who coined the phrase  
7 "mushrooms;" "white mushrooms"? It is a description made by you to describe  
8 people who belong to particular churches? That's correct, isn't it, sir?

9 A. Not correct.

10 Q. And it's not --

11 A. It's not correct.

12 Q. And it's not a phrase, Mr Witness, that was used by Mr Ruto to describe any  
13 community?

14 A. I was there in person and that is what he said. (Redacted)  
15 (Redacted) and he attended and gave a speech and that is what he said.

16 Q. And I put it to you, sir, your decision to describe people who belong to a certain  
17 church as "white mushrooms" is very offensive to their faith?

18 A. Do you say I've done something wrong to give testimony of that particular part  
19 in this Court?

20 PRESIDING JUDGE EBOE-OSUJI: We will move on. Ms Alagendra, try not to ask  
21 questions like that. Let's just leave the emotions out of it and deal with the facts.

22 And part of the fact perhaps -- part of the fact would be that the Wikipedia -- sorry,  
23 not Wikipedia, but the World Council of Churches material you referred to,  
24 informing about the African Church of the Holy Spirit says that, quote, "Men wear  
25 beards and turbans," unquote, and you are saying that that fits the description

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1 indicated that we see in Mr Ruto's uncle? Is that your point?

2 MS ALAGENDRA: Indeed, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Let's just put it that way and move on, please.

4 MS ALAGENDRA: I'll move on, your Honour.

5 Q. Also, sir, I put it to you you have not been able to maintain a consistent story of  
6 what Mr Ruto allegedly said at this meeting. Do you accept that, sir?

7 A. I took an oath to say the truth and nothing but the truth. What I said is what I  
8 remember him saying.

9 Q. In your testimony here, before this Court, you said Mr Ruto spoke in the  
10 Kalenjin language and his exact words were, "The white mushrooms still in the area  
11 were to be uprooted and eaten".  
12 Now, let's move to your first interview with the OTP - I'll call it first meeting with the  
13 OTP - on 8 October 2012.

14 PRESIDING JUDGE EBOE-OSUJI: Tab? What's the tab?

15 MS ALAGENDRA: It's at tab 85, your Honour, and that will be KEN-OTP-0086-0136.  
16 And I'd like to turn to the next page, 0137, and that can be put on the screen please.  
17 If you can zoom into number 1, "October 2007"? And that's confidential. The next  
18 page, 0137.

19 Q. And there under "October 2007," if you look four lines down in that paragraph  
20 starting with "Ruto ..." Do you see that?

21 A. Yes.

22 Q. And this is what you said there, "Ruto said in Kiswahili that ..." quote "... 'we  
23 should get rid of the Kikuyu grass.'" Very different from what you testified, isn't it,  
24 sir?

25 A. About mushrooms are spoke in Kalenjin and these are part of the words that he

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1 continued to speak in Kiswahili.

2 Q. But that's not what you testified, sir?

3 A. I only gave two lines, but you can tell -- you can't -- for somebody speaking for  
4 more than 15 minutes cannot speak on two -- on only two lines. So he spoke many  
5 things, but I only gave what I recalled when I was seated here that I felt was incitive  
6 to the people who attended that function, but many things were spoken on that  
7 particular day. Now I have recalled, when I have seen this, that he also spoke  
8 on -- about Kikuyu grass in Kiswahili.

9 Q. Let's move on, sir. Let's move on to the statement you provided to the  
10 (Redacted).

11 PRESIDING JUDGE EBOE-OSUJI: Away from this subject?

12 MS ALAGENDRA: I'm still going on with the various statements, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Still about this event?

14 MS ALAGENDRA: Indeed, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: The event?

16 MS ALAGENDRA: Indeed.

17 PRESIDING JUDGE EBOE-OSUJI: Who were in attendance again amongst the  
18 dignitaries?

19 MS ALAGENDRA:

20 Q. Sir, perhaps you can remind us?

21 A. (No audible response)

22 PRESIDING JUDGE EBOE-OSUJI: Witness, who did you say were amongst the  
23 dignitaries in attendance on this occasion?

24 THE WITNESS: Person number 14, person number -- number 4. There were also  
25 councillors. I don't remember their -- their names.



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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MS ALAGENDRA: And, sir, now moving to your statement that you gave to the

3 (Redacted) -- and, your Honours, I am going to

4 be referring to the transcript of that statement provided to us by the Prosecution.

5 That's at tab 66, your Honour, KEN-OTP-0142-0699, and I'd like page 0701 please.

6 Q. I'm looking at the second paragraph, sixth line, and we'll start with the sentence,

7 "Honourable Ruto was the chief guest in this meeting. The ..." -- and I'm quoting, I

8 beg your pardon. I will start again. I'm quoting, "Honourable Ruto was the chief

9 guest in this meeting. The meeting was attended by more than 1,000 Kalenjins. It

10 was in this meeting that he questioned the people who were those living in their

11 midst. He wished why they would not remove them to clean their community."

12 Do you see that, sir?

13 A. Yes.

14 Q. No grass, no mushrooms?

15 A. That is I was explaining in English about the mushrooms.

16 MS ALAGENDRA: Then let's go to your discussions with the Prosecutor last week

17 when you were preparing to come to court. That will be at tab 144, your Honour.

18 Your Honour, there's no ERN for this -- for this document and I will just read the

19 relevant paragraph for now and we will submit it to the Court with an ERN number.

20 PRESIDING JUDGE EBOE-OSUJI: There's --

21 MS ALAGENDRA: Oh, I believe there is an ERN number.

22 PRESIDING JUDGE EBOE-OSUJI: Yes, written in hand.

23 MS ALAGENDRA: Indeed. It is KEN-OTP-0145-0604 and I'm looking at

24 paragraph 14, which will be 0605.

25 PRESIDING JUDGE EBOE-OSUJI: Let's just -- yeah, let's just use paragraph 14.

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1 MS ALAGENDRA: Paragraph 14, yes.

2 PRESIDING JUDGE EBOE-OSUJI: Yes.

3 MS ALAGENDRA:

4 Q. You see, sir, here the Prosecutor was questioning you on your contradictory  
5 accounts and you went on to provide a very interesting explanation and this time  
6 around you said Mr Ruto said Kikuyu grass in English. That was what you told the  
7 Prosecution and --

8 A. Yes. Yes, I said this because there is no word for -- for -- like if I translate it in  
9 Kiswahili, I have to -- to say these words that "Kikuyu grass" in quotes. It is a direct  
10 translation of what he said. I hope it is nothing contradictory.

11 Q. I put it to you, sir, it is all very contradictory and the reason why it is so  
12 contradictory, sir, is because Mr Ruto never said those words? I put it to you. You  
13 can agree or you can disagree, please.

14 A. I was there and he say it.

15 Q. Now, sir, during your testimony here you've testified describing this event as a  
16 meeting and similarly in your OTP statement you described this event as a meeting,  
17 also in your statement to the (Redacted) you  
18 referred to this event as a meeting and the Prosecution clearly understood that you  
19 were referring to a meeting and that is why when my learned friend was asking you  
20 questions his question to you was about the meeting on 1 October 2005. Sir, isn't it  
21 correct this event it wasn't a meeting, was it? It was in fact a football match?

22 A. Meeting and event or forum. I'm trying to describe that function which  
23 (Redacted) on 1 October 2005 where Mr Ruto and other people attended. If -- as I  
24 give my testimony I believe I'm not in an examination class where I'll be -- I'll be -- I'll  
25 be -- I'll be -- I'll be taken liable for using -- for -- for having misdescribed meeting

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1 and -- and -- and a function or an event, but this was I can say directly that it was a

2 function that (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted) so don't reduce the function to a football match. It was a -- it was a

11 function to mark the World Elderly Day.

12 Q. Sir, the three MPs dropped by to see the football match and they left, isn't it, sir?

13 A. They participated by coming, giving their speeches and also amongst other

14 guests and participants of the function they did watch the match.

15 Q. Why didn't you tell this to the Prosecution, or to the Court?

16 A. I was never asked about the programme of the day. I was giving evidence of

17 what I heard on that day that was incitive and that is why I only quoted the

18 last -- the -- the communication that was said by Mr Ruto, but if asked to elaborate

19 from morning up to evening, late in the evening when we left at around -- at around 6,

20 I'll be able to because (Redacted).

21 Q. And that is why, sir, at the document at tab 2, KEN-OTP-0082-0219, if I can put

22 that on the -- at page 0235?

23 PRESIDING JUDGE EBOE-OSUJI: Whose tab 2 now?

24 MS ALAGENDRA: OTP, your Honour.

25 Q. And because they just dropped by, the three MPs, to observe the match, that is

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1 why it is signed there, isn't it, sir, by Honourable Joseph Lagat, MP Eldoret East,  
2 "witness football match"?

3 A. That is what interested him most in the function.

4 Q. That is all he was there for, sir.

5 A. That is what interested him and (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. In fact, (Redacted)

13 (Redacted), isn't it, sir?

14 A. No, you are mistaken.

15 PRESIDING JUDGE EBOE-OSUJI: Witness, are you saying that that the MP,  
16 Honourable Joseph K Lagat, attended the event and was there for more than the  
17 football match? In other words, he also was there during other programmes on the  
18 agenda?

19 THE WITNESS: No, they arrived when the match was -- was -- was going on.  
20 They were not there from morning.

21 MS ALAGENDRA:

22 Q. And, sir, in fact you were so pleased with their presence there, that is why you  
23 had them to autograph (Redacted) book, isn't it?

24 A. Repeat your question.

25 Q. You were very pleased with the presence of the three MPs at the event that you

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1 got them to autograph (Redacted) book?

2 A. Like any others, these are not the only people who -- who -- who signed. You  
3 can see there are also councillors and a few other people who signed on 1 October to  
4 mark that day. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 MS ALAGENDRA: Thank you very much, sir.

10 Your Honours, perhaps we can stop here.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, we will take our lunch-break at this time and  
12 we will resume at 2.30 and, Ms Alagenda, you will also tell us at that time how you  
13 are doing with progress.

14 MS ALAGENDRA: I will, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: We go now to closed session to usher the witness  
16 out of the courtroom and then we will rise after that.

17 \*(Closed session at 1.02 p.m.) Reclassified as Open session

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

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 (The witness stands down)

21 PRESIDING JUDGE EBOE-OSUJI: And I note on the record that the last exchange  
22 produced a flurry of material that should not be in the delayed broadcast, so the court  
23 officer will take care of that in terms of redactions.

24 The Court will rise.

25 THE COURT OFFICER: All rise.

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- 1 (Recess taken at 1.03 p.m.)
- 2 (Upon resuming in open session at 2.35 p.m.)
- 3 THE COURT USHER: All rise.
- 4 Please be seated.
- 5 THE COURT OFFICER: Mr President, we are in open session.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 7 And welcome back, Witness.
- 8 MR GARCIA: Good afternoon, your Honours. Simply for the record, Lucia Garcia for the
- 9 Prosecution. Mr Steynberg cannot attend this final session today. He will be back
- 10 tomorrow. I'm sitting in for him during this last session.
- 11 MR (Redacted): Your Honour, if I may, as everyone noticed in the last session, many details
- 12 PRESIDING JUDGE EBOE-OSUJI: We're in open session, you know that.
- 13 MR (Redacted): Yes. I repeat --
- 14 PRESIDING JUDGE EBOE-OSUJI: One second.
- 15 Private session.
- 16 \*(Private session at 2.36 p.m.) Reclassified as Open session
- 17 THE COURT OFFICER: We are in private session, Mr President.
- 18 PRESIDING JUDGE EBOE-OSUJI: Yes, thank you.
- 19 MR (Redacted): Your Honour, as everyone noticed in the last session, many details were
- 20 mentioned which may identify the witness. So if the present cross-examination will have the
- 21 same nature as in the last session, I suggest to go into private session so the witness can
- 22 express himself as he should. Thank you.
- 23 PRESIDING JUDGE EBOE-OSUJI: Noted, Mr (Redacted). Thank you. And Ms Alagendra
- 24 will of course take that into account.
- 25 We'll go back to open session or remain inside?

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1 MS ALAGENDRA: We can go into public session, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Open session then.

3 (Open session at 2.37 p.m.)

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MS ALAGENDRA: Thank you.

7 Q. Good afternoon, Mr Witness.

8 A. Good afternoon.

9 Q. Sir, you will agree with me that the 2005 and 2007 elections was closely monitored by  
10 local and international human rights organisations, yes?

11 A. Yes.

12 PRESIDING JUDGE EBOE-OSUJI: Did you mean 2005 election?

13 MS ALAGENDRA: The referendum, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: The 2005 referendum and the 2007 elections were closely  
15 monitored by local and international human rights organisations, that's the question?

16 MS ALAGENDRA: Indeed, your Honour. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: And the witness, your answer is?

18 THE WITNESS: I agree.

19 MS ALAGENDRA:

20 Q. And, sir, for instance, I'm sure you're aware that the international observers funded by  
21 USAID was monitoring the 2007 elections, yes?

22 A. I don't know about the funding, but I can confirm that there were monitors for that  
23 election.

24 Q. And, sir, in particular you will recall that the Kenya National Commission for Human  
25 Rights was monitoring the 2005 referendum campaigns; am I right?

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1 A. I don't remember.

2 Q. Do you recall that the Kenya National Commission for Human Rights produced a report  
3 called the "Referendum Report," which related to the campaigns of the 2005 referendum?

4 A. I don't recall.

5 MS ALAGENDRA: Your Honours, if I can go to tab 2 and that will be KEN-D02-0042-0002,  
6 and that will be tab 2 of the Defence bundle, your Honour. And could I ask that page 0003  
7 be put on the screen, please.

8 Q. Sir, if you have a look at this page, "Referendum Report," it's titled "Acknowledgments,"  
9 and it was released September 2006. Does this assist you to recall such a report, sir?

10 A. No.

11 Q. And at page 0007, if I can go to 0007, please. Move down to the picture. Perhaps a bit  
12 further down.

13 And, sir, you will see there that this report has been signed off by Mr Maina Kiai. And do  
14 you recognise his photograph on the left?

15 A. Yes.

16 Q. And if I could go to page 0010, please. And I'm going to look at the first paragraph and  
17 it says the Kenya -- and I quote, "The Kenya National Commission on Human Rights  
18 (KNHCR), an independent national human rights institution, teamed up with the Kenya  
19 Human Rights Commission (KHRC), a non-governmental organisation and with the support  
20 of the Electoral Commission of Kenya (ECK), undertook to monitor the constitutional  
21 referendum campaigns preceding the vote on November 21st 2005." End of quote.

22 Sir, would you agree that these three organisations grouped together and they  
23 monitored the 2005 elections?

24 A. I can see it's written here. I agree.

25 Q. But did you independently hear anything about this work they were doing to monitor



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1 the campaigns?

2 A. I don't remember.

3 MS ALAGENDRA: Your Honour, could I perhaps hand a copy of the document to the  
4 witness so he can flip the pages, which may be faster.

5 PRESIDING JUDGE EBOE-OSUJI: Certainly so, yes.

6 MS ALAGENDRA:

7 Q. Sir, could you turn to the page 0029, and you will see there it's the chapter titled  
8 "Incitement." Do you see? You can look at the bottom of the page for the numbers, right at  
9 the bottom, please, ending 0029. You can turn on to there. Do you see the number? Do  
10 you see the numbers at the bottom of the page, KEN-D09 and so forth?

11 A. Ending with?

12 Q. So keep turning until you reach 0029. It goes in chronology. Do you see, sir, that's the  
13 chapter on "Incitement"?

14 A. Yes.

15 Q. And if you turn the pages until -- you can flip the pages right until 0036, you can take  
16 your time to look at it. Sir, we will look at pages ending 0031, 0032, 0033, 0034 and 0035.  
17 Then we reach page 0036, and there you see the "Recommendations," the Kenyan  
18 national human -- the Kenya National Commission for Human Rights and the Kenya Human  
19 Rights Commission "recommend the investigation and Prosecution of the above named  
20 politicians for incitement under Section 95 and 96 of the Penal Code." Do you see that?

21 A. Yes.

22 Q. And you will agree with me, sir, that all the pages you have flicked from page 0029 right  
23 until 0036, Mr William Ruto is not named, yes?

24 A. Yes, I've not seen him here.

25 Q. Now let's turn to 0040, sir, 0040, and it's titled "Utterances Constituting Hate Speech

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1 Contrary to Section 77 of the Penal Code." Please go through that page.

2 Then turn to page 0041. Then you can have a look at page 0042. And then you

3 come to page 0043 and here it says, "The KNCHR and KHRC recommend the

4 following: The investigation and Prosecution of the above named politicians under

5 Section 77(3)(e) of the Penal Code for subversion; and the enactment of legislation to

6 bolster the existing law on subversion outlawing hate speech."

7 Sir, will you confirm that in the entire section Mr William Ruto is not named?

8 A. Yes. In this report he's not named here.

9 Q. In fact, sir, the only mention of Mr William Ruto in the whole report appears at page

10 0062, if you could turn to that page, please. And it appears in the section of the report

11 dealing with "Gender Insensitive Language Constituting Derogation of Women" and that

12 appears at page 0061. Do you see that, sir?

13 A. Yes.

14 Q. And Mr Ruto has been singled out for uttering these words which appears at page 0062,

15 I quote, "We have men and there are those who are like women because they are fearing to

16 defect from the Banana camp."

17 Do you see that, sir?

18 A. Yes.

19 Q. This is the only mention of Mr Ruto in this entire report?

20 MR GARCIA: Your Honours, I object on two grounds. First of all, to the suggestion that's

21 being put to the witness. It's obvious that the witness hasn't had a chance to read through

22 the report. But even more so, the more overarching objection and more important concern is

23 I don't understand why Defence counsel is putting questions on this report and its content

24 when it's clear from the evidence of the witness that he doesn't recall this report. He doesn't

25 know of it. So once the witness has stated that, I don't see what the purpose is and the

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1 objective of going through every part of the report and having the witness look at, read out  
2 sentences or paragraphs and see what anyone in this courtroom can see by himself. I submit  
3 that this kind of report, if the Defence wishes to introduce it, should be done through a Bar  
4 Table Motion.

5 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

6 MS ALAGENDRA:

7 Q. Sir, you'll agree with me that the present Government of Kenya, where Mr Ruto is the  
8 deputy-president, has been applauded for having women in government and the  
9 stakeholders in society, am I correct?

10 A. Repeat that one.

11 Q. You will agree with me that your present government has been applauded for having  
12 the highest number of women involved in government and in -- and as stakeholders in society?  
13 Would you agree? Are you aware of that?

14 A. Applauded? I'm not aware.

15 Q. Has been praised, recognised?

16 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, what is the relevance of that question?

17 MS ALAGENDRA: It is perhaps to deal with the nature of the issue raised in this report in  
18 terms of the gender insensitive comments by Mr Ruto, your Honour.

19 THE WITNESS: But the gender insensitive comments is not made by me and these  
20 comments in these reports are made by different people. And it is not part of my evidence  
21 and it's my first time to look at this report, and I feel uncomfortable to continue commenting  
22 on documents that I've seen for the first time in this desk and I feel I should only give  
23 evidence of documents I know of those I have commented about in my statements or in my  
24 testimony because I still -- I'm still obliged and under my oath to speak the truth and nothing  
25 but the truth.

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, you need not worry about whether or not  
2 you've read this document. Do your best to answer the question of counsel. Counsel for  
3 the Prosecution during arguments will know how to deal with any reference to a document  
4 that may say more in it than the cross-examiner had indicated in their questioning. So do  
5 your best to answer the questions of Ms Alagendra.

6 The point she's driving at is this: That if it is the case that Mr Ruto had made a  
7 speech where he said, "Remove the mushrooms," or "Remove Kikuyus," that is an  
8 inciting speech and that the Kenya Human Rights Commission report would have  
9 picked that up and not limited their mention of him to gender insensitive speech.  
10 That is the point she's driving at in that questioning.

11 What do you say to that?

12 THE WITNESS: Your Honour, I don't know the way Kenya Human Rights Commission and  
13 Kenya National Human Rights Commission were collecting their information in order to  
14 compile such a report, but on that particular function that was happening in --

15 PRESIDING JUDGE EBOE-OSUJI: Do not give too much detail. We know what function  
16 you are talking about, but just make your point without indicating if you played any role in it  
17 and things like that.

18 THE WITNESS: Yes. I don't know whether Kenyan National Human Rights Commission,  
19 or Kenya Human Rights Commission, were in this particular function so that they could pick  
20 up such utterances from Mr William Ruto.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MS ALAGENDRA: Your Honours, I'll proceed.

23 Q. Sir, are you aware that the Kenya Human Rights Commission, KHRC, they had  
24 monitors all over the country monitoring the 2007 campaigns?

25 A. I don't know.

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1 Q. And are you aware, sir, that the Kenya Human Rights Commission produced a report  
2 titled "Violating the Vote" from information they compiled from their monitors from around  
3 the country? Are you aware of that?

4 A. No.

5 Q. Have you ever read the report --

6 A. No.

7 Q. -- titled --

8 PRESIDING JUDGE EBOE-OSUJI: Witness, remember to allow the question to be completed  
9 and then pause for five seconds and then answer.

10 THE WITNESS: Yes, your Honour. Sorry for that.

11 MS ALAGENDRA:

12 Q. Sir, do you know anyone by the name of (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. I'm not being rude. (Redacted)

19 (Redacted) I hope you understand?

20 A. Yes.

21 Q. And, sir, (Redacted) were recruited, trained

22 and paid by the Kenya Human Rights Commission to monitor the 2007 campaigns? Are you  
23 aware of that?

24 A. I don't know about that programme.

25 Q. Did you know anyone by the name of Andrew Losili who was a Kenya Human Rights

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1 Commission monitor who was covering the Eldoret North area? Just say "Yes" or "No," sir.

2 A. No.

3 Q. Sir, in the 2007 elections who did you vote for in the presidential elections?

4 A. Whom I voted for?

5 Q. Yes, sir.

6 A. Kalonzo Musyoka.

7 Q. Is there any reason why you took so long to think, sir?

8 A. I was respecting the microphone.

9 MS ALAGENDRA: Sir, I'd like you to have a look at a photograph. It's at tab 44, your  
10 Honours. That will be KEN-D09-0042-0049. That's the Defence bundle, tab 44, your  
11 Honour. I beg your pardon, KEN-D09-0042-0449. It can be shown in public.

12 Q. Sir, do you recognise this person and, if you do, just say "Yes" or "No" without  
13 explaining how you know him?

14 A. No.

15 Q. Have you ever seen him before, sir?

16 A. I don't remember seeing him.

17 MS ALAGENDRA: Your Honour, perhaps we should go into a private session please.

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 \*(Private session at 3.03 p.m.) Reclassified as Open session

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 MS ALAGENDRA:

23 Q. Sir, you told the Court on 18 November, and I quote -- this is transcript 155, pages 43,  
24 your Honour, and I'll read it to you, sir. You said -- can I ask that the photograph be taken  
25 down, please?

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- 1 You said, "(Redacted)..." -- let me  
2 look at that actual transcript. Let me read it for you accurately, sir. You said:  
3 "(Redacted) and we are  
4 heading -- we were heading to the police station because we knew there was another  
5 gathering there."  
6 And you were asked: "How is it that (Redacted)  
7 (Redacted)  
8 And you answered: (Redacted)  
9 (Redacted)  
10 (Redacted)  
11 (Redacted)  
12 (Redacted)  
13 PRESIDING JUDGE EBOE-OSUJI: And that's end of quote.  
14 MS ALAGENDRA: End of quote, indeed.  
15 Q. Sir, so that was your testimony to the Court. You recall that?  
16 A. Yes.  
17 Q. So when (Redacted) to the police station and you said you were listening to the speech of  
18 Mr Ruto, where exactly was (Redacted) standing in relation to you at that moment?  
19 A. Because I got out of (Redacted) and headed -- and headed to the -- to the  
20 supermarket and back, getting to the -- to the -- where the crowd was, I did not see exactly  
21 where (Redacted) was standing.  
22 Q. But he was there at the police station; is that correct, sir?  
23 A. Yes, when I left they were heading there to the crowd.  
24 Q. Sir, do you recall his name - (Redacted)  
25 (Redacted)

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1 A. I don't recall the name.

2 MS ALAGENDRA: Your Honours, we can go into a public session please.

3 PRESIDING JUDGE EBOE-OSUJI: Open session.

4 (Open session at 3.07 p.m.)

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

6 MS ALAGENDRA:

7 Q. Sir, on 26 December 2007, you will agree with me that tensions were high all over the  
8 country; am I right?

9 A. I'm not sure about other parts of the country, but there were tension.

10 Q. In fact, the allegations of marked ballot papers being ferried on behalf of the  
11 government was spreading not just in Eldoret but in other areas as well, am I right, sir, other  
12 constituencies?

13 A. I heard about Eldoret.

14 Q. Sir, are you saying you never heard AP officers were killed on 26 December in Nyanza  
15 for example?

16 A. I'm talking about ferrying of ballot papers.

17 Q. So am I, sir. And did you hear there were allegations that AP officers were ferrying  
18 marked ballot papers in other are areas like Nyanza and they were killed on that very 26  
19 December? Did you hear that?

20 A. No. I heard that the APs were ready to rig -- were to be used to rig elections.

21 Q. Were you watching the news, sir, during those days on the TV?

22 A. Yes.

23 Q. So allow me to play you a news clip and see whether that may help you refresh your  
24 memory. And I'm going to play the video KEN-D09-0022-0002.

25 And, your Honours, that was MFI-T-D09-0049. And the transcript, your Honours, is at tab



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1 40 of the Defence bundle.

2 PRESIDING JUDGE EBOE-OSUJI: While the clip is being set up, I meant to ask you when  
3 we got in about how we are doing on time.

4 MS ALAGENDRA: Your Honours, we have reviewed matters very carefully and we've  
5 discussed as well with my learned friend Mr Katwa, and I would require until the end of  
6 tomorrow, your Honour, to the end of the day. And I understand Mr Kigen-Katwa will take  
7 the first two sessions of Wednesday at the most, and we can surely start with 658, your  
8 Honour, on Wednesday right after lunch.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed, please.

10 MS ALAGENDRA:

11 Q. Sir, please have a look at the clip that's going to play and see if it will help you  
12 remember events clearly.

13 (Playing of the video excerpt KEN-D09-0022-0002)

14 MS ALAGENDRA:

15 Q. Sir, do you remember seeing this news clip about events that were taking place in Homa  
16 Bay, Oyugis, Awendo? Do you recall seeing that at the time?

17 A. Yes.

18 Q. And compared to what was happening in those areas, sir, you will confirm that nobody  
19 was killed in Eldoret on 26 December 2007? Can you confirm that?

20 A. Yes. In Eldoret town, I don't remember anyone being killed.

21 Q. And, sir, it is in this context that on the morning of 26 December you saw people  
22 gathered outside the Brookside Dairy; am I right, sir?

23 A. In the morning it was announced by Joshua Arap Sang that vehicles Molo Line and 2NK  
24 had ferried papers and some were in this particular company.

25 Q. Sir, at the Brookside Dairy, how many people were there? Is it hundreds, thousands?

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1 A. Hundreds.

2 Q. And it is there you told the Court that you met person number 6, correct?

3 A. Yes.

4 Q. And you will confirm, sir, Mr Ruto was not there, yes?

5 A. I didn't see him at the dairy.

6 Q. And the first time you see Mr Ruto, sir, is at the police station, Eldoret police station,  
7 correct?

8 A. Yes.

9 Q. And for the record, sir, we do accept that Mr Ruto was at the Eldoret police station on 26  
10 December, and we also accept that Mr Ruto addressed the crowd there. Do you understand  
11 me, sir?

12 A. Yes.

13 Q. And Mr Ruto arrived after Mr Farouk Kibet finished speaking, correct, sir?

14 A. I don't know his time of arrival, but I saw him speaking.

15 Q. And you saw him after Mr Farouk Kibet finished speaking, correct?

16 A. Yes.

17 Q. And the crowds were still agitated that there were ballot boxes hidden inside the police  
18 station as well, correct, sir?

19 A. I don't remember about police station, but I had -- I arrived there after when Mr Farouk  
20 was talking.

21 Q. You don't recall seeing Mr Ruto going into the police station with the OCPD and some  
22 members of the public to inspect the police station, or you don't know?

23 A. I don't remember that part.

24 Q. And when he came out of the police station, sir, Mr Ruto addressed the crowd and he  
25 confirmed to them that there were no ballot boxes inside the station. Do you recall that?

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1 A. No.

2 Q. Sir, do you recall who was standing next to Mr Ruto when he was speaking?

3 A. I don't. There were many people.

4 Q. Who was standing physically next to Mr Ruto, you don't recall?

5 A. I don't.

6 Q. Sir, do you know who was the OCPD of Eldoret at the time?

7 A. No.

8 Q. And do you recall, sir, that there was members of the press that were at the police  
9 station as well?

10 A. Yes.

11 Q. And do you recall that there were other monitors who were also present there, election  
12 monitors?

13 A. I don't know.

14 Q. I know you testified that you don't know him, but did you hear that the KHRC monitor,  
15 Mr Andrew Losili, was present there? Did you hear that?

16 A. No.

17 Q. Sir, when Mr Ruto addressed the crowd, he called for calm and he told the people that  
18 they are mindful of the rumours of rigging and they will do their best to ensure that the  
19 election proceeds smoothly; isn't that what Mr Ruto told the crowd?

20 A. That was not all.

21 Q. I know you told the Court that Mr Ruto used the word "witches," but I put it to you, sir,  
22 he did not use that word. What do you say?

23 A. He spoke also in Kalenjin and that is when he used that -- the word "witches".

24 Witches" has just come out of my interpretation of his Kalenjin words. So if you are putting  
25 it that he did not speak English about on that -- on "witches," in English the word "witches," or

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1 Swahili, then I agree, but if it is what he spoke about in Kalenjin then that is wrong.

2 Q. Sir, I put it to you in any language Mr Ruto did not use the word "witches," and I also  
3 put it to you, sir, that the person standing right next to Mr Ruto as he addressed the crowd  
4 was Mr Angelus Karuru, the OCDP of Eldoret. What do you say to that?

5 A. It's wrong.

6 Q. And, sir, let me read to you what the KHRC monitors who were present had to report  
7 about the event and you can comment on it.

8 Your Honour, I'm looking at tab 32 and this is a document that was provided to us by  
9 the Prosecution. It was written by the Kenya Human Rights monitor, Andrew Losili,  
10 and the ERN is KEN-OTP-0068-0042 and I'm looking at the page 0043. I'm looking at  
11 the top of the page and I will read it.

12 It says, "Voting day 27/12/2007." That's the heading. Underneath that, and I quote:  
13 "On 26/12/2007 during midday a word went around the Eldoret Town that the  
14 election had been rigged for Eldoret North with the presence of Administration Police  
15 guarding the boxes.

16 As I was travelling to police station (Eldoret) tension was so immense and as I  
17 approached the police station I found a huge crowd gathered around the police  
18 station citing rigging irregularities and a vehicle was burning and it was suspected it  
19 was carrying the materials. Few moments Honourable William Ruto arrived in the  
20 police station and cooled down the temperatures of the crowd and promised the  
21 people that things will go on well as they are vigilant of the process of the rigging."

22 Sir, I've -- that was end of quote.

23 I put it to you, sir, that indeed what happened at the police station that day in terms  
24 of Mr Ruto's role was exactly as it was described by Mr Losili. What do you say to  
25 that, sir? Do you agree, or you disagree?

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1 A. Mr Losili is not a Kalenjin, so he did not report on what he did not hear. That is -- that  
2 is what I can -- I can say about -- about this. As I can see, it is also written at that time  
3 because it's handwritten. It was like he was taking notes and I think he only wrote what he  
4 heard.

5 Q. Sir, you've told the Court you don't know him, so let me say this to you. I put it to you,  
6 sir, and would you be surprised, Mr Losili speaks Kalenjin?

7 A. If he does, I don't know why he did not report on what was actually said in Kalenjin.

8 Q. In fact, sir, Mr Losili is Kalenjin Marakwet. You didn't know that, did you?

9 A. The name doesn't sound Kalenjin. That's why I commented it. So I don't know him.

10 PRESIDING JUDGE EBOE-OSUJI: You might also, Counsel, want to spell the name for the  
11 record.

12 MS ALAGENDRA: Your Honour, the name Andrew and the second name Losili,  
13 L-O-S-I-L-I, your Honour.

14 Your Honours, if I can go to tab 41, and can I request for the document  
15 KEN-D09-0035-0115 to be put on the screen, please, and could you zoom into the  
16 article below? I'm looking at the article "Rigging fears ignite violence in  
17 towns ..." -- sorry, if I may just go up first to the date of the news item?

18 Q. Sir, do you see there at the top the date is Thursday December 27, 2007, Daily Nation?

19 A. Yes.

20 Q. Now going down to the article, which is reporting on the events of the previous day,  
21 "Rigging fears ignite violence in towns as APs stage sit-in against new gun order." And can  
22 you see the first paragraph, sir? And I will read, quote, "A vehicle transporting election  
23 materials was yesterday reduced set on fire in Eldoret Town."

24 And if I can go to the last paragraph of the first column, you will read there, sir, and it  
25 says, I quote, "Earlier, hundreds of residents stormed the police station after word

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1 went round that a Mololine bus had been impounded with the papers."

2 Do you see that?

3 A. Yes.

4 Q. And underneath that I quote, "ODM chairman Henry Kosgey and Pentagon member  
5 William Ruto called for calm but warned the Government not to attempt any rigging." End  
6 of quote.

7 Do you see that, sir?

8 A. Yes.

9 Q. And for the record the ERN of -- and, sir, the news report of that day is exactly what  
10 Mr Losili reported, isn't it?

11 A. It is very brief.

12 Q. Did you read that newspaper, sir, at the time?

13 A. No, but I can see it here. It doesn't carry everything that transpired on  
14 that -- everything that was said by William Ruto at that time, especially on the  
15 language he -- on -- on the Kalenjin language.

16 Q. You weren't at Brookside or Eldoret police station, were you? That's the truth?

17 A. Repeat the question.

18 Q. You were not at Brookside or Eldoret police station, were you?

19 A. I was there.

20 Q. And I say that also, sir, because you have the events all back to front?

21 A. I don't understand.

22 Q. What I'm saying is you have the events of the day in the reverse order than how it  
23 actually happened, because the crowd, sir, was first at the Eldoret police station and it is from  
24 there that they moved to Brookside and not the way you explained it, sir. Didn't you know  
25 that?

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1 A. Myself, I was practically there, and I got from Brookside and I went to the supermarket  
2 and to the police station. And therefore about the reverse method I don't understand,  
3 because already when we were in the -- when we were in the -- in the -- in the Brookside  
4 company, it is not that there was no one at the other side. That is how we decided to go,  
5 because we knew -- because we -- we -- we -- we knew that there was another gathering of  
6 people at the other side of the police -- of the police station. Therefore, it is not true that it  
7 was a reverse of events.

8 PRESIDING JUDGE EBOE-OSUJI: When do we go to the open session? Oh, we are there.  
9 I'm sorry, my mistake. Sorry.

10 MS ALAGENDRA:

11 Q. You see, Mr Witness, if you had gone to the Eldoret police station after all the events  
12 that you described take place at Brookside happened, you would have found an empty police  
13 station. There wouldn't have been anybody there. Do you understand me?

14 A. But you are wrong. Remember, I was not going -- I was not going there on foot. If I  
15 was walking then maybe I will have found no one, but remember from Brookside to  
16 police -- to the police station on a vehicle is not -- is not that far. It is not even -- it is not even  
17 a five minutes' -- it is not even a five minutes' drive if you -- if you're just close.

18 Q. Sir, you don't even know the DC, do you? You don't know him?

19 A. On what context?

20 Q. In any context, sir. You've had no dealings with him, have you, and you don't know  
21 him?

22 A. I've stated clearly that (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And you don't --

7 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, is that a "Yes" or "No" whether you  
8 know the DC? Counsel is interested in what you yourself know, not what somebody else  
9 might have known.

10 THE WITNESS: I personally as an individual I did not have meetings and I can say that he  
11 did not know me as a person, but I could recognise him. In any case I could use the person  
12 number 6 to get to the -- to get to him as a person.

13 Q. You see, sir --

14 PRESIDING JUDGE EBOE-OSUJI: One second.

15 Do you still need to go to private session to explain further, or is that enough of an  
16 explanation that you had in mind?

17 THE WITNESS: That's enough I had.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Proceed.

20 MS ALAGENDRA:

21 Q. You see, sir, not only don't you not know his name, but you don't even recognise him.  
22 You don't know what he looks like, do you? Because if you did, sir, the first photograph I  
23 showed you, that was the DC, Mr Bernard Kinyua. Your story is made up, isn't it, sir?

24 A. The -- the photograph you showed me, the DC on most occasions I have -- in his -- in his  
25 office and when I saw him, he was on a uniform. And the photographs you showed me is



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1 not somebody in uniform, and that is why I did not recognise him. And I want to tell you,  
2 no story here is cooked up because it is a reality of what was happening at that particular  
3 time.

4 Q. Let's move on, sir. Sir, did you hear --

5 PRESIDING JUDGE EBOE-OSUJI: One second. Just so I understand and I get the picture,  
6 do DCs wear uniforms?

7 THE WITNESS: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: And DCs, are they police officers or civilian people?

9 THE WITNESS: They are administration officers. So they have their -- their uniform  
10 always while on duty.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.

12 MS ALAGENDRA:

13 Q. Sir, during the Waki proceedings, the DC - and I will tell you his name is Bernard  
14 Kinyua - did you hear his testimony, his public testimony when he testified in Eldoret?

15 A. No.

16 MS ALAGENDRA: Your Honours, for the record I'm going to be referring to a document  
17 from the Prosecution which they seek to admit through P-13, and for that reason I have not  
18 put the entire hundreds of pages. And in your -- in your bundle, your Honour, it's just the  
19 relevant pages of the testimony that I've put there.

20 PRESIDING JUDGE EBOE-OSUJI: And where is this in the bundle?

21 MS ALAGENDRA: I'll get that for your Honour, but for the Court record it is

22 KEN-OTP -- it's tab 46, your Honour, and the ERN is KEN-OTP-0005-7542, and I'm referring  
23 to pages 7683 first. And if that could be put on the screen, please.

24 And I'm reading now from the middle of the page. I quote, it's a question from counsel,

25 Mr Musyoka Annan, and the question is, "Did you receive allegations of Molo Line bus park

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1 at the police station allegedly carrying ballot paper?"

2 Mr Bernard Kinyua: Yes.

3 Mr Musyoka Annan: Do you know what date that was?

4 Mr Bernard Kinyua: It was on 26th.

5 Mr Musyoka Annan: "Were you aware" -- "Were you aware of certain politician that  
6 went to the police station with regard to that bus?

7 Mr Bernard Kinyua: I was not present at the police station."

8 The next reference I would like to look at is page 07 -- sorry, 7699.

9 PRESIDING JUDGE EBOE-OSUJI: And that is at another place in the documents.

10 MS ALAGENDRA: In the larger document, yes, your Honour, but for purposes of your  
11 binders I've just put the relevant pages.

12 Q. And there I'm looking at the question from Commissioner Gavin McFadyen, and I quote,  
13 "Just a couple of questions. Do you say that before the elections there was widespread  
14 suspicion and rumours that the elections would be rigged? Rigged in favour of who?"

15 Mr Bernard Kinyua responds, and I quote: "Rigged in favour of the government."

16 End of quote.

17 Commissioner Gavin McFadyen, quote: "And you heard these rumours, do you  
18 know who they came from?

19 Mr Bernard Kinyua: The rumours were spread all over as I have in fact indicated, on  
20 the 26th, some people wanted to verify whether there were marked ballot papers in a  
21 bus which was packed at the local police station. And they did proceed to the  
22 Brookside milk factory to also ascertain the same allegation which they found to be  
23 untrue."

24 Do you see that, sir?

25 A. Yes.

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1 Q. Right. So Mr Kinyua's testimony is they proceeded from the police station to the  
2 Brookside Dairy.

3 Now, let me continue reading.

4 "Commissioner Gavin McFadyen ..." --

5 PRESIDING JUDGE EBOE-OSUJI: But did you see what Mr Kinyua said in the previous  
6 place you read? He said it was not at the police station.

7 MS ALAGENDRA: Indeed, your Honour. I think he's probably explaining what he's  
8 heard.

9 PRESIDING JUDGE EBOE-OSUJI: Okay.

10 MS ALAGENDRA:

11 Q. I continue reading.

12 "Commissioner Gavin McFadyen: Do you know some of those people who were in  
13 that group that went to the police station and then to the Brookside factory?"

14 And then I go to the next page at 7700.

15 Your Honours, there was a loose page that was given to your Honours this morning  
16 because we had -- yes, this.

17 So the question I put again from Commissioner Gavin McFadyen, and I quote, "Do you know  
18 some of those people who were in that group that went to the police station and then to the  
19 Brookside factory?"

20 The next page Mr Bernard Kinyua answers, "I did not see those people myself but I  
21 know the incident happened. I would not have been able to identify the people."

22 Do you see that, sir?

23 A. Yes.

24 Q. Do you now accept, sir, Mr Bernard Kinyua was nowhere near Eldoret police station nor  
25 Brookside, or do you still think otherwise?

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1 A. I still think otherwise. Remember, Mr Kinyua is a government official and to these  
2 reports and questions he's answering, I think he's very limited on the kind of answers  
3 he's -- he is giving to these -- to this commission. And -- and I have stated on occasions  
4 where Brookside incident happened and that one of the police station, and I don't think that  
5 about the people he's talking about here are the people who are with him in his -- in his -- in  
6 his -- in his vehicle, but the people who are in -- who are in the -- in the crowd. So I still say  
7 that Mr Bernard Kinyua is very limited to his answers.

8 PRESIDING JUDGE EBOE-OSUJI: When you say "very limited" -- there are two points that  
9 come out of that. One is the suggestion that Ms Alagendra had put earlier about whether or  
10 not you had reversed the sequence of events going from Brookside to the police station or  
11 otherwise. So that is one point.

12 But the other point is that Mr Kinyua is saying that he was not at the police station.

13 When you say he was limited in his testimony to the inquiry, assuming this is the text  
14 of his transcript, what do you mean by he was limited?

15 THE WITNESS: Because I don't see where he has talked about speeches that were made by  
16 leaders who are there and that is why I say I find him being limited in his answers or very  
17 careful to the answers he was -- he was giving to the commission.

18 PRESIDING JUDGE EBOE-OSUJI: All right. What about the point concerning his presence  
19 at the police station? He said he was not there at the time.

20 THE WITNESS: (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Let's go to private session for some matter.

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1 \*(Private session at 3.50 p.m.) Reclassified as Open session

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. Naturally the witness's last answer  
4 identifying himself will be redacted from the delayed broadcast.

5 Ms Alagendra, you will continue and we'll go back to open?

6 MS ALAGENDRA: Yes, please, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Back to open session.

8 (Open session at 3.51 p.m.)

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

10 MS ALAGENDRA:

11 Q. Sir, let me take you to your statement to the Prosecution.

12 Your Honours, back to the statement at tab 1, please. I'm looking at paragraph 71. The  
13 ERN is KEN-OTP-0082-0187, and the page I'm looking at is 0201 and to go to paragraph 71,  
14 please.

15 And, sir, let me read that to you:

16 "I also saw that an Uchumi Supermarket had been burnt down.

17 Uchumi is a Kikuyu-owned supermarket. It was located opposite Unga, U-N-G-A,  
18 on Uganda Road. It was burnt down by the Kalenjin youths who had failed to burn  
19 down Tuskys."

20 That's what you told the Prosecution, isn't it?

21 A. Yes.

22 Q. Sir, for lack of a better word, that's a lie, isn't it, sir?

23 A. That's not a lie.

24 Q. I'll put it to you, sir, Uchumi was not burnt down on 26 December 2007. What do you  
25 say to that, sir?

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1 A. It was burnt down on that day.

2 Q. Let me take you to tab 24.

3 The Defence bundle, your Honour, that is KEN-D09-0042-0148, and could we zoom  
4 into the date, please?

5 Sir, do you see there the Daily Nation, Wednesday, January 2, 2008. And I'm looking  
6 at the article titled "Raid on Church Leaves 35 Dead as Chaos Spreads."

7 Do you see that, sir?

8 A. Yes.

9 Q. And I'm looking at the second column at the heading "Humanitarian Crisis." And if  
10 you could scroll down a bit please to the fifth paragraph starting "Uchumi."

11 Now, let me read the news report of January 2, 2008, sir.

12 "Uchumi Supermarket, which had remained the only open shopping outlet, was  
13 closed yesterday after it ran out of stock."

14 Do you see that, sir?

15 A. Yes.

16 Q. Uchumi Supermarket was up and running right until the 1st of January and it only shut  
17 down because it ran out of supplies. Do you see that, sir?

18 A. Yes.

19 Q. Do you still maintain your testimony that Uchumi Supermarket was burnt down on 26  
20 December?

21 A. Yes, because it was burnt on 20 -- on 26th. If there -- if by -- by 2nd they were still  
22 selling, that one, I don't know, because when I say "burnt" -- when I said "burnt down" I  
23 meant it was put on fire. And being a permanent -- a permanent -- a permanent house, it did  
24 not go down to ashes everything, but the ceiling and the -- and the -- and the -- and the  
25 roofing were burnt.

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1 If then there was repair and continued selling the stock inside up to that time, I may  
2 not -- I may not -- I may not tell.

3 MS ALAGENDRA: Your Honours, can I move to tab 48, please, and I'm looking at the  
4 document KEN-D09-0042-0451?

5 Q. What you're looking at, Mr Witness, is a letter from the group chief executive officer of  
6 Uchumi, and this is what he says. He says, "Re: Burning of Uchumi Eldoret branch.  
7 The above matters refers.

8 This is to confirm that Uchumi Supermarket branch in Eldoret was not burnt down  
9 during the skirmishes of the post-election violence that occurred in the country in  
10 2007/2008.

11 We would like to also clarify that the only fire incidence that occurred in Eldoret  
12 branch was in 1998. This was caused by electric short-circuit in the building that  
13 ignited the fire and burnt down the shop.

14 Yours faithfully for and on behalf of Uchumi Supermarkets Limited, Dr Jonathan  
15 Ciano, MBS, Group Chief Executive Officer."

16 Sir, I put it to you that information you gave to the OTP and your testimony in this  
17 Court are knowingly false. What do you say?

18 A. No. I'm not surprised to see such a letter. Having -- I request that we go to a private  
19 session.

20 PRESIDING JUDGE EBOE-OSUJI: Private session.

21 \*(Private session at 3.59 p.m.) Reclassified as Open session

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

23 THE WITNESS: I was saying that I'm not surprised to see such a letter written and signed by  
24 this officer. Having seen how the people who don't want to see this case continue in this -- in  
25 this Court work, I cannot believe or take this letter with such seriousness as it is written

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1 because I know anything in Kenya is possible, especially with businessmen who depend  
2 much on protection of the government in order for them to operate smoothly in the Republic.  
3 And, therefore, having such -- having such a letter does not qualify that things did not  
4 happen.

5 At the time I was also asked -- I was asked to sign an affidavit of which I had not read.  
6 I signed -- I -- I -- I will also -- I was also asked to -- to sign a letter which --

7 PRESIDING JUDGE EBOE-OSUJI: Witness, I think we've got your point. And there is a  
8 reason why it's always best to call witnesses to come and testify as opposed to bringing the  
9 documents in, but your point is taken.

10 And the point he's making is whoever sent this letter should come and testify to it in  
11 court and be subjected to cross-examination by the Prosecution. We'll leave it at  
12 that.

13 MS ALAGENDRA: I'm looking at the time.

14 PRESIDING JUDGE EBOE-OSUJI: Indeed. And you say we'll continue until the end of  
15 tomorrow?

16 MS ALAGENDRA: Yes, please, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 The Court will adjourn now and we will resume tomorrow. We will go into closed session.

19 \*(Closed session at 4.02 p.m.) Reclassified as Open session

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 (The witness stands down)

23 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

24 THE COURT OFFICER: All rise.

25 \*(The hearing ends in closed session at 4.03 p.m.) Reclassified as Open session



Trial Hearing  
Witness: KEN-OTP-P-0800

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- 1 RECLASSIFICATION REPORT
- 2 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 3 2013, the version of the transcript with its redactions becomes Public.