

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia and Judge Robert Fremr
7 Trial Hearing
8 Monday, 19 January 2015
9 (The hearing starts in open session at 9.41 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Court officer, please call the case.
15 THE COURT OFFICER: (Interpretation) Thank you, Mr President.
16 The situation in the Republic of Congo -- or Kenya, rather, in the matter of The Prosecutor
17 versus William Samoei Ruto versus Joshua Arap Sang, ICC-01/09-01/11.
18 We are in open session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 Appearances?
21 MR STEYNBERG: Good morning, Mr President. Good morning, your Honours. For the
22 Prosecution this morning Anton Steynberg, and with me Lucio Garcia, Lorenzo Pugliatti,
23 Pierre Belbenoit and Grace Goh. Thank you.
24 MR NARANTSETSEG: Good morning, Mr President, your Honours. On behalf of the
25 victims, James Mawira, Charlotte Devinat and myself, Orchlon Narantsetseg. Thank you.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MR KIGEN-KATWA: Good morning, Mr President and your Honours. For Mr Sang is
3 Marie-Ange, Cynthia Bondi, Logan Hambrick, Dr Caroline Buisman, Philemon Koech and my
4 name is Katwa-Kigen. Mr Sang is present. Thank you, your Honours.

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

6 MR KHAN: Mr President, your Honours, good morning. Mr William Ruto, who is present
7 in court, is represented by David Hooper of Queen's Counsel, Dato' Shyamala Alagendra, Ms
8 Leigh Lawrie also of counsel, Clara Gerard-Rodriguez, our case manager, and myself, Karim
9 Khan.

10 PRESIDING JUDGE EBOE-OSUJI: Mr (Redacted) is that it?

11 MR (Redacted): (Via video link) That's correct, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: We note your presence. We'll get back to you in due
13 course.

14 We go to private session.

15 *(Private session at 9.43 a.m.) Reclassified as open session

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

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

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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12 (Redacted)

13 (Redacted)

14 Let's take our submissions then on the testimonial protection.

15 MR STEYNBERG: Thank you, your Honours.

16 The Prosecution has already submitted a written filing in this regard. It is filing
17 number 1766 and the confidential redacted version of that filing.

18 Your Honours, the Prosecution rests on those submissions. Additionally, your
19 Honours, I note that the VWU in their report - security report - on this witness have
20 endorsed the same protections required -- requested by the Prosecution, what have
21 come to be known as "the usual suite," your Honours, and we rest on those
22 submissions.

23 Thank you.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Mr Kigen-Katwa?

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1 MR KIGEN-KATWA: Mr President, we do not oppose the application.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Ms Alagendra?

4 MS ALAGENDRA: Mr President, likewise we do not oppose the application.

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

6 (Trial Chamber confers)

7 PRESIDING JUDGE EBOE-OSUJI: The Chamber rules on the -- first on the matter of in-court
8 protective measures during testimony. The request is granted in light of -- given the
9 non-opposition to the application, none registered by the Defence counsel.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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1 (Redacted) The Chamber will rise now.

2 THE COURT USHER: All rise.

3 (Recess taken at 10.02 a.m.)

4 (Upon resuming in open session at 10.37 a.m.)

5 THE COURT USHER: All rise.

6 Please be seated.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We are in open session.

8 Just a quick announcement, our sitting schedule for today, normally we would have risen at

9 11, but we decided to go -- proceed from now 'til 12.30. We will rise at 12.30, we'll take our
10 lunch-break at that time and return at 2 and continue from 2 to 4. So that will be the sitting
11 schedule for today.

12 Prosecutor, have we done the Rule 66(3)?

13 MR STEYNBERG: Your Honours, I've not yet confirmed it for the record, but I will now
14 confirm that the warning was given to the witness by myself personally under Rule 66(3).

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

16 Can the solemn declaration be administered to the witness.

17 WITNESS: KEN-OTP-P-0743

18 (The witness speaks Swahili)

19 (The witness gives evidence via video link)

20 THE WITNESS: (Interpretation) I solemnly declare that I shall speak the truth, the whole
21 truth and nothing but the truth.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness. Can you hear me?

23 THE WITNESS: (Interpretation) Yes, I can hear you clearly.

24 PRESIDING JUDGE EBOE-OSUJI: I thank you very much and welcome you to the Court. I
25 will give you the same words of welcome that I've given to every other witness who has

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1 testified before you.

2 First I would like you to know that you are -- this courtroom belongs to you. And the reason
3 I tell you that this court belongs to you is because we do not want you to feel like a stranger in
4 it. We want you to help us do our work of searching for the truth about what happened in
5 the Kenya post-election violence of 2007/2008. Do you understand?

6 THE WITNESS: (Interpretation) Yes, I do follow you.

7 PRESIDING JUDGE EBOE-OSUJI: Yes. Please do feel at home and answer the questions
8 the lawyers will ask you. That's how we do the work. It's through questioning. And the
9 first lawyer who will begin asking you those questions is the lawyer representing the
10 Prosecutor. He will ask you questions first. And when he finishes asking you questions,
11 then the lawyers for Mr Ruto and Mr Sang will take their turns asking you their own
12 questions. And it may well be that we may also give an opportunity for the lawyer
13 representing the victims to ask you questions. Do you understand?

14 THE WITNESS: (Interpretation) Yes, I do understand you.

15 PRESIDING JUDGE EBOE-OSUJI: We want you to listen carefully to the questions that each
16 lawyer would ask you. One lawyer at a time would ask you questions one question at a time.
17 We want you to listen carefully to each of those questions, one at a time as the question is
18 being asked of you. Do you understand?

19 THE WITNESS: (Interpretation) Yes, I have understood.

20 PRESIDING JUDGE EBOE-OSUJI: You listen to the question carefully, you understand it.
21 If you understand it, then you can answer it. If you do not understand the question, please
22 indicate so. Indicate that you do not understand the question so that the person asking you
23 the question may repeat the question in a way you will understand it.
24 Do you understand?

25 THE WITNESS: (Interpretation) Yes, I do.

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1 PRESIDING JUDGE EBOE-OSUJI: So once you've understood the question, then answer it
2 to the point. Just answer -- give the answer that the question calls for. Just answer it briefly
3 and fully and stop there and wait for the next question.

4 Do you understand?

5 THE WITNESS: (Interpretation) I do understand.

6 PRESIDING JUDGE EBOE-OSUJI: In answering those questions, I want you to please not
7 worry about whether or not the question that has been asked of you is a proper question or a
8 fair question. Do not worry about that. What I want you to worry about is simply the
9 answer that that question calls for and then answer it.

10 The matter of whether or not the question is correct, whether it is fair or proper, is not
11 for you to worry about. It is for me and my colleagues, the Judges, who will worry
12 about that, and the way we worry about it is to make sure that lawyers who ask
13 witnesses who come to this Court question do not ask them questions that are not fair,
14 or correct, or proper. We take that job very seriously.

15 Do you understand?

16 THE WITNESS: (Interpretation) Yes, I do understand.

17 PRESIDING JUDGE EBOE-OSUJI: We also do not want you to argue with the lawyers
18 because you do not like their questions, or because you think the question may be abusive.
19 Again, it is our job as the Judges to make sure that lawyers do not abuse witnesses through
20 the means of asking them questions. Questions in this courtroom are not abusive. We don't
21 allow that.

22 Do you understand?

23 THE WITNESS: (Interpretation) I do understand you.

24 PRESIDING JUDGE EBOE-OSUJI: So try not to argue with the lawyer, or try not to think, "I
25 do not like this question. You shouldn't have asked it." Just listen to the question carefully,

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1 understand it and answer it.

2 Again, I have to ask you do you understand all of these things I'm saying?

3 THE WITNESS: (Interpretation) I have followed what you have said and I have
4 understood you.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 You must answer those questions truthfully to the best of your ability. That is the
7 only way you can help us do our work, by being truthful.

8 We also do not want you to guess, to engage in guesswork or to speculate. Only tell
9 us what you know.

10 Do you understand?

11 THE WITNESS: (Interpretation) I do understand you.

12 PRESIDING JUDGE EBOE-OSUJI: Also try to avoid telling us what somebody else told you
13 as if you were the one who witnessed what you're telling us. In other words, there may be a
14 situation where a witness was not there to see what had occurred, maybe somebody else told
15 that witness what had occurred, but when the witness is answering the question they answer
16 it as if they were the ones who saw what happened when in fact what happened was that the
17 witness heard it from somebody else. We try to avoid that.

18 Do you understand?

19 THE WITNESS: (Interpretation) I have not quite grasped what you said.

20 PRESIDING JUDGE EBOE-OSUJI: What I'm saying is do not give us information you heard
21 from somebody else. Tell us only what you know, not what you heard from somebody else.

22 Do you understand?

23 THE WITNESS: (Interpretation) Yes, I do understand.

24 PRESIDING JUDGE EBOE-OSUJI: Now, I need to return to my advice to you to make sure
25 you understand the question and answer it briefly and stop. Answer just what the question

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1 calls for.

2 The reason I need to return to that is because the Court has ordered that you testify

3 under certain protective measures. Those measures include the fact that your name

4 is not being used directly. No one will call you by your name. You will only be

5 referred to by the number pseudonym.

6 Your face is not also being directly broadcast to the public. Some computer

7 technology has been used to make sure people do not see your face clearly and know

8 who is testifying. The same with your voice. Your voice is not being broadcast

9 directly. Again, there is some distortions that are applied to your voice so that

10 people who know you will not readily make out that it is your voice that is speaking.

11 And from time to time we will need to go into private session to hear some testimony

12 because that sort of testimony may contain information that someone who hears it

13 will or may know that that's you.

14 So these are all the -- what we've done to make sure that we protect your identity.

15 Now, how you answer the questions would also help maintain those protections. It

16 is important that you do not give more information than the question calls for when

17 we're in the public session. This is important because the lawyers who are asking

18 you questions know what information they expect you to give and, when they ask

19 you the questions, they will not expect you to give them more information than that

20 so they feel safe asking you that particular question in the public session.

21 Now, the problem becomes in your answer that, if you start giving much more

22 information than the question calls for, there may be a risk that in giving that extra

23 information you may reveal identifying information. So it is for that reason that it is

24 important that you just limit yourself to what the question calls for.

25 Somebody asks you, "What is one plus one?", simply say -- if you know the

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1 mathematics people will say "Two," then you say "Two" and leave it at that. Do not
2 go, "One plus one is two because when I went to school I learnt that in school and all
3 that stuff and they told me 'One plus one is two.'" No, just simply "Two" and leave it
4 at that.

5 Do you understand what I'm trying to say?

6 THE WITNESS: (Interpretation) I have understood you.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Just listen carefully, understand the question, answer just that question and stop.

9 Now, there is some logistical matter that I also must speak to you about that makes it
10 possible for us to do this work well. There are some colleagues who can only hear
11 you through the microphone. Those are the court reporters and the interpreters.
12 They hear you only through the microphone.

13 For that reason it is important that we make it easy for them to do their work, and the
14 way we do that is to make sure that no two people are talking at the same time
15 because, if two people are talking at the same time, the court reporters and
16 interpreters will not hear anyone because everyone is talking through the same
17 microphone so to speak. We cancel each other out. So it is important that when the
18 question is being asked you wait for the question to finish and, once the question
19 finishes, we also want you to wait a little while, something like five seconds, before
20 you start answering.

21 So Prosecutor will ask you a question, "One plus one?", and then you have to wait for
22 about five seconds before you say "Two."

23 The five seconds, you know that by counting one to five in your mind, one, two, three,
24 four, five, and then you start answering.

25 Do you understand?

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1 THE WITNESS: (Interpretation) I have understood you.

2 PRESIDING JUDGE EBOE-OSUJI: The reason you have to wait, you may be asking, "Well, if
3 he's finished asking the question why do you have to wait for five seconds? I can answer
4 immediately." No, it's not that simple. The reason why you have to wait five seconds is
5 because while you are answering the question, or while the question is being asked
6 rather - while the question is being asked - somebody is interpreting that question in the
7 background and they need some time to finish interpreting. After the question has finished,
8 they may still need some time to finish all their interpretation.

9 That's why we allow for five seconds because we think that within those extra five
10 seconds the interpreters should be able to finish the work of interpreting. So that's
11 why we want to wait for five seconds after the question has finished before you start
12 answering.

13 Do you understand?

14 THE WITNESS: (Interpretation) I have understood.

15 PRESIDING JUDGE EBOE-OSUJI: And finally - finally - I would urge you to speak at a
16 speed that is not too fast and not too slow. So do not speak too fast, because again when you
17 speak too fast the interpreters may not be able to follow what you are saying. Also do not
18 speak too slowly because we want to finish this job quickly and let you go.

19 Do you understand?

20 THE WITNESS: (Interpretation) Yes, I do understand you.

21 PRESIDING JUDGE EBOE-OSUJI: And I thank you very much on that note and those
22 questions will begin now with Mr Steynberg for the Prosecutor.

23 Mr Steynberg, we're in open session.

24 MR STEYNBERG: Thank you, Mr President. I request we go into private session to deal
25 with some background information relating to this witness. I imagine it will be

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1 approximately 10 minutes.

2 PRESIDING JUDGE EBOE-OSUJI: Private session.

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

4 THE WITNESS: (No interpretation)

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

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Witness, you wanted to say something?

8 THE WITNESS: (Interpretation) Yes, Mr President. When we're in private session, I

9 would like to say something about my security and about my family in Kenya. I want to talk
10 about the safety and security of my friends as well. I would like you to tell me how they will
11 be safe. Can you tell me how this will happen?

12 And I say this because recently I observed a number of things. Mr Ruto and

13 Mr Katwa-Kigen during the hearings and in the evenings sent information to their people
14 informing them that such-and-such a person was a witness. I know that even tonight they
15 will make those calls again, (Redacted)

16 (Redacted)

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

18 Mr Steynberg, any observations?

19 MR STEYNBERG: (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 2 (Redacted)
- 3 THE WITNESS: (Interpretation) (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 THE WITNESS: (Interpretation) Yes, Mr President.
- 25 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you. So let's proceed. (Redacted)

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1 (Redacted)

2 (Redacted)

3 Mr Steynberg, please proceed.

4 MR STEYNBERG: I'm grateful, your Honour.

5 QUESTIONED BY MR STEYNBERG:

6 Q. Good morning, Mr Witness.

7 A. Good morning, Counsel.

8 Q. I think you -- my name is Anton Steynberg. I think you will remember me from last
9 week's witness preparation sessions; is that right?

10 A. Yes, I remember.

11 Q. Mr Witness, I'd like to commence by getting some personal details for you while we're
12 in private session. Firstly can I direct your attention to the screen in front of you. Do you
13 see in the top right-hand corner there two red letters "PS"? Do you see that?

14 A. Yes, I can see it.

15 Q. Mr Witness, those letters signify that we are in private session, meaning you can speak
16 freely and nobody outside the Court will hear you. Where you do not see those letters it
17 means we're in public session and you need to be careful not to reveal information which
18 might identify you. Do you understand?

19 A. Yes, I do understand.

20 MR STEYNBERG: Your Honours, for the record, the witness's CV has been admitted by
21 both Defence parties or they do not object to the admission of the CV. It is contained at the
22 back of the PIS form. And, your Honours, perhaps in accordance with your Honours'
23 request, if I could ask at this stage that a PIS number be afforded to this form.

24 PRESIDING JUDGE EBOE-OSUJI: The PIS number will be assigned to this.

25 THE COURT OFFICER: (Interpretation) KEN-OTP-P-0743 will have the reference number

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1 KEN-PIS-0001-0114.

2 THE INTERPRETER: An overlap at the beginning of the reading of the reference,
3 Mr President, from the booth.

4 PRESIDING JUDGE EBOE-OSUJI: I think we have PIS-0001-0114. We'll proceed.

5 MR STEYNBERG: Thank you, your Honour.

6 Q. Now, Mr Witness, I'm just going to go through some personal details with you, and I
7 would like you to confirm whether they are correct. If there is anything which is not correct,
8 please let us know.

9 Is it correct, sir, you are of (Redacted) ethnicity?

10 A. Yes.

11 Q. Is it correct that the languages you speak are (Redacted) and you also speak
12 some (Redacted) correct?

13 A. Yes.

14 Q. Sir, you were born in (Redacted) in (Redacted) location, (Redacted)
15 (Redacted) division, (Redacted) district of the Rift Valley in Kenya, correct?

16 A. That's correct.

17 Q. Can you confirm for us, please, your date of birth?

18 A. My date of birth is (Redacted)

19 Q. Thank you. Is it correct, sir, you have (Redacted) children?

20 A. Yes, but not too long ago (Redacted)

21 Q. Congratulations. And are you presently married?

22 A. Yes, I have a wife.

23 Q. Is it correct, sir, you attended school until the age of (Redacted) years?

24 A. I'm not sure of the age, but it was around that figure, maybe a little more.

25 Q. And what standard of education, what year of education did you complete?

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- 1 A. (Redacted) year.
- 2 Q. Did I hear you correctly saying (Redacted) year, was that the (Redacted) year of (Redacted)
- 3 A. I'm not sure I've understood you, Counsel.
- 4 Q. I'm trying to clarify your answer. We did not hear clearly. What year of school did
- 5 you finish?
- 6 A. I said (Redacted) year" and in English it's (Redacted)
- 7 Q. Thank you, we've got that now. Is it correct, sir, you -- as far as your
- 8 professional career is concerned, you used to be employed as (Redacted)
- 9 (Redacted)
- 10 A. (Redacted) yes, that's correct.
- 11 Q. You were a (Redacted), correct?
- 12 A. Yes, I used to be one at that time, but not now.
- 13 Q. Until which year did you -- were you occupied as a (Redacted)
- 14 A. I don't have a clear recollection of the year, but I think it was in the (Redacted)
- 15 Q. And what did you do after you stopped (Redacted)
- 16 A. I became (Redacted)
- 17 Q. Where (Redacted)
- 18 A. I started (Redacted) Then I moved to (Redacted)
- 19 Q. And in the year 2007 where were you (Redacted)
- 20 A. I was in (Redacted)
- 21 Q. And is it correct, sir, that at a certain stage you also (Redacted)
- 22 (Redacted) - I'll spell that, (Redacted)
- 23 (Redacted)
- 24 A. That's correct.
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

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1 MR STEYNBERG: (Redacted) is what I have, your

2 Honours.

3 PRESIDING JUDGE EBOE-OSUJI: All right. The (Redacted) wasn't in there, but

4 that's all right. I think we understood. Please proceed.

5 MR STEYNBERG: My apologies, your Honour.

6 Just a correction for the record at line 9. The words I spelled are two separate words,

7 first word (Redacted) and new word (Redacted) There is an (Redacted) missing.

8 Q. All right. I'd just like to, while we're still in private session, get some clarity as to

9 geography. (Redacted) where you were staying, where is that in relation to (Redacted)

10 A. What do you mean by that?

11 Q. Let's start with the distance. What was the distance between (Redacted)

12 (Redacted) in (Redacted) and (Redacted)

13 A. I am not very sure, but it would be about (Redacted) kilometres.

14 Q. And if you were to travel from (Redacted) to (Redacted) can you please describe the

15 route you would follow and the towns and locations you would pass along the way?

16 A. Yes, I can do that.

17 Q. Go ahead. Go ahead, please.

18 A. (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 Q. Thank you very much. That was a very useful description. I'd just like to clarify some
6 spellings. Firstly at (Redacted) you said (Redacted) which is
7 correctly spelled on the record. Where did (Redacted) go to and can you spell that
8 for us, please?

9 A. (Redacted)

10 MR STEYNBERG: I think that should be (Redacted) with a (Redacted) and that is
11 correctly spelled. Then there are some (Redacted) which are not really important.

12 Q. You mentioned (Redacted) Can you
13 repeat that, please?

14 A. (Redacted)

15 Q. And then did you say there was (Redacted)

16 A. No, not (Redacted) and it's to the right.

17 Q. And what was the name of the (Redacted) you mentioned?

18 A. (Redacted)

19 MR STEYNBERG: (Redacted) thank you very much.

20 If the Court will bear with me, please?

21 All right, your Honours. I think we can move now into public session with the
22 Court's permission?

23 PRESIDING JUDGE EBOE-OSUJI: We'll go to the public session.

24 Witness, we are now moving from private session to the public session.

25 Mr Kigen-Katwa, you were rising. Do you want to raise whatever it is inside or

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1 outside?

2 MR KIGEN-KATWA: Inside, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: All right, before we go to the public session.

4 Yes?

5 MR KIGEN-KATWA: Mr President, at page 23, line 13, the witness says that his level of
6 schooling is (Redacted) year, and to the best of my knowledge there is a possibility
7 that this evidence can be conducted in English and I was going to enquire from my
8 learned friend whether he has surveyed that possibility and whether the Court can
9 attempt that so that we can move faster?

10 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, any views?

11 MR STEYNBERG: Your Honours, the witness does speak English, but it's far from perfect.
12 For this reason nearly all of the interviews we've conducted with him have been conducted
13 with the benefit of an interpreter. I do understand that this causes delays, but my personal
14 view is that it might be very difficult for the witness to manage in English.

15 PRESIDING JUDGE EBOE-OSUJI: Let's stay as we are.

16 MR KIGEN-KATWA: We're obliged, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Open session now.

19 (Open session at 11.27 a.m.)

20 THE COURT OFFICER: (Interpretation) We're in open session, Mr President.

21 MR STEYNBERG: Thank you, your Honours.

22 Q. Mr Witness, I'd like to start off by asking you some questions about your knowledge of
23 the accused in this case, starting with Mr William Ruto. Did you know Mr William Ruto in
24 2007?

25 A. Yes.

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1 Q. What can you tell the Court, Mr Witness, about Mr Ruto's position in Kalenjin society
2 and in the Rift Valley?

3 A. I did not quite follow what you said. Could you please repeat what you said? I did
4 not quite grasp it.

5 Q. Certainly. What can you tell us about Mr Ruto's position in Kalenjin -- in the Kalenjin
6 community? How is he regarded amongst the Kalenjin in the Rift Valley?

7 A. At that time and until today, because there have not been any further elections in order
8 to select any Kalenjin leaders --

9 PRESIDING JUDGE EBOE-OSUJI: Witness, can you continue? What we heard in your
10 answer seems to be an introduction saying, "At that time and until today, because there have
11 not been any further elections to select a Kalenjin leader."

12 Can you tell us more? The question was how was Mr Ruto regarded within the
13 Kalenjin community?

14 THE WITNESS: (Interpretation) Thank you. Within the Kalenjin community he was a
15 leader. And if you would like to talk about his political status, he was the MP for Eldoret
16 North.

17 MR STEYNBERG:

18 Q. Thank you. Let's start off with the fact that you say he was a leader in the Kalenjin
19 community. How did he become a leader in the Kalenjin community?

20 A. A campaign was led over Kass FM radio.

21 Q. And who on Kass FM radio was leading this campaign?

22 A. Joshua Arap Sang.

23 Q. And can you tell the Court the name of the radio show which Mr Sang hosted?

24 A. The programme was called Lene Emet.

25 Q. And how did Mr Sang campaign to have Mr Ruto become a leader of the Kalenjin?

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1 A. Mr Ruto had the opportunity to make a speech over Kass FM and Mr Sang put
2 questions to him. In answering the questions put to him by Mr Sang, he said that he was a
3 true leader.

4 Q. Who said that?

5 A. Joshua Arap Sang said so.

6 Q. If I understand you correctly then, Joshua Arap Sang referred to Mr Ruto as a true
7 leader. Do I understand you correctly?

8 A. No. This is what I said: Ruto was -- Mr Ruto was invited to appear on Kass FM and
9 he presented his political programme. On that occasion Mr Sang put questions to him and
10 he also provided the listeners the opportunity with putting questions to Mr Ruto. I do not
11 quite know how the programme itself was organised, but generally speaking, questions were
12 put to the listeners such as, "What is your name?"

13 But on many an occasion, it was difficult to ascertain the identity of the listeners who
14 were putting questions over the telephone. So it did come to light that these were
15 people who had been prepped to take part in this meeting in order to follow this
16 campaign through.

17 Q. All right. I'll come back to clarify some of those issues, but what I'm trying to
18 understand is that earlier, I'll refer to page 29, line 4 -- line 2 to 4, you said the following:
19 "Mr Ruto had the opportunity to make a speech over Kass FM and Mr Sang put questions to
20 him. In answering the questions put to him by Mr Sang, he said that he was a true leader."
21 What I'm trying to clarify is that who said who was a true leader?

22 A. It was Mr Joshua Arap Sang. Subsequently there were listeners who called in to the
23 programme. I don't know whether it was they who called in or whether they were called up
24 themselves over the telephone.

25 Q. All right. Mr Witness, I'm going to ask you please just to try and focus on the exact

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1 question I'm asking you. You're giving additional information which is not necessarily part
2 of the question. So let me just try and -- first let's try and focus on answering the question
3 and then you can give additional information. Do you understand that?

4 A. (No interpretation)

5 Q. So you answered half of my question when I asked you who said who was a true leader.
6 You said Mr Joshua Sang said that. Who was he talking about?

7 A. He was referring to Mr Ruto.

8 Q. Thank you very much.

9 A. It was not just simply because Mr Ruto had been invited to the studio, but also with
10 regard to the main community it was said that Mr Ruto was a true leader.

11 Q. Thank you. A few follow-up questions. You said, and I refer to line 18 and onwards
12 of page 29, "It did come to light that these were people ..." the callers, "... these were people
13 who had been prepped to take part in this meeting in order to follow this campaign through."
14 How did that come to light?

15 A. I have not quite grasped your question, Counsel.

16 Q. I'll repeat, and I'm paraphrasing -- well, I'm repeating to you the answer that has been
17 translated. You said Mr Ruto was invited to appear on Kass FM and that Mr Sang put
18 questions to him. Do you recall that? You can just --

19 A. No, that is not what I said. I do not know whether he had been invited or whether he
20 had gone there of his own volition, but all that I do know is that Mr Ruto was at the Kass FM
21 studio. I do not know how his invitation was organised. I notably do not know whether he
22 had been invited or had gone there of his own accord.

23 Q. Very well. But what I am really interested in is what follows. You said Mr Sang put
24 questions to him and provided listeners the opportunity to put questions to him. Do you
25 remember saying that?

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1 A. Yes. Questions were indeed being put to him.

2 Q. And then further down, lines 18 and onwards, you said, "It came to light that these ...
3 people ..." these listeners "... had been prepped to take part in this meeting in order to follow
4 this campaign through."

5 A. Yes.

6 Q. So my question is: How did it come to light that these callers had been prepped or
7 prepared to take part in this meeting to follow the campaign through? How did you find out
8 about that?

9 A. At a given moment in time, I called in myself and Mr Joshua Sang asked me what my
10 name was. Now, with regard to the other listeners who took part, Mr Sang would talk to
11 them without even asking them what their name was, so I wondered how it was that he knew
12 their names.

13 Q. Is there anything else that you can tell the Court that made you think these listeners,
14 specifically the callers to the programme where Mr Ruto was described as a true leader,
15 anything else that leads you to believe that they had been prepped beforehand?

16 A. Yes. The people whose names were given by Mr Sang were part of a group, a group
17 that were supporters of Kass FM. I don't know quite how to describe them. I can't
18 remember the name of that group. One of them was called Sanders. Mr Sang might for
19 example say to somebody from Sunrise, the Sunrise Group, to greet the other members of the
20 Sunrise Group.

21 There is another group, and I can't recall the name of that group, and I don't know
22 whether it's still in existence, but I do believe that it was dissolved. I do not know
23 whether I have really answered your question?

24 Q. Let me ask you another one. Can you recall the names or pseudonyms of any of these
25 callers who used to call into Mr Sang's -- who called in to Mr Sang's show on this occasion

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1 when Mr Ruto was on the show?

2 MR KIGEN-KATWA: Mr President, may I raise an objection? The witness had not said any
3 of them was using pseudonyms and, to the extent of my learned friend suggesting that use of
4 pseudonyms was involved, he is leading and I would like to object.

5 MR STEYNBERG: I'll rephrase, your Honour.

6 Q. Can you recall the names that -- by which the persons calling in to this show identified
7 themselves, if at all?

8 A. I remember two names. As for the others, I have forgotten them. One was called Tija
9 (phon). Another was a councillor.

10 Q. Can you please spell the first name for us, Tija?

11 A. J-I-P-T-I-N-B-I-N-W-Y-O. G-I-P-T-I-N-B-I-N-W-Y-O.

12 Q. Giptinbin -- I don't think I can pronounce that. Giptinbinwyo. Can you pronounce
13 that for us, please?

14 A. Giptinbinwyo.

15 Q. All right.

16 PRESIDING JUDGE EBOE-OSUJI: Can you say it again, Witness. Can you say the name
17 again. Just say it. Just say it and let's see if we can spell it in court. Can you?

18 THE WITNESS: (Interpretation) I-P-I-T-I-N-B-I-N-Y-O. Kiptinbinyo.

19 MR STEYNBERG: All right. There should be a "K" at the beginning. I heard the witness
20 say "KI"?

21 PRESIDING JUDGE EBOE-OSUJI: Okay. Witness, can you do this for me? Don't look at
22 your paper. Just look at me on the screen and tell me the name. Just say the name.

23 THE WITNESS: (Interpretation) Kiptinbinyo.

24 PRESIDING JUDGE EBOE-OSUJI: I think there is also some lapses in the relay. All right.

25 So we will -- did you say "Kiptindinyo"?

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1 THE WITNESS: (Interpretation) Yes.

2 MR KIGEN-KATWA: With your permission, Mr President? Mr President, we concede that
3 a person by the name Kiptindinyo used to call and we are prepared to have the spelling also
4 made out so that we move on from this point.

5 PRESIDING JUDGE EBOE-OSUJI: Yes, thank you very much. Mr Kigen-Katwa, can you
6 assist with the spelling again?

7 MR KIGEN-KATWA: Mr President, the spelling is K-I-P-T-I-N-D-I-N-Y-O.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR STEYNBERG:

10 Q. Thank you, Mr Witness. And did you say that person was a teacher?

11 A. No, I'm not sure what he did.

12 Q. All right, I must have misheard. The word "Kiptindinyo," what does that mean in
13 Nandi?

14 A. It is not the Nandi language, but Kipsigis, and the meaning of this name is a woman
15 rapist. That is an individual who hides in a field of maize, or in a copse of bushes, and waits
16 for women to go by in order to rape them. So it's a nickname given to that kind of
17 individual.

18 Q. Thank you. And the second name you said you remembered? You said -- I think you
19 said this person was a councillor?

20 A. (Speaks English) Councillor. (Interpretation) Yes, that is correct.

21 Q. Mr Witness, please observe the pause between my question and your answers because
22 sometimes we're being cut off. Was that the name the person used, "Councillor"?

23 A. Councillor.

24 Q. All right, let me move on. You said Mr Sang described Mr Ruto as a true leader.

25 What was the Kalenjin word or words used by Mr Sang to describe Mr Ruto as a true leader?

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1 A. Ii kandoindet nebo iman.

2 Q. Can you spell that for us please, Mr Witness?

3 A. Please give me the time to write it out on a piece of paper, then I'll spell it to you.

4 Spelling: W-I-I-P-S-K-A-M-B-O-I-M-D-E-T space M-E-B-O another space I-M-A-N.

5 Q. All right. So I'll have a go at that. Wiipskamboimbet nebo iman, is that close enough?

6 A. I did not quite grasp what you said.

7 Q. All right, never mind. It's on the record.

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

9 MR STEYNBERG: Microphone, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Oh, sorry.

11 Witness, can you pronounce the name again? The word you spelled, can you -- don't

12 look at the paper. Just -- just pronounce it. See if you can pronounce it.

13 THE WITNESS: (Interpretation) Ii kandoindet nebo iman.

14 MR KIGEN-KATWA: The spelling of the first word would be I-I, the second word would be

15 K-A-N-D-O-I-N-D-E-T the next word is N-E-B-O and the last word would be I-M-A-N.

16 MR STEYNBERG: I'm grateful, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Kigen-Katwa.

18 MR STEYNBERG:

19 Q. And, Witness, what is the literal meaning of these words?

20 A. "You are a true leader."

21 Q. Now, besides Mr Sang and Kass FM, were there any other people who were supporting

22 Mr Ruto to become the leader of the Kalenjin?

23 A. At the outset there weren't many of them, but subsequently there were more and more
24 people supporting.

25 Q. What was the relationship between Mr Ruto and the traditional Kalenjin chiefs in the

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1 Rift Valley like at that time?

2 A. You know that there is a difference between the elders in the Rift Valley and those in the
3 sub-tribe of the Nandis.

4 Q. All right, but what can you tell us about the relationship between any of the Kalenjin
5 traditional leaders and Mr Ruto at that time?

6 MS ALAGENDRA: Your Honours, could I also raise another issue? My learned friend uses
7 the word "Kalenjin chief" and elder and chief are two different positions, your Honour. I'd
8 ask my learned friend to be more specific.

9 MR STEYNBERG: Well, in fact I'm going to be less specific and allow the witness to explain.

10 Q. And I'll repeat my previous question. Can you tell us -- what can you tell us about the
11 relationship between Kalenjin traditional leaders and Mr Ruto at that time, whether they be
12 elders or chiefs or whatever position they might hold?

13 MS ALAGENDRA: Your Honours, again I'm going to rise because a chief is not a traditional
14 role. It's an appointment by the state.

15 PRESIDING JUDGE EBOE-OSUJI: Well, let's give the witness some space to explain that.
16 Proceed.

17 MR STEYNBERG:

18 Q. Thank you, Mr Witness. Could you answer that question?

19 A. Well, if you're talking about Kalenjin people, this is a generalisation that includes that
20 sub-tribe who have different customs. So what I can tell you about the Rift Valley and the
21 traditional chiefs or the elders, most were members of Ruto's church, the AIC. And those
22 people who go to that church don't often deal with traditional matters. They only deal with
23 religious matters.

24 Q. Well, those traditional chiefs and elders who went to that church, what was their
25 attitude towards Mr Ruto's -- or the campaign to elect Mr Ruto as the Kalenjin leader?

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1 MS ALAGENDRA: Your Honours, I'm going to object to this, because we don't have a basis
2 of how this witness would know what happens in that particular church, because of
3 information we received, he belongs to a different church.

4 PRESIDING JUDGE EBOE-OSUJI: You can cross-examine on that, Ms Alagenda.

5 MR STEYNBERG: Thank you, your Honours.

6 Q. What can you tell us about these traditional leaders' attitude towards the campaign to
7 elect Mr Ruto as leader of the Kalenjin?

8 MR KIGEN-KATWA: That is -- that is a very unfair question, Mr President. The witness
9 has not said anything about traditional leaders. Instead he has said about church leaders.
10 Actually the church, not even the church leaders.

11 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

12 Mr Steynberg, put the question again.

13 Q. Thank you. It's from line 7, I'll repeat that: The traditional chiefs and elders who
14 went to that church, that is the AIC church, what was their attitude towards Mr Ruto or the
15 campaign to elect Mr Ruto as the Kalenjin leader? Do you know that?

16 A. I'm not in a position to know that. However, he went to a great many meetings, and
17 each time they heard that Ruto was going to a particular place, they would go there too.

18 Q. Who would go there too?

19 A. These elders from the church and also they had dealings with the members of other
20 churches, that is to say, Ruto gave a lot of money to people who belonged to his church.

21 MR STEYNBERG:

22 Q. Just for the record, the AIC is the African Inland Church; is that correct?

23 A. That's right.

24 Q. Let me just try and wrap up this point then. You've mentioned that there was a
25 campaign to elect or to have Mr Ruto appointed as the Kalenjin leader. Are you able to tell

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1 us who were the main people who were supporting Mr Ruto in this campaign, the notable
2 people that you know of?

3 A. Ruto was not elected. Let me explain to you. The election was on the radio. People
4 called in to the radio station, and they were supporters of Kass FM. That's not an election.
5 There was no election in relation to the main community, but there wasn't any really
6 competing, competitors within the election.

7 Q. All right. But the question is: Who were Mr Ruto's main supporters in this campaign
8 that you've been speaking of?

9 A. I beg your pardon? What supporters are you talking about?

10 Q. Mr Witness, you told us about a campaign to have Mr Ruto become the leader of the
11 Kalenjin. I'm asking you are you aware of the identity of any people, notable people,
12 well-known people who were supporting Mr Ruto in this campaign?

13 MS ALAGENDRA: Your Honours, could we have a reference from my learned friend as to
14 where the witness said there was a campaign for Mr Ruto to be elected, and secondly, the
15 witness is speaking about supporters of Kass FM, not supporters of Mr Ruto.

16 PRESIDING JUDGE EBOE-OSUJI: We'll move on. If that's an objection, overruled.
17 Proceed, Mr Steynberg.

18 MR STEYNBERG: Thank you, your Honours.

19 Q. I'll repeat the question: Do you recall you told us earlier about a campaign to have
20 Mr Ruto become the leader of the Kalenjin? Do you remember saying that?

21 MS ALAGENDRA: Your Honours, I'm asking for a line reference for that issue, your
22 Honour.

23 THE WITNESS: (Interpretation) Yes, I remember.

24 THE INTERPRETER: Overlapping speakers.

25 MR STEYNBERG: Your Honours, I believe that objection was overruled.

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1 Q. Now, my question is: Besides Kass FM, were there any other people who supported
2 Mr Ruto in that campaign?

3 A. I wasn't in a position to know about that.

4 Q. All right. I'll leave -- I'll leave that for the time being.

5 Mr Witness, was there any particular occasion that you can recall where Mr Ruto
6 became leader of the Kalenjin people?

7 A. Yes.

8 Q. When and where was that occasion?

9 A. I don't remember the date, but that ceremony at which he was chosen as leader of the
10 Kalenjin was at the post club in Eldoret.

11 Q. Sorry, which club in Eldoret?

12 A. (Speaks English) Yeah, Sports Club Eldoret.

13 PRESIDING JUDGE EBOE-OSUJI: Would that be sports --

14 THE INTERPRETER: Overlapping speakers. We are unable to render the meaning.

15 PRESIDING JUDGE EBOE-OSUJI: One second.

16 THE WITNESS: (No interpretation)

17 PRESIDING JUDGE EBOE-OSUJI: One second, everyone.

18 Witness, did you say Sports Club?

19 THE WITNESS: (Interpretation) That's right.

20 MR STEYNBERG:

21 Q. How do you know about this ceremony, Mr Witness?

22 A. I saw it on -- I saw it on the television.

23 Q. And what happened at that ceremony?

24 A. The most important thing is that Ruto was chosen to be the leader of the Kalenjin. I
25 didn't understand anything else that happened.

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1 Q. And what does it mean to be the leader of the Kalenjin, Mr Witness?

2 A. I don't understand, because it was for the first time the Kalenjins were elected. But if
3 you -- if you didn't go as a Nandi, I can tell you about this, what I can tell you is that it was
4 politics. It was a way of getting votes.

5 Q. What did you understand by his appointment as leader of the Kalenjin?

6 A. I haven't understood because to say that one is the leader of the Kalenjin and in other
7 places one wants to impose the Nandi traditions, amongst the Nandi people, if a leader of
8 something -- well, if someone is a leader, no one can contradict him. But everything that
9 happened in terms of the Kalenjin, I didn't understand much of it.

10 Q. So do I understand you correctly that in the Nandi tradition, if somebody is appointed
11 as a leader, no one may contradict him? Is that what you tried to convey?

12 A. That's right. Amongst the Nandi people, a person is not chosen. Someone emerges
13 from the community. Someone comes from a family that is well-known.

14 Q. All right. I'm going to move on.

15 MR STEYNBERG: Your Honours, may I ask to briefly move into private session to deal with
16 some political affiliation issues?

17 PRESIDING JUDGE EBOE-OSUJI: Are you going to ask, or the Defence, the question about
18 the witness's -- a follow-up to the witness's answer, that there is a difference between elders in
19 the Rift Valley and those in the subgroups, sub-Kalenjin groups? Is it something,
20 Mr Steynberg, you wish to pursue in your own time?

21 Ms Alagendra, do you intend to take it up? So I leave it for you to do in your space.

22 MS ALAGENDRA: No, your Honour.

23 MR STEYNBERG: Your Honour, it's not something which is particularly important to my
24 line of questioning, but if your Honour wants to clarify, by all means.

25 PRESIDING JUDGE EBOE-OSUJI: Yes. Witness, can you tell me, when you were

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1 answering a question earlier, at some point you had said to the Prosecutor that he needed to
2 understand that there was a difference between elders in the Rift Valley and those in the
3 sub-ethnic groups. Was that what you said?

4 THE WITNESS: (Interpretation) I said this, he talked about the Kalenjin. Kalenjin doesn't
5 mean the same as Nandi. If you are talking about Kalenjin people, I don't understand. He's
6 referring to which custom. (Redacted)

7 (Redacted)

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

9 Now let's go into private session.

10 *(Private session at 12.16 p.m.) Reclassified as open session

11 THE WITNESS: (Interpretation) I beg your pardon?

12 THE COURT OFFICER: (No interpretation)

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, did you want to say something?

14 We're now in private session.

15 THE WITNESS: (Interpretation) Yes. I was saying this, it's very cold here. I'm freezing.

16 I'm asking for permission to go outside so I can blow my nose outside.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, maybe we should rise now.

18 MR STEYNBERG: Your Honours, this would be a convenient junction.

19 PRESIDING JUDGE EBOE-OSUJI: We will rise and return at 2. Court will rise.

20 THE COURT USHER: All rise.

21 (Recess taken at 12.18 p.m.)

22 (Upon resuming in open session at 2.06 p.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

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

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1 We're in open session.

2 Witness, welcome back.

3 Mr Steynberg, please continue.

4 MS ALAGENDRA: Your Honours, I do apologise, if I may interrupt my learned
5 friend? There is a matter, your Honour, which we wanted to place on record which
6 is in relation to the language of the witness. I'm not certain if it was done in private
7 earlier?

8 PRESIDING JUDGE EBOE-OSUJI: Let's go into private session. The discussion of
9 language was in private session.

10 MR KHAN: And my learned friend's microphone is on.

11 *(Private session at 2.07 p.m.) Reclassified as open session

12 THE COURT OFFICER: (No interpretation)

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 MS ALAGENDRA: Your Honours, earlier Mr Kigen-Katwa had suggested that
15 perhaps the witness be asked about the language issue and my learned friend for the
16 Prosecution, Mr Steynberg, said that the witness struggles with English and most of
17 the interviews the Prosecution have had with him has been with an interpreter.

18 Whilst we don't have any objections continuing as we are now, I just want to place on
19 record, your Honour, that in fact most of the interviews the OTP did with the witness
20 (Redacted) Additionally (Redacted)

21 (Redacted) and (Redacted)

22 (Redacted) and I just wanted this to be on the record, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, any observations?

24 MR STEYNBERG: Well, your Honours, certainly the transcribed and recorded
25 statements that I've been reading have been transcribed -- have been translated from

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1 Swahili. I haven't done a census of exactly how many statements. My impression
2 certainly was that it was the majority. It seems as if my learned friend might have
3 done that mathematics. Perhaps she can tell us?

4 PRESIDING JUDGE EBOE-OSUJI: All right, let's do this. Witness, what the
5 discussion boils down to is whether we should proceed as we are doing, which is you
6 speak in Kiswahili and your answer is interpreted into English and questions asked of
7 you are also interpreted from English to Kiswahili before you answer.
8 That necessarily prolongs the exercise, the interpretation. What we want to do is to
9 speak in a language which you will -- which you are able to work with comfortably,
10 but also for us to move quickly.

11 The Judges do understand that when witnesses come to testify they want to testify in
12 a language they feel very comfortable in and naturally any native language they grew
13 up with feels more comfortable, but it may also be the case that someone is able to
14 communicate in a second language quite proficiently and can see that if they really
15 start speaking in that language they can move forward comfortably and then that
16 becomes a faster way of proceeding than having to use an interpreter. That's what
17 we're trying to do.

18 So if you can speak in English, if you understand English sufficiently and can
19 communicate in English sufficiently, it will be the preference of the Chamber to have
20 your questions posed to you in English and you listen to it in English and reply in
21 English. Is that something you can do?

22 THE WITNESS: (Interpretation) I prefer not to do that. So far -- well, (Redacted)
23 (Redacted) You can ask me what (Redacted) has been; that is to say when I
24 studied up to (Redacted)

25 And when I decided to speak in Swahili it was through the interpreter so I could

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1 better understand the question and better answer, and if I said that I was going to
2 speak in English I think I'll have some problems. That's not going to help you in
3 your work.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Well, let's leave it at that.

5 Mr Steynberg, proceed.

6 MR STEYNBERG: Thank you, your Honours.

7 I had intended to start in public session to ask one or two follow-up questions.

8 Perhaps we could go back into public session for a moment?

9 PRESIDING JUDGE EBOE-OSUJI: Public session.

10 (Open session at 2.12 p.m.)

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

12 MR STEYNBERG: Thank you.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now back in public session, so you
14 know. Remember, just listen to the questions carefully and answer briefly. Just
15 give the answer the question requires, just that answer, and stop and wait for the next
16 question.

17 Do you understand?

18 THE WITNESS: (Interpretation) Yes, I've understood.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR STEYNBERG: Thank you.

21 Q. Mr Witness, you spoke before the luncheon adjournment about the Kalenjin
22 people and you also mentioned certain other subgroups such as the Nandi and the
23 Kipsigis. I don't believe it's in dispute that the Kalenjin people are made up of a
24 number of subgroups; is that correct?

25 A. No, that's not right. In actual fact there's not something that you would call

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1 "the Kalenjin people." It's something that Mr Ruto started. It was the politicians
2 who wanted that sort of expression so that they could refer to people as "Kalenjin."

3 Q. Why were that -- why was that?

4 A. That's my point of view in relation to how that began.

5 Q. All right. But this notion of "the Kalenjin people," who was that made up of?

6 A. No, no, that's not right.

7 Q. Please listen to the question. I don't think you've heard the question. Please
8 just listen carefully. This concept of "the Kalenjin" that you say the politicians made
9 up, who were included in that group known as "the Kalenjin"?

10 A. There is a sect: The Nandi, the Kipsigis, the Marakwet, the Pokot, the Wasabi,
11 Wagon and the Sabaot. The last three, that last group is considered sometimes as a
12 single group but they are different, and then there are also the Dorobo.

13 THE INTERPRETER: Interpreter correction: The word at the beginning was
14 "seven," not "sect."

15 MR STEYNBERG: All right, thank you.

16 Q. Now you mentioned before the lunch-break, and I'll read from the real-time
17 transcript, page 41, from the top of the page, "Among the Nandi people, if a leader of
18 something -- well, if someone is a leader no one can -- no one can contradict him."
19 My question is which group did Mr Ruto belong to? Which subgroup?

20 A. He belongs to the Kalenjin group.

21 Q. Yes, but you've told us the Kalenjin are made up of a number of subgroups. I
22 want to know which subgroup, or sub-ethnicity, of the Kalenjin did Mr Ruto
23 specifically belong to?

24 A. That is when the Kalenjin group was created; that is to say Ruto was in those
25 groups of Kalenjin people.

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1 Q. All right, Mr Witness. I don't think you're understanding the question. You
2 said there were seven sub-tribes, including Kipsigis, Pokot, Sabaot, Nandi, Marakwet
3 and various others. Which of those subgroups did Mr Ruto come from?

4 A. He comes from the Nandi subgroup.

5 Q. All right. Thank you. Mr Witness, I'm going to ask you please to try, try your
6 very best to listen to the question and make sure you understand it before you answer.
7 If there is anything you don't understand, please ask me and I'll clarify it, all right?

8 Okay. Now, you told us about an occasion at the Eldoret sports ground where
9 Mr Ruto was recognized as the leader of the Kalenjin. Are you able to tell us
10 roughly when this was, if not the exact date, then what year did this happen?

11 A. I no longer recall the date. I think it was in 2005, before the referendum.

12 THE INTERPRETER: "After," the interpreter in the Swahili booth corrects, "after the
13 referendum."

14 THE WITNESS: (Interpretation) That happened a while ago.

15 MR STEYNBERG:

16 Q. All right, good. And besides the television, did any other media carry or
17 broadcast this event?

18 A. I haven't understood your question.

19 Q. You said this event was covered on -- you watched this event on the television.
20 What I want to know was was this event also covered or broadcast in other media
21 press such as newspapers, radios, et cetera?

22 A. That was published in the daily newspapers, even -- it was also broadcast by the
23 radio stations, in particular Kass FM. And I don't remember what other places it
24 was published in.

25 MR STEYNBERG: Thank you, your Honours. Private session, please?

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 2.22 p.m.) Reclassified as open session

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR STEYNBERG: Thank you.

6 Q. Mr Witness, I'd now like to deal with your, matters relating to your political
7 views and your political affiliations. And first of all, it's not disputed in your CV
8 that you were (Redacted) from early (Redacted) until (Redacted) is that
9 correct?

10 A. Yes.

11 Q. And you were (Redacted)
12 (Redacted) is that right?

13 A. Yes.

14 Q. Now, what political party were you supporting in the 2007 presidential
15 elections?

16 A. PNU.

17 Q. And did you hold any particular office or were you just an ordinary supporter
18 of this party?

19 A. I was an ordinary supporter.

20 Q. All right. Before we go back into public session, I'd like to draw your attention
21 to a form we use in order to help to protect the identity of witnesses, which is known
22 as the PIS form, protected information sheet.

23 And I'd ask that the court officer in the remote location please provide the witness
24 with a copy.

25 Do you see that document? I see you're being shown the document on a laptop.

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1 Do you have that in front of you, sir?

2 A. Yes, I can see it.

3 Q. All right. I'm not sure how well this is going to work on the laptop, because
4 the document consists of more than one page, but can I ask with the assistance of the
5 court officer, can we firstly turn to page number 2. And do you see there's a list of
6 locations at the top of the page in alphabetical order starting with the location
7 (Redacted) Do you see that?

8 A. Yes, I can see that.

9 Q. All right. So that we don't give any information in public session which may
10 identify you, if you need to refer to any of these locations when we're in public
11 session, please can you refer, instead of saying for instance (Redacted) you would say
12 "location number 1" or the last one, instead of saying (Redacted) you would say
13 "location number 13." Do you understand?

14 A. Very well.

15 Q. And below "Locations" you will see a list of people's names headed "Persons"
16 also in alphabetical order, the first name being (Redacted) Similarly if you want to
17 refer to any of these persons, please refer to as "Person number 1, person number 2,"
18 et cetera, all right?

19 A. Agreed.

20 Q. And if you could scroll down, Mr Court Officer, or Mr Witness, to the next page
21 and then through to page number 4, you'll see the list of names continues up until
22 person number 31 on page number 4. Do you see that? All right.

23 A. Very well.

24 Q. And after that, there is a list of organisations and you will see that at number 3,
25 (Redacted) is listed there. Do you have that?

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1 A. Very well.

2 Q. So when we're in public session, if you need to refer to yourself as (Redacted)
3 (Redacted) then you would say please (Redacted) organisation number 3." Do
4 you understand?

5 A. Fine.

6 Q. All right. Thank you. There's just one further matter I'd like to deal with in
7 private session before we continue in public. You mentioned this morning that there
8 was an occasion (Redacted)

9 (Redacted)

10 (Redacted)

11 A. First of all, you haven't explained yourself properly. It wasn't (Redacted)

12 (Redacted) It was (Redacted)

13 (Redacted)

14 (Redacted) So that's the correction that I wanted to make, that I wanted to make to
15 your question.

16 Q. Thank you. Yes, that was my mistake. I recall that now. (Redacted)

17 (Redacted)

18 A. Yes, (Redacted)

19 Q. (Redacted)

20 A. The name of the programme was Lene Emet, and people would call in and
21 express their opinions. Most of those who called spoke about the ODM. But when

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 THE INTERPRETER: The interpreter didn't get what the witness said. There was a

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1 cutout in the mic.

2 THE WITNESS: (Interpretation) (Redacted)

3 (Redacted)

4 (Redacted)

5 MR STEYNBERG:

6 Q. All right. When Mr Sang said "this person who is talking is not one of ours,"
7 who was he referring to?

8 MR KIGEN-KATWA: Mr President, that's not true.

9 MR STEYNBERG: I'm reading from the transcript at line 15. Counsel can check for
10 himself. And I'll read it again, (Redacted)

11 (Redacted) -- well, it's not clear who the

12 "he" was. Let me clarify that.

13 Q. You say "... someone else called, and he went on to say that this person who is
14 talking is not one of ours." Who said that? Was it Mr Sang or the caller?

15 A. It is the person who called in.

16 Q. Thank you for clarifying that. And who is he referring to when he said "... this
17 person ... is not one of ours"?

18 A. Kindly repeat your question, please.

19 MR KIGEN-KATWA: Mr President, may I invite my learned friend's attention to
20 line 11 and have the question put again to the witness as far as the interpreter said he
21 missed out the whole of that bit of translation.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, do you want to remain or do you
23 want to come back to this issue later?

24 MR STEYNBERG: Your Honours, I'm more interested in the issue I'm pursuing now.
25 Exactly what it was that was spoken about is not really that -- something that's that

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1 important to me. If necessary we can clarify it later, but I'd like to firstly clear up the
2 issue I'm busy with now if I may.

3 Q. All right, Mr Witness, I'll try and put the question again. You said that (Redacted)
4 (Redacted) is that right?

5 A. Yes, that is correct.

6 Q. Now, it's not necessary (Redacted)

7 (Redacted)

8 A. (Redacted) but please kindly repeat your question.

9 Q. Well, I think you've answered it, but what I wanted to know is what (Redacted)
10 (Redacted)

11 (Redacted)

12 A. (Redacted).

13 Q. (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 A. (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 (Redacted)

25 Q. All right. Mr Witness, the problem is coming in because you are using

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1 pronouns like "he", "she", "they" and it's not clear to the Court who you are referring
2 to. So as far as possible when you are describing what somebody did, use the name
3 of the person, not "he" or "she". All right?

4 A. I have not understood you.

5 Q. All right. I'm going to repeat the answer that was translated to us at line 13.

6 You said, (Redacted)

7 (Redacted)

8 (Redacted)

9 What I want to know is who, who was the "he" that you were talking about in that
10 answer?

11 A. Well, that means that I am referring to the person, say for example a (Redacted)

12 (Redacted)

13 Q. Mr Witness, what I want to know is who was -- who was (Redacted)

14 (Redacted) For instance, was it

15 (Redacted) was it --

16 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Steynberg. We need to be
17 careful here. The way it's going, we don't want certain questions to be taken out of
18 the context of what the witness may have said somewhere -- may have said at a time
19 in the past and we've struggled to situate him in the present. He may come in with a
20 different answer than that which might have been natural at the time when the
21 problem arose. I do appreciate the difficulty you are having, but still we need to be
22 careful.

23 A lot has happened between when that issue arose and the question you are putting
24 now. I worry that the way you ask the question may generate a different answer
25 than the one the witness might have been talking about at the time in the past.

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1 MR STEYNBERG: All right. Perhaps I can just start by trying to give some advice,
2 if I may, regarding the answering of questions and the use of pronouns.

3 Q. Mr Witness, it's very important that when you are telling the Court about
4 certain things that other people did that everybody in the courtroom understands
5 who you are talking about, who you said did those things. To give you an example:
6 If you tell us about three people who are in a room, person A, person B and person C,
7 and you said -- and you say "he spoke," we will not understand whether it's person A,
8 or person B, or person C who spoke. So you should please try to specify person A
9 said this, or person B said this, or person C said this so that we can all understand.
10 Do you follow?

11 A. I have understood you, however, I think you omitted something. You asked
12 me my point of view, you asked for my point of view, and my point of view I
13 understood to mean the plural, including myself as well as other persons (Redacted)
14 (Redacted) That is why I referred to (Redacted)
15 Now, the (Redacted) are not with me. If
16 you were to ask me that question, I will not be able to mention (Redacted)
17 (Redacted) and that is why in my answer I referred to
18 (Redacted) in general.

19 Q. All right, but I think that you did not follow exactly what my question was and
20 I'll go back to it.
21 In your previous --

22 MR KIGEN-KATWA: Mr President, could I suggest that we attempt to have this
23 question put to the witness in English for one instance and see if he could understand
24 because between the question in English and the translation to Kiswahili to him there
25 is the intervention of the French translation and that could be where the witness is

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1 unable to understand. We could just try this one instance and see if he could

2 comprehend the question in a neutral way, of course.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

4 MR STEYNBERG: I have no objection to that, your Honours, if the Court thinks it's
5 in order.

6 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we will have you listen to
7 the question in English and try answering it in English just this once and see -- and
8 then we can go back to Kiswahili later. All right? Yes.

9 Mr Steynberg, proceed.

10 THE WITNESS: (Interpretation) Yes.

11 MR STEYNBERG: In order for this to work, however, your Honours, the
12 interpreters will have to not intervene, otherwise the witness won't hear what I'm
13 saying. So as long as we're all understood.

14 Q. Mr Witness, you were telling us about --

15 PRESIDING JUDGE EBOE-OSUJI: One second. If we all can switch to the floor
16 channel just for this question and answer and then we'll come back to English channel.
17 Proceed.

18 MR STEYNBERG: I presume that includes the remote location, your Honours?

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MR STEYNBERG: All right.

21 Q. Mr Witness, can you hear me?

22 A. (No interpretation)

23 Q. All right. If you could answer me in English please just for this question, all
24 right? Can you hear me in English?

25 A. (Speaks English) I do.

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1 Q. Thank you. You said earlier that (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 And your answer was, as translated, (Redacted)

7 (Redacted)

8 (Redacted)

9 Do you understand so far?

10 A. I do.

11 Q. What I'm trying to find out from you is when you said (Redacted)

12 (Redacted) who are you referring to by "he"? Is this (Redacted)

13 (Redacted) or is this (Redacted) or is this some other person? Who is the "he" in that
14 sentence?

15 MR KIGEN-KATWA: Mr President, I object to that question. It should have been
16 in neutral terms, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Indeed.

18 MR STEYNBERG: Well, let me just put it like that.

19 Q. Who was the "he" that was (Redacted)

20 A. No, I had actually not said that way. (Indiscernible) is actually (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR STEYNBERG: Sorry, perhaps we can go back to the translation. Thank you.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, you may now go back to
4 speaking Swahili.

5 Mr Steynberg?

6 MR STEYNBERG: Thank you, your Honours.

7 Q. You said (Redacted)

8 (Redacted)

9 A. (Interpretation) (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 A. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. (Redacted)

24 A. Yes.

25 Q. All right. Please try to remember my advice earlier and mention the person's

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1 name when you are referring to a particular person, not just "he," okay? All right.

2 Were the --

3 A. Very well.

4 Q. After this incident (Redacted)

5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. (Redacted)

12 (Redacted)

13 A. (Redacted)

14 (Redacted)

15 MR STEYNBERG: Thank you.

16 Your Honours, I intend to move on to a new incident relating to a certain meeting or
17 gathering. I believe we can do it in public session. From my understanding, there
18 were a number of people at the gathering and it was not a small gathering where the
19 witness should be identifiable.

20 Q. Mr Witness, I'm going to move on to a new area and I'm going to ask to do this
21 in public session, but please try to be careful in your answers not to give any
22 information which might identify you specifically as having attended this occasion.
23 All right?

24 A. (No audible response)

25 PRESIDING JUDGE EBOE-OSUJI: Witness, did you hear that?

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1 THE WITNESS: (Interpretation) Yes, I understood you.

2 PRESIDING JUDGE EBOE-OSUJI: All right. We will now go to open session.

3 (Open session at 2.57 p.m.)

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR STEYNBERG: Thank you.

7 Q. Mr Witness, can you please tell the Court, without giving at this stage the
8 location, was there any occasion when you attended a gathering or a meeting or
9 similar occasion where Mr Ruto made a speech?

10 A. Yes, I did go.

11 Q. And if I can ask you to look at page 2 of the PIS, can you tell the Chamber,
12 please, if the location of this meeting, the area where this meeting took place, is on the
13 PIS form?

14 A. It's number 6.

15 Q. And where specifically was the meeting held? What was the venue of the
16 meeting? For instance it could be a park or a stadium or a hospital, something like
17 that. What was it?

18 A. It was at a school.

19 Q. And what type of a meeting was this? What was the purpose of this meeting?

20 A. It was a harambee.

21 Q. And I think it's common cause that a harambee is a fundraiser; is that correct?

22 A. That's right.

23 Q. When was this meeting? When was this harambee? When did it take place?

24 A. I can't really remember the date, but I believe it was in October of 2007.

25 I believe that it was around 15th.

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1 Q. Okay. And who was the Master of Ceremonies at this harambee? Who was
2 in charge of the proceedings?

3 A. There was Chief Lagat and then he gave the microphone to Christophe Chikario
4 (phon).

5 THE INTERPRETER: "Cheruiyot," correction from the Swahili interpreter.

6 MS ALAGENDRA: Your Honours, if I may just raise a matter? Could we perhaps
7 go into private session, your Honour, so I can raise this?

8 PRESIDING JUDGE EBOE-OSUJI: Private session.

9 *(Private session at 3.02 p.m.) Reclassified as open session

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

11 MS ALAGENDRA: Your Honours, (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 MR STEYNBERG: (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: While on that note, is there any difficulty with
18 leading on it?

19 MS ALAGENDRA: Yes, there is, your Honour.

20 MR STEYNBERG: Perhaps what we can do, your Honours, is just establish the
21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed, Mr Steynberg.

24 MR STEYNBERG: (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 THE COURT OFFICER: (Via video link) (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 THE COURT OFFICER: (Via video link) (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 PRESIDING JUDGE EBOE-OSUJI: All right.
- 22 THE COURT OFFICER: (Via video link) -- (Redacted)
- 23 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 24 MR STEYNBERG: All right. Thank you, your Honours.
- 25 Q. (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. It is person number 17, number 17. I don't know whether -- it's person number
4 17 on the third page.

5 Q. Thank you. Then for the record, that's what I thought he said, it's (Redacted)
6 (Redacted) and not (Redacted) as appears at line 6 of page 63.

7 And just before we go into public session, who is (Redacted) Can you tell us a bit
8 more about him?

9 A. (Redacted)

10 Q. And what can you tell us about his relationship with Mr Ruto, Mr William
11 Ruto?

12 A. They had strong ties between them. (Redacted) when he said something,
13 Mr Ruto would carry out the instructions. I will give you an example. (Redacted)
14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. And who is person number 17?

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. (Redacted)

5 A. (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. All right. Now, person number 17, besides the names (Redacted), did
9 he go by any other names or any other nicknames?

10 A. Yes.

11 Q. What was that or what name or names were those?

12 A. (Redacted)

13 Q. Sorry, can you repeat that name one more time?

14 A. (Redacted)

15 Q. Can you spell that name for us, please, Mr Witness?

16 A. (Speaks English) (Redacted)

17 (Redacted) (Interpretation) (Redacted)

18 MR STEYNBERG: Your Honours, that's not what I heard. I specifically heard the
19 witness say (Redacted) and then I think the
20 remaining letters are (Redacted)

21 Q. Is that correct, Mr Witness?

22 A. Yes, that's right.

23 Q. And, Mr Witness, can I say that the way you spelt that, (Redacted)

24 (Redacted) that's a very good way of spelling and I recommend you use that as we go
25 forward in your evidence.

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1 MR STEYNBERG: Your Honours, I think we can go back into public session.

2 PRESIDING JUDGE EBOE-OSUJI: Open session.

3 (Open session at 3.14 p.m.)

4 THE COURT OFFICER: (Interpretation) We are in open session.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR STEYNBERG:

7 Q. Thank you, Mr Witness. Now, when I started off asking you about this

8 occasion, this harambee, I asked you whether there were any occasions where you

9 heard Mr Ruto speak. Did Mr Ruto in fact then speak at this harambee?

10 A. Could you ask your question more clearly?

11 Q. Did Mr Ruto in fact speak, make a speech, at this harambee?

12 A. Yes, he did speak.

13 Q. And can you recall, Mr Witness, what did Mr Ruto say during this speech?

14 A. I remember what he said, however, I'm not going to faithfully report what he

15 said, but I do remember the general content. He said that the ODM and another

16 party -- and he said "our party." He meant the people who were in the audience,

17 most of whom were Nandi. He added that no one would have any reason to go to

18 another political party, the Kikuyu party, when we had our political party, and he

19 said and that was when we were at place number 6, and that place number 6 is not

20 part of the places where the Kikuyu live.

21 He added -- I can't make this out very well, I can't see very well the name on the list,

22 but I will remember, he added, "We have no reason and, if necessary, we will drive

23 the Kikuyu out."

24 Q. Drive the Kikuyu out of where?

25 A. That is what he said.

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1 Q. What did you understand him to mean when he said we will, "... if necessary,
2 we will drive the Kikuyu out"?

3 A. He meant that we had to drive out the Kikuyu to another region and send them
4 back to their region, namely, Central Province.

5 THE INTERPRETER: Interpreter correction. In an earlier reply the witness said,
6 "We have no reason to follow the Kikuyu and if necessary, we will drive the Kikuyu
7 out." Line 17 of the French transcript.

8 MR STEYNBERG:

9 Q. And why -- did he say why it was necessary to drive the Kikuyu out back to
10 Central?

11 A. The Kikuyu couldn't elect anyone else who was not part of their ethnic group.

12 Q. Can you recall anything else that he said during that speech?

13 A. A few days before that date, they were all part of the same political party, ODM
14 Kenya, and Kenyatta was also part of that group. At one particular time the ODM
15 Kenya dissolved. Later, Uhuru joined his former political party, KANU, and Ruto
16 and Raila remained in the ODM and Kalonzo stayed in ODM Kenya. I --

17 THE INTERPRETER: The Swahili interpreter did not hear the last part of the reply
18 provided by the witness.

19 MR STEYNBERG:

20 Q. All right. Mr Witness, the interpreter didn't get everything you said but, first
21 of all, I think one correction at line 10 to 11: I believe I heard you say later Uhuru
22 joined. At one particular time ODM Kenya dissolved and later Uhuru joined
23 another political party. Is that what you said?

24 A. No. Uhuru had his only political party, KANU, and KANU allied itself with
25 another political party and that was to support the president of the day.

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1 Q. And the president of the day I think we all know was Mr Kibaki; is that right?

2 A. That's right.

3 Q. All right. Now, Mr Witness, I started off by asking you if you can recall
4 anything else that Mr Ruto said and you provided this explanation of the various
5 political parties leading up to the election. What is it that you wanted to get at?

6 A. I said this: Mr Ruto told us at that time -- you see Uhuru will help his father.
7 I don't remember whether he was talking about his father or someone else or his
8 brother. He gave the example of how the Kikuyu stuck together. They stuck
9 together.

10 Q. All right. What language was Mr Ruto speaking when he said these things?

11 A. He was speaking in Nandi and then he spoke in English, but it was really
12 particularly intended for the journalists.

13 Q. And when he said the Kikuyu had to be -- let me get your exact words again.
14 When he said --

15 MR KIGEN-KATWA: Mr President, could I request that the laptop that is
16 obstructing the witness could be moved a little.

17 MR STEYNBERG: Thank you.

18 Q. And when you said that the Kikuyu had to be driven out back to Central
19 Province, what language was he speaking when he said that?

20 MS ALAGENDRA: Your Honours, if I can object to that. The Kikuyus being
21 driven to Central Province was his interpretation, not the words used by Mr Ruto.

22 PRESIDING JUDGE EBOE-OSUJI: We will need to clarify that, but in the -- we will
23 clarify that but, in the meantime, we should also note that since Mr Kigen-Katwa
24 made the request about the screen it was adjusted. Just for the record.
25 Proceed.

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1 MR STEYNBERG: Thank you. I will rephrase.

2 Q. When Mr Ruto said, "... if necessary, we will drive the Kikuyu out," what
3 language was that said in?

4 A. He said it in Nandi.

5 Q. How many people were attending this harambee, Mr Witness?

6 A. There were many people. It's difficult to give you an estimate because I might
7 get it wrong. There were a great many people and they even occupied the road that
8 led towards that place, towards the school.

9 Q. Is it possible for you to estimate a range of people? So for instance one might
10 say between 10 and 20, 50 and 100, 100 and 200, 300 and 500, something like that?

11 A. No, I don't think I could give you an estimate. All I can tell you is that there
12 were a lot of people because they occupied the school yard, and even spilled out, and
13 occupied the road nearby. And I think you'll understand what I mean when I say
14 that.

15 Q. Very well. What was the reaction of the crowd when Mr Ruto said that "... if
16 necessary, we will drive the Kikuyu out"?

17 A. Well, the people who were calling that out were full of joy.

18 Q. I'm not sure I understand. What do you mean "the people who were calling
19 that out"? Who was calling what out?

20 A. I said that the crowd hailed Mr Ruto.

21 Q. I see.

22 A. They were very happy. I forgot. I think he even said -- he said that those who
23 support PNU are not normal people, they are crazy.

24 Q. Thank you. Is there anything else you wish to add that Mr Ruto said?

25 A. I've told you what I remember for the time being.

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1 Q. And to your understanding, how were the Kikuyu to be driven out of the area?

2 MS ALAGENDRA: Your Honours, I think this is inviting for speculation.

3 PRESIDING JUDGE EBOE-OSUJI: Indeed.

4 MR STEYNBERG: Is that a ruling, your Honour?

5 PRESIDING JUDGE EBOE-OSUJI: Yes.

6 MR STEYNBERG: As the Court pleases.

7 Q. Very well, let me move on. Mr Witness, apart from the crowd that were
8 present at this harambee, was there any reaction in -- other reaction in Turbo to
9 Mr Ruto's speech after that harambee?

10 A. I was not in a position to know what transpired in Turbo. You see, it was
11 nighttime and it was not possible to go to Turbo as such, and I didn't learn of
12 anything relating to such possible reactions.

13 Q. Mr Witness, I'm not necessarily talking about the same night, but after the
14 harambee did anything happen in Turbo after Mr Ruto made the speech about the
15 Kikuyu being driven out?

16 MS ALAGENDRA: Your Honour, I think that's a bit of a far link. I think there
17 must be a few more steps before we reach what happens in Turbo.

18 PRESIDING JUDGE EBOE-OSUJI: The question was proper. See how the witness
19 deals with it.

20 But before we move away from the speech, Witness, you said that you were not in a
21 position to repeat precisely what Mr Ruto had said in his speech, but then you gave
22 testimony of what you understood whatever he said to have meant and that meant
23 that the Kikuyu would need to be driven out. Did I understood you correctly that
24 this is how -- what you said during your testimony?

25 THE WITNESS: (Interpretation) Yes.

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1 PRESIDING JUDGE EBOE-OSUJI: Can you try telling us, if you can, what words he
2 had used that gave you that understanding that he was saying that the Kikuyus
3 needed to be driven out? What was it that he said that gave you that
4 understanding?

5 THE WITNESS: (Interpretation) Do you want me to answer you in my mother
6 tongue, or should I speak in another language? Which language should I use to
7 answer you?

8 PRESIDING JUDGE EBOE-OSUJI: Let's try your -- now, let's do it this way. What
9 language was it that Mr Ruto spoke in that conveyed that impression to you?

10 THE WITNESS: (Interpretation) He spoke in Nandi.

11 PRESIDING JUDGE EBOE-OSUJI: Now, we will want you to use the words in
12 Nandi that you say would have conveyed the meaning to the effect that the Kikuyus
13 would have to be driven out. What were the words in Nandi?

14 THE WITNESS: (Interpretation) Onge mande kokoechu.

15 PRESIDING JUDGE EBOE-OSUJI: Can you say it again?

16 THE WITNESS: (Interpretation) Onge mande kokoechu.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, can you assist us as you have
18 done in the past?

19 MR KIGEN-KATWA: The first word is O-N-G-E, the second one is M-A-N-D-E, the
20 third word is K-O-K-O-E-C-H-U.

21 PRESIDING JUDGE EBOE-OSUJI: Witness, I'm going to try my Nandi on you.
22 What I have on my notepad is "onge mande kokoechu." Was that what you said?

23 THE WITNESS: (Interpretation) Yes, that is correct, even though your
24 pronunciation is different from mine.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. And what do you say those words

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1 mean?

2 THE WITNESS: (Interpretation) "Drive out those Kikuyu."

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Mr Steynberg, proceed.

5 MR STEYNBERG: Thank you, your Honours. I wonder if I mightn't even be able
6 to get some more precision.

7 Q. Mr Witness, you've said that you -- well, at the time you made your statements
8 to the Prosecution, were you able to recall the words that Mr Ruto said when he made
9 this speech about removing the Kikuyu?

10 A. I have not understood your question.

11 Q. You said when you started testifying about this incident that you might not be
12 able to faithfully recall everything that Mr Ruto said. What I'm asking you is at the
13 time when you made your witness statement to the Prosecution investigators, were
14 you able to recall the words Mr Ruto used in his speech?

15 A. Once again I did not quite understand your question.

16 PRESIDING JUDGE EBOE-OSUJI: All right. The question the Prosecutor was
17 asking you was this: Before you came to court, maybe a little while
18 back -- (Microphone not activated)

19 MR STEYNBERG: Your Honours, the statement I'm interested in was in 2011.

20 PRESIDING JUDGE EBOE-OSUJI: Several years ago you met with the Prosecutor
21 investigators and you were having a discussion with them and they asked you
22 questions and you gave them answers and they wrote your answers down, or even
23 recorded it. The Prosecutor's question was: At that time, during that period, did
24 you tell the Prosecutor investigators the words that Mr Ruto had used to say "Drive
25 the Kikuyu out"? Do you remember having given those words to the Prosecution

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1 investigators at that time in the past?

2 THE WITNESS: (Interpretation) I'm sorry, I met the investigators on two occasions.

3 Which occasion are you referring to?

4 PRESIDING JUDGE EBOE-OSUJI: On any of those two occasions, do you recall
5 giving the investigators the words that Mr Ruto had used?

6 MS ALAGENDRA: Your Honours, I think there's a problem here because --

7 THE WITNESS: (No interpretation)

8 MS ALAGENDRA: Because there's more on -- there's more than two occasions on
9 which the witness has --

10 PRESIDING JUDGE EBOE-OSUJI: Witness, what was your answer?

11 THE WITNESS: (Interpretation) I told them that.

12 MR STEYNBERG: Thank you.

13 Your Honours, I'm going to ask at this stage, rather than rely on the witness's memory
14 now, to show the witness a passage from his statement of 26, 27 and 30 May 2011 and
15 ask whether that will refresh his memory as to the exact words used by Mr Ruto.

16 MS ALAGENDRA: Your Honour, we object to that because the most recent version
17 of Mr Ruto's speech was dealt with in interviews in 2014 where he explained certain
18 discrepancies and why his previous account of the speech was false. So in fairness to
19 the Defence and also the witness, perhaps my learned friend should take the witness
20 to that account of 2014?

21 And there is also some explanation given in the proofing session, your Honour, so
22 perhaps my learned friend could also take him there?

23 PRESIDING JUDGE EBOE-OSUJI: Dealing precisely with the matter?

24 MS ALAGENDRA: Exactly, your Honour.

25 MR STEYNBERG: The witness -- in witness proofing the witness did confirm these

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1 words and, if he says anything other than that, then he will have the opportunity to
2 explain that now and counsel can obviously cross-examine on any discrepancies.

3 PRESIDING JUDGE EBOE-OSUJI: Indeed. We will proceed with the memory
4 refreshing exercise.

5 MR STEYNBERG: I'm grateful, your Honours.

6 I'm not sure which court officer to address. I presume Mr Court Officer in the
7 remote location. Can I ask you to please call up the latest redacted version of
8 KEN-OTP-0053-0256 and if you could just display the front page of that document?

9 Q. And, Mr Witness, can you please tell me when you have that in front of you, or
10 Mr Court Officer?

11 THE COURT OFFICER: (Via video link) The document is being presented to the
12 witness, front page.

13 MR STEYNBERG:

14 Q. Mr Witness, you'll see at the bottom of the page there are certain initials. Do
15 you recognize any of those?

16 A. Yes, I can see my initials.

17 Q. And I won't read them out because we're in public session, but are your initials
18 the ones appearing on the left -- at the bottom of the page on the left?

19 A. (No interpretation)

20 Q. Was there an answer?

21 PRESIDING JUDGE EBOE-OSUJI: I heard "Sawa" in -- was that what you -- did you
22 say, "Yes," that's your initial on the left, Witness?

23 THE WITNESS: (Interpretation) Yes.

24 MR STEYNBERG: Thank you.

25 Mr Court Officer, can we have the next page, 0257, please? Do we have that

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1 displayed?

2 THE COURT OFFICER: (Via video link) Yes, Counsel, the page was displayed.

3 MR STEYNBERG: Thank you.

4 Q. Mr Witness, do you see the dates at the top of that page, second line, 26, 27 and
5 30 May 2011?

6 A. Yes, I can see them.

7 Q. And, Mr Witness, can you confirm that is your signature appearing next to your
8 name in the middle of the page?

9 A. Yes, that's my signature.

10 Q. All right. Do you confirm this is a statement you made on those dates to OTP
11 investigators?

12 A. Yes.

13 MR STEYNBERG: All right. Could you call up then please the next page, Mr Court
14 Officer, 0258, and specifically from paragraph 6 onwards?

15 THE COURT OFFICER: (Via video link) The page is being displayed.

16 MR STEYNBERG:

17 Q. And could you read, please, paragraphs 6, 7, 8 and 9 and let us know when
18 you're finished please? In fact, just 6, 8 and 9. Don't worry about 7.

19 A. Okay.

20 Q. Mr Witness, does that refresh your memory as to the words used by Mr Ruto at
21 the harambee?

22 A. Yes, that's correct.

23 Q. And what were those words then?

24 A. He said that the Kikuyu should leave, meaning that majimbo was something
25 that politicians said on a daily basis. When I say "majimbo" everyone would

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1 understand what that means. That is how he came to use another example, referring
2 to other regions or another region saying "the region where we are." And he said:
3 Who are the people in that region? Are there not people in that area who have
4 names belonging to those who are in Central?
5 So he said that too and then went on to ask whether there was another region in
6 Central. And he said some names, such as Kimaiyo. And then he also asked
7 whether a Nandi in Central would live in similar freedom as the Kikuyus who are
8 living in the Rift Valley.

9 Q. All right. what exactly did he say about Kimaiyo, for instance?

10 A. He asked a question: "Is there any Kimaiyo in Central? Is there another
11 Kimaiyo in Central?"

12 And here I used the word "kapoyo" (phon). This was referring to the Kikuyus.

13 Q. The name "Kimaiyo," what language is that? What is Kimaiyo?

14 MS ALAGENDRA: Your Honours, can I request the statement be taken off the
15 screen for the witness, please?

16 PRESIDING JUDGE EBOE-OSUJI: Yes, court officer, you can remove the statement
17 from the screen or at least adjust the screen so he's not distracted by it.

18 THE COURT OFFICER: (Via video link) Yes, Mr President.

19 MR STEYNBERG:

20 Q. Can you tell the Court what is or where is Kimaiyo?

21 A. Are you asking for the meaning of "Kimaiyo" or are you now asking a different
22 question?

23 Q. Well, let me ask this question first: What language is, the name "Kimaiyo,"
24 what language is that?

25 A. Kimaiyo is located in Nandi and Marakwet country.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, one second.
- 2 Mr Khan, you had put in a request for some time towards the end of today's
- 3 proceedings. Do you still want -- is it that urgent or is it something that can wait
- 4 until tomorrow?
- 5 MR KHAN: Mr President, it can be done tomorrow morning --
- 6 PRESIDING JUDGE EBOE-OSUJI: All right.
- 7 MR KHAN: -- if it's preferable to the Court.
- 8 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, would this be a convenient place
- 9 to stop so we can take up Mr Khan's matter and move fresh tomorrow with the
- 10 witness' testimony?
- 11 MR STEYNBERG: Not especially convenient, your Honours, but I'm aware what
- 12 Mr Khan wants to request and I think it's probably best to deal with it this afternoon
- 13 rather than wait 'til the morning.
- 14 PRESIDING JUDGE EBOE-OSUJI: All right.
- 15 Witness, we will release you for today and you will rejoin us tomorrow morning.
- 16 Overnight please do not discuss your testimony with anyone. Do you understand?
- 17 THE WITNESS: (Interpretation) Yes, I understand you.
- 18 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much. And court
- 19 officer, you may lead the witness out of the room.
- 20 (The witness exits the video-link room)
- 21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, would this be in private or in open
- 22 session?
- 23 MR KHAN: Mr President, it can be done in public session I think.
- 24 THE COURT OFFICER: (Via video link) Mr President, I'm sorry, I apologise,
- 25 should counsel remain in the transmission room?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 2 THE COURT OFFICER: (Via video link) Or can we just --
- 3 PRESIDING JUDGE EBOE-OSUJI: Yes, he may remain in the transmission room.
- 4 THE COURT OFFICER: (Via video link) Thank you.
- 5 PRESIDING JUDGE EBOE-OSUJI: Is the witness out of the room?
- 6 THE COURT OFFICER: (Via video link) Yes, Mr President, I confirm the witness
- 7 has been escorted out.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Mr Khan.
- 10 MR KHAN: Yes, Mr President, I'm most grateful for the time. Mr President, as
- 11 your Honours are aware, Mr Ruto has been required to be here for the next five days.
- 12 Your Honours, it came to my attention yesterday and to Mr Ruto's attention last week,
- 13 at the end of last week that in fact the President of the Republic of Kenya was
- 14 scheduled to attend or is scheduled to attend the World Economic Forum in Davos in
- 15 Switzerland.
- 16 When Mr Ruto told the President last week, I think it was on Friday or Thursday that
- 17 he would be out of Kenya this week because of court, the issue of attendance at the
- 18 Davos summit came up for discussion.
- 19 Your Honour, what my request is in a nutshell is that Kenya is due to attend that
- 20 summit on Wednesday, Thursday and Friday of this week. Matters have been
- 21 discussed with the foreign ministry. And I'm asking that Mr Ruto be excused
- 22 Thursday and Friday to attend in place of the President the World Economic Forum
- 23 in Davos.
- 24 Your Honours will be aware from open sources that many heads of state, heads of
- 25 government are attending, and given the very tumultuous economic state of the

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1 world, the aspects of discussion include issues of currency fluctuations and
2 investment.
3 Your Honour, this is an important matter that engages the Republic of Kenya. We
4 can't have -- it's difficult for the President and the Deputy to be both out of the
5 Republic at the same time, and for that reason I'm asking that your Honours excuse
6 Mr Ruto on Thursday and Friday. That would allow him to leave Wednesday after
7 Court to Switzerland, to Davos, and have the meetings and make his presentations at
8 the World Economic Forum on Thursday and Friday.
9 So, your Honours, that's my application. These are, of course, a very important
10 annual event, perhaps one of the most important annual events that engages the
11 global economic community, and it is one that the Republic of Kenya wishes to be
12 properly represented at by the presidency. So, your Honour, that's my application.
13 Your Honour, he would have sat through quite a bulk of the examination-in-chief of
14 this witness, because it will be all of today, all of tomorrow and all of Wednesday.
15 That's my application.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg.

17 MR STEYNBERG: Well, firstly I should observe that Mr Ruto's presence here this
18 week was at the specific request of the Defence, who asked that he should be allowed
19 to attend for the testimony of this witness rather than the prior witness, who did not
20 engage him in the case as much.

21 It is your Honours' ruling that the witness should attend -- the accused should attend
22 for five days at the beginning of each session. From the Prosecution's perspective it
23 really doesn't matter that much which five days the accused attends. It would seem
24 that this witness is likely to continue into the next week, so if Mr Ruto were to be
25 excluded -- excused on Thursday and Friday and attend on Monday and Tuesday,

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1 then the Prosecution would have no objection to that.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, can you speak to that part of it?

3 MR KHAN: Mr President, if it's required that Mr Ruto attend on Monday and
4 Tuesday next week in lieu of Thursday and Friday, he will do so if the Court insists
5 that that is required.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we have excused Mr Ruto.

7 MR KHAN: Indeed.

8 PRESIDING JUDGE EBOE-OSUJI: Having him to attend proceedings five days once
9 in a while is not too much an imposition on him. You do understand that, don't
10 you?

11 MR KHAN: Mr President, I understand the ruling of the Court, and I am grateful
12 for the consideration thus far given to various submissions that I have made. So,
13 your Honours, if the Court is minded to excuse Mr Ruto on Thursday and Friday, he
14 would be here on Monday and Tuesday if that's required.

15 PRESIDING JUDGE EBOE-OSUJI: We have not made a ruling, I just asked the
16 question, and then we will return on this matter tomorrow morning.

17 MR KHAN: I'm most grateful.

18 (Trial Chamber confers)

19 PRESIDING JUDGE EBOE-OSUJI: Mr Narantsetseg, I'm sorry, I'm just reminded
20 that I omitted you. That was not intentional. Proceed please if you have any
21 observation on this.

22 MR NARANTSETSEG: Thank you, Mr President, your Honours. We do not in
23 particular any specific observations to make, but on behalf of the victims we would be
24 satisfied to proceed as long as the proceedings of this Court goes as planned. So we
25 don't have particular objection to it. Thank you.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 MR KIGEN-KATWA: Mr President, completely different issue. Just an indication
- 3 from the Prosecution if they have an estimate of how soon they can finish in
- 4 evidence-in-chief?
- 5 PRESIDING JUDGE EBOE-OSUJI: We will take that tomorrow morning.
- 6 The Court will rise now.
- 7 THE COURT USHER: All rise.
- 8 (The hearing ends in open session at 4.01 p.m.)
- 9 RECLASSIFICATION REPORT
- 10 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 11 2013, the version of the transcript with its redactions becomes Public.