

Trial Hearing  
Witness: KEN-OTP-P-0128

(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  
7 Fremr  
8 Trial Hearing  
9 Wednesday, 29 January 2014  
10 (The hearing starts in open session at 9.43 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
15 Court officer, please call the case.  
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in  
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto  
18 and Joshua Arap Sang, ICC-01/09-01/11. We are in open session, your Honour.  
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
20 I see appearances remain the same. Is there any need to refresh?  
21 MS WEISS: Your Honour, we have an addition to the Prosecution Mr Mao  
22 Zakwani, who is an interpreter, and our case manager has been swapped. It's Ms  
23 Grace Goh.  
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.  
25 MR KOECH: Mr President, for the Sang team, save for the absence

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1 of Ms Caroline Buisman, the team remains the same.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 We apologise that we are starting a bit -- 15 minutes late. As always, there's always  
4 things that come up that need to be resolved before we come into court.

5 Court officer, I understand you feel a need to rectify some matter?

6 MR KHAN: Your Honour, indeed. There was a matter regarding the two  
7 documents that we sought to exhibit yesterday dealing with expenses. The  
8 reference that's been given was given yesterday to the court officer. I think only the  
9 revised -- the new document was exhibited, not the original document that was  
10 shown to the witness and agreed by him.

11 So, your Honours, for the sake of completeness, both documents should be given an  
12 exhibit number we submit. A reference was given to the court officer.

13 PRESIDING JUDGE EBOE-OSUJI: Indeed. It's a human process. Sometimes  
14 these things happen. And, just so the record is clear, this is a matter relating to the  
15 testimony of the last witness, Witness 356.

16 THE COURT OFFICER: (Interpretation) Thank you, your Honour.

17 KEN-OTP-00123-00019 confidential was given the following number:  
18 EVD-T-D09-00124.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Prosecution, you may -- oh, the witness is not in. Can we bring down the blinds  
21 and get the witness into the courtroom.

22 (Closed session at 9.47 a.m.) Reclassified as open session

23 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.  
24 (The witness enters the courtroom)

25 PRESIDING JUDGE EBOE-OSUJI: We were in open session yesterday. We

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1 ended -- we were about to go into open session, so we can now go into open session?

2 MS WEISS: That's right, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Okay, we will go into open session. The blinds  
4 around the witness to go up.

5 (Open session at 9.49 a.m.)

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 Witness, welcome back. Ms Weiss will continue her questions to you. Thank you.

9 WITNESS: KEN-OTP-P-128 (On former oath)

10 (The witness speaks Swahili)

11 QUESTIONED BY MS WEISS: (Continuing)

12 Q. Good morning, Witness. I would like to ask you a couple of questions now.

13 A. (No interpretation)

14 Q. I would like to ask you a couple of questions now about Nandi Hills Town.

15 Witness, what was the ethnicity of the population of Nandi Hills Town in 2007?

16 A. Your Honour, in 2007 the people living in Nandi Hills were a mixture of  
17 ethnicities. Most of them -- well, many of them were Kalenjin, Luhya, Kikuyu, Luo  
18 and even some Kisii people and other ethnic groups.

19 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, that question, have we -- has it  
20 remained an issue on two fronts, both across the aisle and also within your own  
21 case? What I mean by "across the aisle" is obvious. Do the Defence dispute the  
22 composition of the place at the time? And when I say "within your own case," I  
23 mean have you not called other witnesses who have testified to that? It's a  
24 question. I'm not making a hinted ruling.

25 MS WEISS: Your Honour, I understand this is (Redacted)

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1 (Redacted). The reason I ask the question as well is it's going to lead on to my next  
2 question which talks about the composition later.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Go on.

4 MS WEISS: Thank you, your Honour.

5 Q. And so my next question to you, Mr Witness, is what is the ethnicity of Nandi  
6 Hills Town now?

7 A. Your Honour, now I wouldn't really be in a position to tell you which ethnic  
8 groups live in Nandi Hills Town because I left that place a very long time ago.

9 Q. Witness, at the time you left Nandi Hills Town, what was the predominant  
10 ethnicity of Nandi Hills Town?

11 A. Your Honour, Nandi Hills Town was primarily made up of Kalenjin people.

12 Q. And when was it that you left Nandi Hills Town?

13 A. Your Honour, (Redacted)  
14 (Redacted).

15 Q. Witness, you said that in 2007 the ethnicity of Nandi Hills Town was Kalenjin,  
16 Luhya, Kikuyu, Luo and even some Kisii people. Why then in 2008 (Redacted)  
17 were there only Kalenjin?

18 A. Your Honour, most of the people were Kalenjin, and other ethnic groups  
19 came to work in business, they owned farms and also they had come for work.

20 PRESIDING JUDGE EBOE-OSUJI: Can we go into private session for a minute.

21 (Private session at 9.55 a.m.) Reclassified as open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Ms Weiss, it may be better to not pinpoint (Redacted)

25 (Redacted) be redacted

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1 from the public broadcast later.

2 Let's go back to public.

3 (Open session at 9.56 a.m.)

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

5 MS WEISS: Just before I go on to my next question, there was a -- I need to correct

6 the record at line 8 of the current page. It says "other Kalenjin" when, in fact, I'd

7 said "only Kalenjin. " Although, I do need to correct myself there because the

8 witness said "primarily Kalenjin," so if I may I can ask the question again.

9 Q. Witness, you said that in 2007 the ethnicity of Nandi Hills Town was Kalenjin,  
10 Luhya, Kikuyu, Luo and even some Kisii people. And you've said since then that  
11 it's changed, that it's primarily Kalenjin. What caused the other ethnicities to leave?

12 A. Your Honour, the post-electoral violence was such that the tribes that lived in  
13 Nandi Hills went to other regions in the country. They left. In my opinion, they  
14 went to other places. For the time being, I really couldn't tell you whether they  
15 have come back to Nandi Hills or not.

16 Q. Witness, describe, please, for the Court the general atmosphere in your area  
17 leading up to the 2007 presidential elections.

18 A. Your Honour, initially -- well, at that time the situation was normal. That  
19 was early on in the election campaign. After the election campaign, the elections  
20 were held. And after the results of the election came out, the violence occurred and  
21 the situation worsened, deteriorated.

22 Q. And, Witness, in the period directly before the election, how was the  
23 atmosphere in your area then?

24 A. Your Honour, before the elections -- well, you see, first there was the election  
25 campaign in various places. At that time the situation was normal within the

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1 population. After the elections, the results were announced and then the situation  
2 changed.

3 Q. Witness, moving now to the elections of 2007. So you recall that the  
4 presidential elections were in December 2007 in Kenya; is that right? Is that correct,  
5 December 2007 in your memory?

6 A. Your Honour, yes.

7 Q. And do you recall that the ODM and that the PNU were the main parties in  
8 that election?

9 A. Yes, that is correct, your Honour.

10 Q. And who were the leaders of those parties, Witness?

11 A. Your Honour, the leaders of the parties, I'll start with PNU, it was Kibaki, and  
12 for ODM it was Raila Odinga.

13 Q. Were there any other political rallies in your area leading up to the 2007  
14 elections?

15 A. Yes, your Honour.

16 Q. Were there any ODM rallies?

17 A. Yes, your Honour.

18 Q. Did you attend any ODM rallies prior to the elections in 2007?

19 A. Yes, I did, your Honour. I attended two meetings during the campaign.

20 Q. And where were those two meetings?

21 A. Your Honour, the first one was in Kubojoji and the second was in Koyo.

22 MS WEISS: And just for the transcript, Kubojoji is spelled K-O-B-U-J-O-I.

23 Q. Is that correct, Witness?

24 A. Could you please repeat -- repeat that?

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, if you are sure that that's the spelling, I

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1 think you can just spell it and let's not verify spellings with witnesses. If we

2 know -- if you know the spelling, you can just spell it for the record.

3 MS WEISS: Thank you, your Honour. I'm confident that that is the spelling and

4 also for the transcript Koyo is K-O-Y-O.

5 Q. Witness, you said there are two ODM rallies that you attended in the 2007

6 pre-election period, one at Kubojoi and one at Koyo. If I could ask you first to focus

7 on the one at Kubojoi. When was that rally, approximately?

8 A. Your Honour, I can't remember the exact date, but I think it was towards the

9 end of the election campaign. It was in Kubojoi. There was a rally near the district

10 officer's office.

11 Q. Approximately how long prior to the election, if you can make a rough

12 estimation, Witness?

13 A. Your Honour, I remember very well that it was the last month in the election

14 campaign in Kenya, but I can't remember what day.

15 Q. Thank you, Witness. It's an agreed fact that the -- the elections took place at

16 the end of December, so would it be fair to say perhaps the end of November?

17 MR HOOPER: No, no, it wouldn't be fair to say that.

18 PRESIDING JUDGE EBOE-OSUJI: Okay, you can ask the question then. Counsel

19 doesn't want you to lead. That's what the thing is about.

20 MS WEISS:

21 Q. Witness, when you say a month before the elections --

22 MR HOOPER: Well, that's the problem, you see? He didn't. He said that it was

23 in the last month before, so just -- just keep the question a bit wider, I think, please.

24 MS WEISS:

25 Q. Witness, when you say it's in the last month of the election campaign, which

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1 month are you referring to?

2 A. It was in the month of November. In other words, before the month of  
3 December.

4 Q. Witness, how did you learn about this rally in Kubojoji?

5 A. Your Honour, I was passing through. I was going to west of Kenya, going  
6 through Kalani, and I saw signs. There were posters on trees, near shops and there  
7 were signs up on the roadside, and they were all messages announcing a political  
8 rally. And when I was travelling that day, I saw people who were preparing the  
9 dais. They were setting up the dais for the leaders, the sort of dais you have when  
10 you have this type of rally. You set up these stones.

11 MS WEISS: Your Honour, just for the transcript, dais is spelled D-I-S -- D-A-I-S.  
12 That's at line 22 of the current transcript page.

13 Q. Witness, you said that there were posters announcing this meeting or the  
14 rallies. Can you describe these posters for us?

15 A. There were two types of poster, your Honour. One had a picture of Raila  
16 Odinga, the leader of the ODM. And the others had a picture of William Ruto  
17 saying that there would be a meeting, a rally in Kubojoji and that large numbers of  
18 people should come and attend.

19 Q. And, Witness, as you said, there were posters of Ruto and posters  
20 of -- Mr Ruto and posters of Mr Odinga. Of those posters that you saw which were  
21 there more of, those displaying Mr Ruto or those displaying Mr Odinga?

22 A. Your Honour, most of the posters were for Mr William Ruto.

23 Q. Witness, you said that there was -- you said preparing a dais. Could you tell  
24 us a little bit more about that?

25 A. Yes, your Honour. The dais was just next to the main road, the road that



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1 comes from Koyo and goes west. And there was also the district officer's office  
2 which was near there.

3 Q. Who was constructing the dais?

4 A. Your Honour, I saw people I didn't know, but there was someone in charge of  
5 them, Mr Samson Cheramboss.

6 MS WEISS: Your Honour, for the record, I can spell Cheramboss. It's

7 C-H-E-R-A-M-B-O-S-S.

8 Q. Witness, Mr Samson Cheramboss, do you know his ethnicity?

9 A. Your Honour, Mr Samson Cheramboss was from the Kalenjin tribe.

10 Q. What was his occupation in 2007?

11 A. Your Honour, according to what I know and to the way things were  
12 happening in Kenya during the campaign, when you see someone building a dais  
13 for a leader who was turning up, that meant that the person's job was being his  
14 closest ally.

15 Q. Whose closest ally, Mr Witness?

16 A. I mean he was the closest partner. It may have been his chief officer. When  
17 the person is in charge of setting up the dais, they're following the instructions given  
18 by his leader. That's what I think.

19 Q. Witness, when you say "his leader," who are you referring to?

20 A. Your Honour, I'm referring to Mr Ruto. He had a lot of posters in that part of  
21 Kubojoji, lots of posters announcing the rally.

22 MS WEISS: Your Honour, if I may just correct the transcript. At line 11, it says  
23 "who is" when in fact it should read "whose," H -- W-H-O-S-E.

24 Q. Witness, do you know if -- what Mr Cheramboss's living was in 2007?

25 A. Your Honour, (Redacted). He used to be a

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1 commander of the GSU in Kenya. He was also in charge of the presidential escort,  
2 but in that year I knew Mr Cheramboss as a businessman. When he retired, he used  
3 to do business in Kubojoi with petrol shops and even with vehicles.

4 MS WEISS: Your Honour, perhaps I can move into private session for a little bit  
5 now just to be cautious to talk about (Redacted)?

6 PRESIDING JUDGE EBOE-OSUJI: Private session then.

7 (Private session at 10.19 a.m.) Reclassified as open session

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

9 MS WEISS:

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Mr Cheramboss. At that time he used to work for the government.

14 Q. Do you recall how long that was in years?

15 A. Your Honour, ten years before that time.

16 Q. Witness, when you say "that time," what time are you referring to?

17 A. Your Honour, what I mean is that time was 2007, so it was ten years before  
18 2007. (Redacted)

19 MS WEISS: If I could ask the court officer to please display KEN-OTP-0083-0342.

20 And we're at tab number 1 in the bundle, your Honours. It's a confidential  
21 document.

22 Q. Witness, can you see that photograph?

23 A. Yes, your Honour.

24 Q. Do you recognise this photograph?

25 A. Yes, your Honour.

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1 Q. How do you recognise this photograph?

2 A. Your Honour, I recognise Mr Cheramboss who is here. He was somewhere  
3 in Harambee, a place we called Kapkolei. And he'd been given a present. It was  
4 after he'd made a contribution at Harambee.

5 MS WEISS: Harambee I would spell for the record. H-A-R-A-M-B-E-E.

6 Q. Witness, who took this photograph?

7 A. Your Honour, the person who took the photo had a camera, (Redacted)  
8 (Redacted)

9 Q. Were you there, Witness, when it was taken?

10 A. Yes, I was, your Honour.

11 MR HOOPER: Sorry to interrupt you. We missed the place where the photograph  
12 was taken.

13 MS WEISS: I can ask that question again, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, at line 10 I see there's a gap there.

15 MS WEISS:

16 Q. Witness, just for the record, where was this photo taken?

17 A. Your Honour, the place was called Kapkolei. Kapkolei primary school.  
18 Kapkolei primary school.

19 MS WEISS: And for the record I can spell that. It's K-A-P-K-O-L-E-I.

20 Q. Witness, when was this photograph taken?

21 A. Your Honour, I can't remember the day, but it was the time when they had  
22 the Harambee in the school.

23 Q. Witness, do you know when the Harambee was?

24 A. I have forgotten, your Honour.

25 Q. Witness, was it before the 2007 elections?

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1 A. Yes, your Honour.

2 Q. How long before the 2007 elections, if you know, Witness?

3 A. Your Honour, it was a bit longer, but it was getting close to the 2007  
4 campaign time.

5 Q. Witness, can you comment on Mr Cheramboss's status in the community?

6 PRESIDING JUDGE EBOE-OSUJI: Before -- sorry, he can answer, but after that I  
7 have a question.

8 THE WITNESS: (Interpretation) Yes, your Honour. Mr Samson Cheramboss was  
9 a highly respected person. He was highly respected within his community. He  
10 could get people in the community to come together to discuss a subject. People  
11 would come along. He was greatly respected in the community.

12 MR HOOPER: Can I just query whether any of this issue of the photograph and the  
13 status of Mr Cheramboss need be in private? None of this is identifying in any way.

14 MS WEISS: Your Honour, I think at this stage we can move into public session.  
15 The earlier discussion was necessary for private, but I think now we can move into  
16 public.

17 PRESIDING JUDGE EBOE-OSUJI: We will -- yes, Mr Hooper?

18 MR HOOPER: Well, the damage or such damage as it may be, the lack of publicity  
19 to that portion of the evidence of course is lost, so perhaps we can revisit it briefly.  
20 Perhaps my friend can very briefly summarise what the witness has said, that a  
21 photograph was taken by (Redacted) Mr Cheramboss, at a Harambee at a local  
22 school and that Mr Cheramboss is a respected member of the community?

23 PRESIDING JUDGE EBOE-OSUJI: Let's not do that now. Mr Hooper, if that's  
24 going to form a part of your cross-examination, we can do it then if you want to  
25 revisit it, but we have to move along. These things happen.

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1 Witness --

2 Prosecutor, please, I'm butting into your examination-in-chief, but it seems like

3 Harambee is something of significance in your case. Is it a place, or an event? Can

4 you clarify that and, if so, is it safe to do that in public?

5 MS WEISS: It's safe to do that in public, your Honour, and I'll do that.

6 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into the public session. We

7 might as well know what Harambee is.

8 (Open session at 10.32 a.m.)

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

10 MS WEISS:

11 Q. Mr Witness, you said that Mr Cheramboss you saw at a Harambee. Could

12 you explain -- explain, please, for the Court what is a Harambee?

13 A. Your Honour, in Kenya Harambee is carried out when within a family there's

14 a problem, or within -- there's a problem -- or if there's a problem within a

15 community. For example, if a school needs to be built, or a hospital, or if the school

16 fees are too high for a student, the family calls upon someone very influential within

17 the community and that person looks to his friends, or consults his friends, and finds

18 a way to help the family.

19 So it's basically a way of collecting money so that a project can be carried out. For

20 example, a school may be built, a hospital might be built in this manner or --

21 PRESIDING JUDGE EBOE-OSUJI: It's a fundraising.

22 THE WITNESS: (Interpretation) -- one might raise funds to pay for a pupil's school

23 fees.

24 MS WEISS:

25 Q. Thank you, Witness. Mr Witness, you said that Mr Cheramboss was highly

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1 respected within the community. Which community are you talking about?

2 A. Your Honour, I'm talking about the Kalenjin community in this particular  
3 case.

4 Q. And why was he highly respected in the community?

5 A. Your Honour, he is respected because he has done many things. When he  
6 was within the public service, for example, he saw to it that most of the young  
7 people in that community were able to join the army. He did everything to ensure  
8 that electricity would be provided in his community. So he's very respected  
9 because of the things that he has done within the community.

10 Q. Witness, you said that Mr Cheramboss was a commander in the GSU, page  
11 12, line 1. Could you explain what a commander in the GSU is? What does GSU  
12 stand for?

13 A. Your Honour, in English GSU means General Service Unit. In Kenya the  
14 GSU takes action when the police fail to conduct an operation properly. So the  
15 GSU -- well, you see, he was the supreme commander of the GSU at the time.

16 Q. Is that a police unit or an army unit?

17 A. Your Honour, the GSU is a police unit. It's part of the police, but it's a  
18 specialised unit, you see, a specialised unit within the police.

19 Q. Witness, you said earlier that Mr Cheramboss used to do business with  
20 vehicles.

21 MS WEISS: And that's page 12, line 5, your Honours.

22 Q. When you say "with vehicles," can you tell us a little bit more about that  
23 business?

24 A. Your Honour, I saw two trucks that were carrying construction materials such  
25 as sand, crushed stone and cement.

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1 Q. Whose trucks were these, Mr Witness?

2 A. Your Honour, those two trucks belonged to Mr Cheramboss.

3 Q. Witness, do you know how many lorry -- or trucks, excuse me,  
4 Mr Cheramboss owned?

5 A. I'm not in a position to tell you how many trucks he had, but I did often see  
6 two trucks. One of the two trucks belonged beforehand to Kenya Power and  
7 Lighting and the other one had belonged to the army, and that truck had  
8 been -- inaudible. Those were the two trucks that I used to see.

9 PRESIDING JUDGE EBOE-OSUJI: There was an indication of inaudible in the  
10 answer. Can you see if you can get that information out. Then I will want to find  
11 out from you if there was --

12 THE INTERPRETER: Correction from the interpreter: The truck was repainted.

13 PRESIDING JUDGE EBOE-OSUJI: That's where the inaudible comes in.

14 But I wanted to find out from you, Ms Weiss, I noticed you corrected yourself when  
15 you said lorry and then said "excuse me, trucks." The reason I intervene is whether  
16 there is a material distinction between the two for purposes of your case. The  
17 reason I also say that is I thought I heard the witness in native language use the  
18 word "lorry", but when it came out in interpretation it came out as "trucks." So I do  
19 not know whether it's a regional preference that interpretation fed or what. It's up  
20 to you whether there's a distinction. I thought I'd flag that issue now.

21 MS WEISS: Thank you, your Honour. Trucks, lorries, I think is a -- it's certainly  
22 the same item or same vehicle we're talking about, but from different regions. I  
23 know in Australia I would say "trucks," but in America maybe they would say  
24 "lorries."

25 PRESIDING JUDGE EBOE-OSUJI: In America they will say "trucks."

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- 1 MS WEISS: Oh, they would say "trucks" as well? So maybe in England --
- 2 PRESIDING JUDGE EBOE-OSUJI: In other places they will say --
- 3 MS WEISS: -- they would say "lorries."
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes, in other places they will say "lorries."
- 5 Anyway, if it's the same item we are talking about, we need not spend time on it.
- 6 MS WEISS: Thank you, your Honour.
- 7 Q. And, Witness, before we started talking about Mr Cheramboss, we were
- 8 talking about the rally -- the rally in Kubojoi. Did you actually attend this rally in
- 9 Kubojoi?
- 10 A. Your Honour, when I got back in the evening from the place where I had
- 11 gone to visit my family, that is when I realised that this rally was underway.
- 12 Q. What did you do then?
- 13 A. I stopped for a short while, your Honour. I observed and I listened to what
- 14 people were saying.
- 15 Q. And when in relation to the construction of the dais did the rally take place?
- 16 A. Your Honour, the rally was held before the construction of the dais, before the
- 17 end of the construction of the dais. The rally was not held on the same day. First
- 18 the dais or the platform was built and then the rally was held the next day. It was
- 19 later.
- 20 Q. And what time of day was the rally held?
- 21 A. When I came back from my trip, I went by that place at about 3 in the
- 22 afternoon, and I realised that there was a rally.
- 23 Q. How many people attended this rally?
- 24 A. I couldn't tell you exactly how many people were taking part in the rally.
- 25 Between 200 and 500 people.



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1 Q. What was the ethnicity of the attendees?

2 A. Most of them were Kalenjin. However, there were other people who  
3 belonged to the other ethnic groups that I mentioned, such as the Kisii, the Luhya,  
4 the Luo, in other words, the ethnic groups that lived in that area. But they were off  
5 to the side observing to some extent.

6 Q. Witness, were there any dignitaries present at the rally?

7 A. Yes, your Honour. There were many people, and I was on the road, but I  
8 couldn't identify the people who were on the dais, but there were officials from the  
9 ODM party.

10 Q. And who were they?

11 A. As I was saying, your Honour, I was not in a position to identify all of them,  
12 but briefly I would say that the head of the ODM party Henry Kosgey -- Raila  
13 Odinga was present, William Ruto, as well as other people whom I was not able to  
14 identify. My purpose was to listen to what was being said. I was not there to  
15 identify all of them.

16 Q. And who was speaking?

17 A. Your Honour, I think that they all spoke, but when I went by it was Mr Ruto  
18 who was speaking.

19 Q. What was Mr Ruto saying?

20 A. Your Honour, he was asking the people of Kubojoji to vote for ODM in large  
21 numbers. At one point he was speaking in Swahili, but he was able to switch from  
22 Swahili to Kalenjin. (Redacted)  
23 (Redacted)  
24 (Redacted)  
25 (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: Keep going.
- 2 MS WEISS: Your Honour, if I could move very quickly for two questions into  
3 private session.
- 4 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into private session.  
5 (Private session at 10.50 a.m.) Reclassified as open session
- 6 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.
- 7 MS WEISS:
- 8 Q. Witness, you were saying that (Redacted)  
9 (Redacted) He interpreted what was being said in Kalenjin. We're in private session,  
10 but please use the PIS anyway out of practice if you would like to. Who was that  
11 person?
- 12 A. Your Honour, it was (Redacted) he understood  
13 Kalenjin quite well.
- 14 MS WEISS: I think we can move back into public session, your Honour.
- 15 PRESIDING JUDGE EBOE-OSUJI: I take it you were going to request the redaction  
16 for public purposes of the answers given at line 8 about (Redacted)  
17 (Redacted)?
- 18 MS WEISS: That's correct, your Honour. I have my case manager working on that  
19 at this moment.
- 20 PRESIDING JUDGE EBOE-OSUJI: All right.
- 21 MS WEISS: Thank you.
- 22 PRESIDING JUDGE EBOE-OSUJI: Back to public session then.  
23 (Open session at 10.52 a.m.)
- 24 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 25 PRESIDING JUDGE EBOE-OSUJI: Witness, we're back in the public session.

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1 Remember the red light is on and what I told you about the red light. Thank you.

2 MS WEISS:

3 Q. Witness, you said that Mr Ruto was speaking in both Swahili and Kalenjin.

4 What did he say in Kalenjin?

5 MR HOOPER: Well, what did (Redacted) interpret? What did the person interpret?

6 MS WEISS: Your Honour, we're in public session. If I could ask perhaps to go --

7 PRESIDING JUDGE EBOE-OSUJI: Let's go back to private session.

8 MS WEISS: -- back to private session?

9 (Private session at 10.53 a.m.) Reclassified as open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

12 MS WEISS:

13 Q. Witness, you said that (Redacted) who spoke in Kalenjin, (Redacted)

14 translated or interpreted, sorry, what was being said in Kalenjin for you. What was

15 being said by Mr Ruto in Kalenjin according to (Redacted)?

16 Your Honour, maybe we could go into public session for the answer?

17 PRESIDING JUDGE EBOE-OSUJI: Do it in private session. The question was

18 already asked in public and the difficulty was created then.

19 THE WITNESS: (Interpretation) Your Honour, I haven't understood the question

20 that was put to me.

21 PRESIDING JUDGE EBOE-OSUJI: All right. What the lawyer is asking you is this:

22 Do you remember you said you were -- that, when Mr Ruto was speaking in

23 Kalenjin, (Redacted) interpreted to you what he understood Mr Ruto to be

24 saying? And the lawyer's question is, What was it that (Redacted) told you that

25 Mr Ruto was saying?

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1 THE WITNESS: (Interpretation) Your Honour, (Redacted) told me this: Ruto  
2 wanted the Kalenjin to vote for ODM. He wanted the election to lead to a radical  
3 change. What's more, the government led by ODM was going to allow -- well, you  
4 see, he said he wanted the tree stumps to be uprooted, and he wanted them to get  
5 back on their path. That's what he said. Mr Ruto was speaking in Kalenjin briefly  
6 and then he switched back into Swahili.

7 PRESIDING JUDGE EBOE-OSUJI: Can we now return to public? We can?

8 MS WEISS: Yes, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: All right, let's go back to public session.

10 THE INTERPRETER: Correction from the interpreter: Get their fields back, not  
11 make their way back. Get their fields back.

12 (Open session at 10.57 a.m.)

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

14 MS WEISS:

15 Q. Witness, what do you understand --

16 MR HOOPER: Can I just interrupt my friend and suggest for the sake of the  
17 transcript and the continued trial that what the witness just said as it appears on the  
18 transcript be read again into the public domain, as it were?

19 PRESIDING JUDGE EBOE-OSUJI: You mean the correction?

20 MR HOOPER: Well, with the -- with the correction as it were. I mean, the  
21 correction amends the -- amends the transcript and overrides the phrase "get back to  
22 the path," should read "get their fields backs." So inserting that we then have the  
23 essential text, as it were, in the public domain that this witness understood Mr Ruto  
24 to have said.

25 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, actually I was going to say something

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1 along those lines so that we have clarity in light of the correction that was made. If  
2 the question can be put again in a safe manner. We're now in public, no need to  
3 refer to sources, but basically the witness can tell us -- one second.

4 Witness, I want you to give us your answer again, what you just told the Court that  
5 Mr Ruto was saying. You don't need to give us any other information about who  
6 told you what and all that. Just -- you already gave us an answer. Can you tell us  
7 again what it was that Mr Ruto said. Do not tell us whether somebody told you  
8 that or not. Just tell us what Mr Ruto said.

9 THE WITNESS: (Interpretation) Your Honour, I told you that Mr Ruto asked the  
10 Kalenjin to vote in massive numbers and that once the ODM took power, they were  
11 going to uproot the tree stumps and their lands would be given back to their owners.

12 MS WEISS: Your Honour, I'm mindful of the time. Maybe I can explore this in the  
13 next session?

14 PRESIDING JUDGE EBOE-OSUJI: Indeed, Ms Weiss.

15 We will take our morning break now. The blinds will come down and the witness  
16 will be escorted from the courtroom.

17 Witness, we are taking our morning break now and we will be back at 11.30.

18 (Closed session at 11.02 a.m.) Reclassified as open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 (The witness stands down)

22 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

23 THE COURT USHER: All rise.

24 (Recess taken at 11.03 a.m.)

25 (Upon resuming in open session at 11.35 a.m.)

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1 THE COURT USHER: All rise.

2 Pleased be seat.

3 PRESIDING JUDGE EBOE-OSUJI: Welcome back, Witness. We are in open  
4 session. As you can see, the red light is on.

5 Ms Weiss, please.

6 MS WEISS:

7 Q. Witness, you said, and I quote at line 24 of page -- of the transcript -- of page  
8 25 of the transcript, sorry your Honours, "Mr Ruto asked the Kalenjin to vote in  
9 massive numbers and that, once the ODM took power, they were going to uproot  
10 the tree stumps and their lands would be given back to their owners."

11 My first question there is what did you understand to mean by "uprooting the tree  
12 stumps"?

13 A. Your Honour, at the beginning most of us didn't know what that meant, but  
14 later when the events occurred we said, "Ah, that must have been what they were  
15 talking about."

16 Q. And what were they talking about, Witness?

17 A. Your Honour, what happened was the violence and some people were forced  
18 to leave where they were living and go somewhere else. And then afterwards I  
19 thought, "Ah, they were the tree stumps they were talking about at the time of the  
20 election campaign."

21 Q. Witness, when you say "some people," which people were you talking about?

22 A. Your Honour, when I was talking about "some people," I meant some people  
23 who weren't from the Kalenjin tribe and who were living there.

24 Q. Can you specify the ethnicity of those people?

25 A. Your Honour, we knew that the Luhya came and bought land in the Rift

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1 Valley area. They hadn't had any land ownership rights yet and the Kikuyu people  
2 knew that -- we knew that there were people who were coming to do business in the  
3 Rift Valley. They were the people who were targeted. We were targeted that way.

4 MS WEISS: Your Honour, just a small correction at line 16 of the current transcript.  
5 "... some people who went ..." should be "... some people who were not ..."

6 Q. Witness, you said also earlier the lands would be given back to their owners.  
7 Who are those owners?

8 A. Your Honour, this is land they had bought from the Kalenjins --

9 THE INTERPRETER: Correction of the Swahili booth: Land which the Luhya  
10 people had bought from the Kalenjins.

11 MS WEISS: Witness, just one moment.

12 Your Honours -- Witness, just one minute. Your Honours --

13 Q. Witness, is this correct, that it was the Kikuyu people who had bought -- had  
14 bought from the Kalenjins? Is that what you said? We just need to clarify the  
15 record.

16 A. Your Honour, I said it was the Luhya who had bought land from the  
17 Kalenjins and that the Kikuyu were doing business in Kalenjin area.

18 Q. Thank you, Witness. Thanks for the clarification.

19 Witness, when you heard these things being said at the rally, what was your  
20 reaction?

21 A. Your Honour, I left that area and kept on travelling to go home and that was  
22 when I heard all this.

23 Q. From your observation, Witness, what was the reaction of the other attendees  
24 at the rally?

25 A. Your Honour, each person had his point of view about what he heard, But it

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1 wasn't good news for people who weren't Kalenjin.

2 Q. Witness, do you know, did Mr Ruto and Mr Cheramboss know each other?

3 A. Your Honour, it's as I said before, the work that was being done to prepare  
4 the rally where Mr Ruto was going to be speaking to people meant that there was Mr  
5 Cheramboss and Mr Ruto working together.

6 Q. Was Mr Cheramboss present at the rally?

7 A. Yes, your Honour.

8 Q. Did he have a role at the rally? Did he play any part in the rally?

9 A. Yes, your Honour. I've already said this. As I said before, when I arrived,  
10 the meeting, the rally had already started. And when you have people coming to  
11 the meeting, and you're responsible for it, there are great responsibilities, and this  
12 was the responsibility of Mr Cheramboss.

13 Q. What was he doing?

14 A. Your Honour, I would like to ask a question. Are you talking about that day,  
15 the day of the rally, or before?

16 Q. Witness, I'm talking about the day of the rally. What was Mr Cheramboss  
17 doing on that day?

18 A. Your Honour, when all the preparation was over, people sat down and kept  
19 on following the programme, and he was there to overlook it, to make sure that  
20 everything was being done according to the programme.

21 Q. Witness, before I leave the rally at Kobujoi, I just want to go back and clarify  
22 one point or ask you one more question. You said, and I give the reference as page  
23 28, line 25 of the transcript, "It was not -- it wasn't good news for people who weren't  
24 Kalenjin." Why was what you heard not good news for people who weren't  
25 Kalenjin?



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1 A. Your Honour, when there is good news for someone, it's announced in the  
2 language that everybody can understand, and it's a message that everyone can  
3 understand. But when it's information which is presented as a parable or in code,  
4 then people have to try and work out what it means.

5 Q. And, Witness, what does -- what did that mean?

6 A. Your Honour, the meaning became apparent after the election, that's what I  
7 think. When they started forcing people to leave the area and displacing them, that  
8 was when I started to understand what this code or parable meant, the story which  
9 had been told on that day.

10 Q. When you say "... they started forcing people ...", who do you mean by  
11 "they"?

12 A. Your Honour, I'm talking about the Kalenjin tribe.

13 Q. Witness, I'll move on now to the rally at Koyo. You testified this morning  
14 that there were two ODM rallies prior to the election that you knew about.  
15 Approximately when was the rally at Koyo?

16 A. Your Honour, the Koyo rally was the last rally before the Kobujoi meeting. It  
17 was around late November, after the Kobujoi rally, so it was just before the election.

18 Q. Just to clarify, Witness, after the Kobujoi rally, before the election; is that  
19 correct?

20 A. Yes, your Honour.

21 MS WEISS: Your Honour, I just have word from our interpreter here that at line 25  
22 of page 30, the interpretation of "last rally before" was actually "last rally after."

23 PRESIDING JUDGE EBOE-OSUJI: Why don't you try and clarify that testimony  
24 then with the witness.

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1 MS WEISS:

2 Q. Witness, and just sorry to be repetitive, but for the purpose of the record was  
3 the Koyo rally before or after the Kobujoi meeting?

4 A. It was after the Kobujoi rally.

5 Q. Thank you, Witness. Now, where was it held? And when I say "it," I mean  
6 the Koyo rally.

7 A. Your Honour, it was in the Koyo shopping area.

8 Q. And, Witness, mindful that we're in public session, could you tell us how you  
9 knew about the rally?

10 A. Your Honour, there was a neighbour, and my neighbour came to my place  
11 and said that there would be a rally there. There was also a vehicle that was going  
12 around with a PA system which told people about the Koyo rally. And that was  
13 before the meeting was held on that day.

14 MS WEISS: Your Honour, if I could perhaps go into private session just for a few  
15 questions?

16 PRESIDING JUDGE EBOE-OSUJI: Private session then.

17 (Private session at 11.55 a.m.) Reclassified as open session

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

19 MS WEISS:

20 Q. Witness, you said that you knew about the rally from a neighbour and also  
21 from a vehicle that was going around with the PA system. Firstly, who was the  
22 neighbour that you heard this from?

23 A. Your Honour, my neighbour is called (Redacted) and the vehicle with  
24 the PA system was -- was driven by (Redacted).

25 Q. Sorry. Just to clarify, Witness, is (Redacted)?

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1 A. (Redacted).

2 MS WEISS: Your Honour, I know we're in private session, but he's -- (Redacted)

3 (Redacted) is number 3 on the PIS and (Redacted) is number 2 on the PIS.

4 Q. So, Witness, if we do talk about this further in public session, I ask you to  
5 refer to the PIS please.

6 Could you tell us what person number 2, so (Redacted) what does he do?

7 A. Your Honour, (Redacted). He

8 (Redacted).

9 Q. And am I correct in understanding that he was the one that told you about the  
10 rally?

11 A. Yes, your Honour.

12 Q. And what did he tell you?

13 A. Your Honour, he said that (Redacted)

14 (Redacted)

15 (Redacted)

16 MR HOOPER: Would it be possible just to clarify who the neighbour was who told  
17 him, which one of these two it was, because my friend's put it -- led him on his  
18 answer. But it's not clear.

19 PRESIDING JUDGE EBOE-OSUJI: First of all, we can clarify that later. I was  
20 wondering is there an issue as to whether a rally was held, Mr Hooper, or is the  
21 issue what might or might not have been said?

22 MR HOOPER: There is no dispute that a rally was held in that place. The nature  
23 of the rally is something else.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, would that help in maybe eliminating  
25 some details setting up the circumstances of that rally?

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1 MS WEISS: To a certain extent, your Honour, but I would like to elicit what it is  
2 that his neighbour actually said to him.

3 PRESIDING JUDGE EBOE-OSUJI: For purposes of clarity of the record, yes, that  
4 needs to be done, but if it isn't necessary to stage the rally as it were before it  
5 occurred we can just go to the rally and discuss what happened at the rally.

6 MS WEISS: Certainly, your Honour. I would also very briefly like to explore what  
7 was said through the public address system, but apart from that I can move straight  
8 to the rally.

9 Q. So, Witness, who was your neighbour that told you about the rally?

10 A. Your Honour, I said before that it was (Redacted). He was the person  
11 who spoke to me about this meeting.

12 Q. Thank you, Witness. And who was it that was speaking on the public  
13 address system?

14 A. Your Honour, it was (Redacted).

15 MS WEISS: Your Honour, we can move into public to elicit what he said on the  
16 public address system if the Court pleases?

17 PRESIDING JUDGE EBOE-OSUJI: Witness, we'll go into the public session now so  
18 the lawyer can continue asking you questions, but be careful to not put in  
19 information that will personally identify you, such as that (Redacted)  
20 (Redacted)

21 Public session.

22 (Open session at 12.03 p.m.)

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

24 MS WEISS:

25 Q. Witness, what did you hear over the public address system?

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1 A. Your Honour, on this public address system, I heard it said they were calling  
2 for people to be present during this rally.

3 Q. Witness, if you look at your PIS form, can you tell me do you know whether  
4 person number 2 and person number 3 knew Mr Cheramboss?

5 A. Yes, your Honour.

6 Q. What was their relationship?

7 A. Your Honour, I couldn't say. But what I do know is that these were people  
8 who knew each other. They had worked together.

9 Q. How had they worked together?

10 A. Your Honour, on several occasions the person at number 3 went on his  
11 vehicle to Mr Cheramboss. He came and went to go and find Mr Cheramboss.  
12 And at another time they went to the same church on Sundays on other occasions.

13 Q. Witness, the rally in Koyo, did you go to the rally?

14 A. Yes, your Honour.

15 Q. How many people were there?

16 A. Your Honour, between 150 and 200 people.

17 Q. What was the ethnicity of those present?

18 A. Your Honour, most of them were Kalenjins. There were some Luhya, Luo  
19 and Kisii who live in that place.

20 Q. Who were the speakers at the rally in Koyo?

21 A. Your Honour, the persons who were the speakers were Samson Cheramboss,  
22 a woman called Sally Kosgey, who was a candidate for parliament, and her friends  
23 were also there. I don't remember their names.

24 Q. Did you hear Mr Cheramboss speak?

25 A. Your Honour, yes. He took the floor and he addressed the community. He

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1 spoke in the name of Mr Ruto, inviting the members of his community to vote for  
2 ODM, and he said that that would recompense them from -- that would be  
3 recompensed by the same party.

4 Q. Why do you say he spoke in the name of Ruto? How do you know this?

5 A. I didn't understand why he addressed them on Mr Ruto's behalf in order to  
6 give this message.

7 Q. What was it that he said that made you think that he was speaking on behalf  
8 of Mr Ruto?

9 A. Your Honour, I thought that because during the first rally, Mr Ruto  
10 was -- had been invited as the guest of honour. That was in Kobujoi. And then  
11 afterwards there was the meeting in Koyo and I saw this person quote Mr Ruto and  
12 the ODM, so I thought, "Well, why did he do that?"

13 Q. What language or languages did Mr Ruto -- Mr Cheramboss speak -- speak in  
14 at the rally in Koyo?

15 A. Your Honour, during the rally in Koyo Mr Cheramboss spoke a bit in Swahili,  
16 but most of the time he spoke rather in Kalenjin.

17 Q. And with reference to the PIS, and mindful again that we're in public session,  
18 how were you able to understand what Mr Cheramboss was saying in Kalenjin?

19 A. Your Honour, fortunately there was the person who was at number 1. That's  
20 somebody who was often following this rally. When I saw him I said, "What was  
21 said when he was speaking in Kalenjin?"

22 Q. And what did he tell you, Mr Witness?

23 A. Your Honour, he told me the following: He was saying that the Kalenjin,  
24 they should vote en masse and that they would see the results that the government,  
25 the ODM, would bring them.

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1 Q. Did he say anything else?

2 A. If he'd added anything, for the moment I can't remember.

3 MS WEISS: One moment, your Honour, please.

4 Your Honour, could I please just move into private session for one question?

5 PRESIDING JUDGE EBOE-OSUJI: Private session.

6 (Private session at 12.15 p.m.) Reclassified as open session

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

8 MS WEISS:

9 Q. Witness, what you heard being said at that rally, did that affect you  
10 personally?

11 A. Yes, your Honour. If I remember what I heard at Kobujoi and at the second  
12 place, then I thought what I think now has a meaning.

13 Q. And what was that meaning?

14 A. Your Honour, during the rally in general people speak in a language that  
15 everybody understands, but to speak in Kalenjin for a long time, that for me means  
16 that they're saying things that they do not want -- that one section of the audience  
17 can understand and that was my understanding of it.

18 PRESIDING JUDGE EBOE-OSUJI: Just one second. Witness, we're now -- we need  
19 you to -- the lawyer's question, the last two questions or so, she was asking you  
20 about what happened at the Koyo rally and what you heard and how that affected  
21 you, and you in your response you said what you heard at the Kobujoi rally and at  
22 the Koyo rally had a meaning and then you continued.

23 We now want to be clear on what it is you heard at the Koyo rally that had the  
24 meaning. For a moment forget about the Kobujoi rally. You've already told  
25 you -- told us what you've heard at the Kobujoi rally. We now want -- she wants to

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1 find out from you what you heard at the Koyo rally that you said had a meaning that  
2 might have affected you. Can you tell us?

3 THE WITNESS: Your Honour, I was a foreigner in that place, a stranger to that  
4 place. I had the right to follow everything that was happening concerning the  
5 general politics, and it affected me because I was in a rally where a language was  
6 used which didn't make it possible to follow everything that was being said and  
7 that's the reason why I was affected. So I thought I linked that to what I had  
8 already heard previously.

9 PRESIDING JUDGE EBOE-OSUJI: So at the Koyo rally - at the Koyo rally - was it  
10 that that affected you was the fact that a language which you didn't understand was  
11 being used to speak at the rally or was it something else that affected you at that  
12 rally, or was it something else plus the fact that a language you did not understand  
13 was being used?

14 THE WITNESS: Your Honour, our brothers, the Kalenjin, when they have  
15 something, a secret, they speak in Kalenjin even if I was there. Then I was affected,  
16 because I understood that it was something about us and I understood that the  
17 Kobujoi rally concerned us.

18 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, continue. You may ask questions  
19 from what arose from my own questions.

20 MS WEISS: Thank you, your Honour.

21 Q. And, Witness, following on from that, how did it concern you; you  
22 personally?

23 A. Your Honour, that affected me personally because I was a foreigner in that  
24 place before following the words that I heard in Kobujoi and there. And at that  
25 time I didn't know what was happening, but afterwards I understood that they were



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1 talking about us and that's it.

2 MS WEISS: Your Honour, I'll move on from that.

3 Q. But while we're still in private session, Witness, I just want to ask you -- and  
4 reference, page 38, line 19, I asked the witness, "Did Mr Cheramboss -- did he or Mr  
5 Cheramboss say anything else?" And you said, "If he had added anything, for the  
6 moment I can't remember." Can you remember if Mr Cheramboss said anything  
7 else?

8 A. What I said is what I remember for the moment. The words that (Redacted)  
9 interpreted for me, and he says the name, that was to call upon the Kalenjin to vote  
10 en masse, and afterwards they would see the positive results from the ODM party.

11 Q. Witness, do you recall giving a statement to OTP investigators on (Redacted)  
12 (Redacted)?

13 A. Yes, your Honour.

14 Q. Witness, at the time you gave the statement, could you remember anything  
15 else that Mr Cheramboss said?

16 A. Your Honour, perhaps if I was given a bit more time then I would be able to  
17 remember.

18 PRESIDING JUDGE EBOE-OSUJI: You can refresh the witness's memory, not by  
19 reading out anything, but if she can be shown -- sorry, he rather, can be shown the  
20 statement at the place where there may have been something else for him to look  
21 and then you ask him later on whether that has refreshed his memory.

22 MR HOOPER: Well, rather the cart before the horse perhaps, at least perhaps that  
23 decision has been made, but the difficulty is that -- and I'm very aware the witness is  
24 sat here, obviously he can understand and hear what I say, but the realities of the  
25 situation are that the statement was provided just in (Redacted). The interviews

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1 extended over (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, one second.

3 MR HOOPER: Just --

4 PRESIDING JUDGE EBOE-OSUJI: One second. No, no, no. Mr Hooper, I'm sure

5 you can deal with that in cross-examination. I know what you are going to say,

6 where you are headed. I'm sure you can fully deal with that in cross-examination.

7 I ruled on the matter as a matter of discretion for the Court to grant the refreshment

8 of memory, and that we don't want to stay all day with my ruling over the issue.

9 Let's get it over with.

10 MR HOOPER: Right.

11 PRESIDING JUDGE EBOE-OSUJI: You will deal with it in cross-examination.

12 MR HOOPER: Right, but while I'm on the subject can I just mention one thing?

13 That is that we asked the Prosecution to provide us with the times of those

14 interviews in (Redacted). He was interviewed I think on the (Redacted)

15 (Redacted). The Prosecution have told us they have no record of the

16 time that they spent with the witness in (Redacted). So we'd asked them, perhaps

17 as I'm reminded now of this issue, between now and perhaps this afternoon, as they

18 do have members of the Prosecution team who attended that interview, whether

19 they could revisit that and provide me with the information in respect to that.

20 It's also of course to be borne in mind the witness was seen for four hours just a few

21 days ago. As your Honour says, that will be a matter clearly that will be revisited in

22 cross-examination. Thank you.

23 MS WEISS: Your Honour, if I could get the court officer to pull up the statement, or

24 I have a clean copy, whichever works best?

25 PRESIDING JUDGE EBOE-OSUJI: You have a clean copy? It's better to give a

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1 clean copy and direct the witness to where the words may be, or pinpoint it.

2 MR NDERITU: Your Honour, and just as a matter of clarification it does appear to  
3 me the statement was in (Redacted).

4 PRESIDING JUDGE EBOE-OSUJI: Do we have a copy somewhere? It need not  
5 detain us. You can continue.

6 MS WEISS: Sorry, your Honour. It's in the bundle, at the very end of the bundle  
7 before your Honours.

8 Q. Witness, if I can get you just to look at the very first page of that statement,  
9 Witness.

10 A. Yes, your Honour.

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

12 MS WEISS: It's KEN-OTP-0083-0328.

13 Q. Witness, can I just get you to not read the statement and look at the first page.  
14 Witness, if you just listen for the translation of what I'm instructing you to do.  
15 Thank you. So if you just look at the first page of that statement, do you recognise  
16 this to be the statement you gave between (Redacted)?

17 A. Yes, your Honour.

18 Q. And without going through the statement at all, if you could just flip it over  
19 and look at the very last page of the statement. Is that your signature there on the  
20 last page?

21 A. Yes, your Honour.

22 Q. Witness, if I can get you to turn to page 7 without looking at the other pages,  
23 just to page 7. Paragraph 36, do you see that there?

24 A. Yes, your Honour.

25 Q. Witness, I know you're testifying today in Swahili, but can you read in

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1 English well enough to understand what is written on the statement?

2 A. Yes, your Honour.

3 MR HOOPER: Can this be in public?

4 PRESIDING JUDGE EBOE-OSUJI: Can we go in public?

5 MS WEISS: Yes, your Honour, we can go into public.

6 PRESIDING JUDGE EBOE-OSUJI: We'll go in public.

7 MR HOOPER: And may I suggest that -- I can hear -- I can hear Mr Steynberg from  
8 here.

9 PRESIDING JUDGE EBOE-OSUJI: We can all hear Mr Steynberg.

10 MR HOOPER: But I don't let him know that normally.

11 PRESIDING JUDGE EBOE-OSUJI: We try not to tell him we've been hearing him  
12 all along.

13 MR HOOPER: Perhaps it would be better if Ms Weiss didn't just read it out.

14 PRESIDING JUDGE EBOE-OSUJI: We heard that. And it wouldn't be appropriate  
15 for -- the direction was for the witness himself to read the part, and then later on the  
16 witness would be asked whether his memory had been refreshed and we take it  
17 from there.

18 MS WEISS:

19 Q. Witness, if you could read in paragraph 30 --

20 I'm not sure, are we in public session now? No.

21 PRESIDING JUDGE EBOE-OSUJI: Let's go to public session.

22 MS WEISS: Your Honours, the document is actually confidential.

23 PRESIDING JUDGE EBOE-OSUJI: We can go into public. The witness is not going  
24 to read the text aloud. He's going to review that part himself, without reading it  
25 aloud, and then later on Ms Weiss would ask whether his memory has been

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1 refreshed.

2 (Open session at 12.34 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now back in open session.

5 You've been following what we're trying to do. The procedure of the Court allows

6 you to review that part of the statement that the Prosecution -- the Prosecutor has

7 given to you, review that yourself without reading it aloud, and then you wait for

8 any question from the lawyer. Have you reviewed paragraph 36?

9 THE WITNESS: Yes, your Honour.

10 MS WEISS:

11 Q. Does that refresh your memory, Witness?

12 PRESIDING JUDGE EBOE-OSUJI: As to what else Mr Cheramboss might have said

13 at the rally?

14 MS WEISS: Can the statement be taken away from the witness?

15 THE WITNESS: (Interpretation) Your Honour --

16 MS WEISS:

17 Q. Witness, do you remember whether Mr Cheramboss said anything else at the

18 rally in Koyo?

19 A. Yes, your Honour.

20 Q. And what was that?

21 A. Your Honour, he talked about two tribes. The first were the Luhyas, and the

22 second was the Kikuyu. And he said that if ODM won the election, then the

23 Kalenjin would be free to do what they wanted to do and that they would take back

24 the land which had been bought by the Luhya.

25 MS WEISS: I'm going to move away from the rally in Koyo now.

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1 Q. Witness, I will take you now to election day and in December 2007. It's an  
2 agreed fact that this was on 27 December 2007. Witness, did you vote on that day?

3 Did you vote on that day?

4 A. Yes, I did, your Honour.

5 Q. And with reference to the PIS if need be, where did you vote?

6 A. Your Honour, looking at the sheet in front of me, I can say that I went to vote  
7 at location number 2.

8 Q. Witness, the election results were announced on 30 December. Did you hear  
9 those results being announced?

10 A. Yes, your Honour.

11 Q. How did you hear?

12 A. Your Honour, I'd been listening to the radio and watching television.

13 Q. Did you hear anything else on the radio?

14 A. Yes, your Honour.

15 Q. And what did you hear?

16 A. Your Honour, I heard that Mr Kibaki had just won the election.

17 Q. And after you heard that on the radio, did you hear anything else on the  
18 radio?

19 A. Yes, your Honour. After having heard that on the radio, there were rumours  
20 going around, going around different places, and the rumours even got as far as  
21 where we were.

22 Q. I'm sorry, Witness, just to clarify, did you hear the rumours on the radio or  
23 did you hear them from somewhere else?

24 A. Your Honour, I heard the rumours from people, the people who were coming  
25 from Eldoret. And they were telling us what the situation was like there. And in

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1 the place where we were, we got rumours from what people told us.

2 Q. And you said " ... they were telling us what the situation was like there,"  
3 referring to Eldoret. What was it they were saying in relation to the situation in  
4 Eldoret?

5 A. Your Honour, they were saying that violence had just broken out in Eldoret.  
6 And other people were saying that if Kibaki had just won, that meant that he'd  
7 rigged the elections, and that he couldn't win, that he'd rigged the election. So that  
8 meant we started wondering, some of us started wondering what to do.

9 Q. Witness, where were you -- and if you need to refer to the PIS, please do  
10 so -- where were you when you heard the election results?

11 A. Your Honour, I was in location number 1 according to what I see on the  
12 paper.

13 Q. Witness, you said "... we started wondering, some of us started wondering  
14 what to do." What did you do?

15 A. We remained calm, your Honour. We kept on following the results. We  
16 did that by listening to the radio and also by getting news from people. And when  
17 people gathered in groups and sat down, we would go over there, and people were  
18 talking about different subjects.

19 Q. Witness, did you stay in location 1 in the days following the election?

20 A. Yes, I did, your Honour.

21 Q. For how long did you stay in location 1?

22 A. Your Honour, I stayed there for a few days. It wasn't even a week. Then  
23 after they announced the results, we were told that Kibaki was president, and we  
24 saw people gathering in groups. And we heard that people were starting to fight in  
25 Eldoret.

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1 And looking at the sheet here at the bottom, persons number 4 and 5 started telling  
2 people that they were going to travel, that they were going to go to Nandi Hills.  
3 And they wanted all the men to get ready to go off to Nandi Hills. And some of us  
4 thought that we'd go to Nandi Hills, too, because we'd see how things would  
5 happen, we'll see what the opinion of the government was on all these issues,  
6 because there were rumours going around, and people were forming groups. It  
7 was as if the situation was developing -- an unexpected situation was developing.  
8 I don't know if you'll allow me to go on, your Honour?

9 Q. Witness, I'll just stop you there and ask some clarification, and then we can  
10 move forward. Why did you go to Nandi Hills?

11 A. Your Honour, most of us didn't know why, because usually when something  
12 happens in Kenya, it's often the DC who states the position of the government, or if  
13 the residents want to have some information, they go off to the DC's office. And  
14 this time it was as if there were demonstrations around the DC's office.

15 Q. And just for the record, who is or what is the DC? What does that stand for?

16 A. Your Honour, DC means district commissioner. It's the representative of the  
17 government in the district.

18 Q. Thank you. And you said a little earlier that persons number 4 and 5 started  
19 telling people that they were going to travel, that they were going to Nandi Hills.  
20 Why were they going to Nandi Hills?

21 A. Your Honour, we were surprised by this question, too. It was the  
22 government's suggestion as I said. Persons number 4 and 5 were the leaders. And  
23 we didn't know what we were going to do. They took us there, and they wanted all  
24 men living there should not stay at home. All the men had to get together and go  
25 with to the DC.



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1 Q. And did you go to the DC as well?

2 A. Yes, your Honour. We had to, because if I hadn't gone, and as I was a man,  
3 they would have said that I was a rebel or that I was not complying with  
4 government orders. Numbers 4 and 5 were the leader and the leader's assistant,  
5 and otherwise they would have said that we were traitors.

6 Q. Witness, what would have happened if you didn't go?

7 A. Your Honour, in the Rift Valley area, those of us who were outsiders often  
8 wanted to hear the orders or directions of people from the local administration  
9 authorities. They may have been chiefs or assistant chiefs. So there was no way I  
10 couldn't go where the chief was telling me to go. This was very important  
11 information.

12 Q. How did you get to the DC's office, which I understand was in Nandi Hills?

13 The witness has testified.

14 A. Your Honour, we weren't alone. There was a huge crowd. I was able to see  
15 the crowd. There were people from Kobujoi, and they were going through the  
16 place where we were. And when we got there, we were on the road, and we filled  
17 up the entire roadway. And we went there to --

18 PRESIDING JUDGE EBOE-OSUJI: Was there an abrupt interruption in  
19 interpretation? "... we went there to ..." what?

20 THE INTERPRETER: Interpretation correction: We went there on foot.

21 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, the courtroom clock gives us six more  
22 minutes to lunch break time. You had indicated yesterday that you might be  
23 completing, did I get it wrong, before lunch break or was I -- did I mishear?

24 MS WEISS: I said before the end of the day, at the latest at the end of the day, but  
25 from the pace we're taking I think I would probably need half of the session this

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1 afternoon and then be done.

2 PRESIDING JUDGE EBOE-OSUJI: As I said earlier, you need to make a judgment  
3 call on what we really need in the case. There are all sorts of details I'm seeing, I  
4 don't know what bearing they really have on the issues, but keep that in mind  
5 please.

6 MS WEISS:

7 Q. Witness, you said you travelled by road. Did you see anyone else on your  
8 journey that you recognised?

9 A. Your Honour, I came across a lot of people. I recognised some of them. I  
10 recognised, for example, on this list here number 3. He was in his vehicle and he  
11 had his PA system. He was going to the front and to the back. There was a big  
12 crowd and you couldn't communicate with the people without the PA system, and  
13 he was telling people to get on the road. He said, "We're going to the DC's office  
14 and we're going to Nandi Hills."

15 Q. And, Witness, did you stop along the way at all on your way to Nandi Hills?

16 A. Yes, your Honour. Sometimes we stopped on the way. Some of us had  
17 something to eat. There was food on the roadside under the trees, just by the road.  
18 So anyone who was hungry could stop, would have something to eat, and then  
19 would keep on going. I didn't know where the food had come from, but I could sit  
20 there with people who knew where we were going because I didn't know.

21 So the first stop was for that.

22 The second stop was when we reached a place, which is number 3 on the sheet of  
23 paper I have in front of me here, And there the person who had the microphone  
24 said, "You men from other tribes, when you get to Nandi Hills be at the back and  
25 you'll do what the Kalenjins do. Don't do what you want to do." That's what they

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1 told us. When people got together, when we got there, that's what they told us and  
2 then we kept on going.

3 Q. Witness, just one question about the food, when you stopped for the food.  
4 Who was providing the food?

5 A. Your Honour, they were women. I don't know how they'd organized  
6 themselves. They were at different points. Some gave porridge, others gave  
7 (indiscernible), others gave chapattis. I don't know how they organised themselves  
8 to get the food there for so many people. And I don't know how they'd prepared  
9 the food.

10 Q. Did you have to pay for the food?

11 A. No, your Honour. There was no money involved. Anyone who was  
12 hungry could stop and eat and then keep on going.

13 Q. Witness, when you got to Nandi Hills what did you see? It's Nandi Hills  
14 Town, am I correct?

15 A. Your Honour, when we reached Nandi Hills Town, as I've already said, there  
16 was a huge crowd. There were other people who had come in from the other side  
17 and we were there, so there was a huge number of us.

18 I thought we'd go to the DC so that he could speak to us, but we didn't get that far.  
19 The police came. The head of the Nandi Hills police turned up. And often when  
20 people form a group like that the police try to organise people, but before he spoke  
21 someone came out. Someone came out from the other side and he shot an arrow,  
22 and the person hit by the arrow fell down and I was afraid. When I saw that the  
23 policeman had been killed I thought they're going to shoot at us, and so I turned  
24 around and started running back home.

25 And when I got back, behind me there were people going into the shops. There

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1 were a few Kalenjin soldiers who were showing them where the Kalenjin stores  
2 were. They had guns. And when the doors were open, people were looting, and  
3 there were also vehicles there. The vehicles were parked there. And people had  
4 money. If you looted something, they'd give you money. If you took a mattress,  
5 they gave you money. I didn't want to do that. They had killed the head of the  
6 police, and I saw that it was dangerous, and I started running.  
7 And behind me people were beginning to fight. They were looting. They were  
8 doing all sorts of things. So on the road (Redacted) and said that a  
9 petrol station in Kikuyu had just been blown up, and I was shaking, and I didn't  
10 want to stop and I went home.

11 MS WEISS: Witness, if we can maybe just stop there.

12 There is one -- and I would like to explore a little bit of this after lunch. It might be  
13 a good idea -- it might be a good place to stop, but there was just one small  
14 correction which our interpreter has picked up at page 54, line 1 and 2, "There were a  
15 few Kalenjin soldiers who were showing them where the Kalenjin stores were." I'm  
16 told that that was not "Kalenjin." It was "Kikuyu."

17 THE WITNESS: (Interpretation) Your Honour, these were Kalenjin soldiers who  
18 were together with the Kalenjins in the crowd. They're the ones who were showing  
19 where the Kikuyu shops were, so that they could be destroyed. And they destroyed  
20 them. And when they couldn't force their way into the shops, they -- they shot at  
21 the doors to force the doors open. They went in and looted.

22 MS WEISS: That's the clarification I was after, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it there for now and  
24 take it up again at 2.30.

25 Witness, we've come to the time for our lunch break. So we will take a break and

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- 1 we'll come back at 2.30. Thank you.
- 2 Blinds down, please, for the witness to be escorted from the courtroom.
- 3 (Closed session at 1.05 p.m.) Reclassified as open session
- 4 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.
- 5 (The witness stands down)
- 6 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 7 THE COURT OFFICER: (Interpretation) All rise.
- 8 (Recess taken at 1.05 p.m.)
- 9 (Upon resuming in open session at 2.35 p.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 13 Witness, welcome back.
- 14 Ms Weiss, please continue. We're in open session.
- 15 MS WEISS: Thank you, your Honour.
- 16 Q. Witness, I'm just going to now clarify a few things that you told us before the
- 17 break, before I move on from Nandi Hills Town.
- 18 Witness, you said before the break that when you reached Nandi Hills Town there
- 19 was a huge crowd.
- 20 MS WEISS: Page 53, line 13, your Honours.
- 21 Q. What was the ethnicity of the people in the crowd?
- 22 A. There was a large crowd, and most of those people were Kalenjins, but there
- 23 was also a mixture of people who came from other ethnic groups such as the Luhya
- 24 and Luo and other people who were living in Nandi Hills who were not Kalenjins.
- 25 Q. Witness, you also said that someone came out from the other side and he shot

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1 an arrow when you were in Nandi Hills Town. And the person hit by the arrow fell  
2 down.

3 MS WEISS: Same page, line 20 to 22, your Honours.

4 Q. Who was the person that was shot by the arrow?

5 A. That person who was hit by the arrow was the commander of the police in  
6 Nandi Hills. He was the OCS.

7 Q. What was the ethnicity of the OCS?

8 A. He was a Kikuyu.

9 Q. And just for the record, Witness, could you tell us what OCS stands for?

10 A. OCS means officer in charge of the station.

11 Q. Did you see who shot the arrow?

12 A. Your Honour, I couldn't see. There were many people. The arrow came out  
13 of somewhere and I wasn't expecting it. I don't know where the arrow came from.

14 Q. Witness, you said that you were afraid when you saw that the policeman had  
15 been killed and you thought they were going to shoot at us.

16 (Lines 22 to 24, your Honour.) Who did you think was going to shoot at you?

17 A. Your Honour, this was something that just came right out of the blue,  
18 shooting an arrow at the police. I thought one of the other police officers was going  
19 to react and shoot upon the crowd after his colleague died.

20 Q. Witness, you said - and this is at page 54, line 23 - "Kalenjin soldiers who were  
21 together with the Kalenjins in the crowd, they were the ones showing where the  
22 Kikuyu shops were so that they could be destroyed." Witness, what do you mean  
23 by "soldiers"?

24 A. Your Honour, I'm referring to the police officers who came from that station  
25 in Nandi Hills who were of the Kalenjin ethnicity. They weren't together with other

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1 police officers from other ethnic groups, and then after that they were in contact with  
2 other Kalenjin people who were amongst that crowd. And those police officers  
3 were the ones who were the ones who were pointing out that shop.

4 Q. Thank you for clarifying that, Witness.

5 Witness, you also said that if you looted something, they gave you money. (Page  
6 54, line 6, your Honours.) When you say "they gave you money," who gave the  
7 money?

8 THE INTERPRETER: Correction from the interpreter: In the previous reply the  
9 witness mentioned Kikuyu shops.

10 THE WITNESS: (Interpretation) Your Honour, there were rich people from the  
11 Kalenjin ethnic group who had shops in other places. Amongst those rich people  
12 there were, according to the PIS document I have, it's person number 3. That  
13 person came with their lorries and they were parked at one place, and that rich  
14 person was talking with other people who engaged in looting. Each time the  
15 looters brought back some goods, those rich people gave them some money. So  
16 those rich people were in contact with the people who were carrying out the looting.

17 MS WEISS:

18 Q. And who were the people that were carrying out the looting?

19 A. Your Honour, most of them were Kalenjins. They were the ones who were  
20 looting and who were handing over the looted goods to the rich people, but others  
21 were looting items and taking these various items to their own homes. Some were  
22 going and providing the goods to the rich people and then going back.

23 MS WEISS: Your Honour, I have one question in -- which I will need to ask in  
24 private session, if I may.

25 PRESIDING JUDGE EBOE-OSUJI: We will go to private session, but when the

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1 witness spoke about your last line of inquiry, clarification, I heard the word "askari"  
2 used, not from the interpretation but from the witness testifying in Kiswahili. The  
3 word "askari," what does that mean? Do we know?

4 MS WEISS: I'll put that to the witness in context.

5 Q. Witness, you used the word "askari" in your answer just before. Can you  
6 explain what "askari" means?

7 A. Your Honour, "askari" means the police or the police officers, police officers  
8 who came from that station, the Nandi Hills police station.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will now go into private  
10 session for your one question, you said. Okay.

11 (Private session at 2.46 p.m.) Reclassified as open session

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

13 MS WEISS:

14 Q. Witness, you said before the lunch break - and your Honours page 54, line 12  
15 - (Redacted) said that a "...", I think that's, "... petrol station in  
16 Kikuyu had just been blown up." I'm not sure if that was an interpretation error or  
17 not, but can I just ask you what did (Redacted) on the telephone?

18 A. Your Honour, (Redacted) and I -- I had  
19 already fled. (Redacted) just set a Kikuyu service centre on fire," and that  
20 service centre or service station rather was on fire.

21 MS WEISS: Just one more question to follow that up.

22 Q. Witness, could you tell us where that was?

23 A. That happened in Nandi Hills.

24 MS WEISS: Thank you. And that's it for the private session for the moment, your  
25 Honour, please.



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1 PRESIDING JUDGE EBOE-OSUJI: Can we go back to public session.

2 (Open session at 2.48 p.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss, when did you say you will be  
5 rounding up your cross-examination -- your examination-in-chief?

6 MS WEISS: I think if I can have another 20 minutes, I should be done.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MS WEISS:

9 Q. One last question to finish up the Nandi Hills line of questioning. Witness,  
10 just to get some idea of time, can you remember how long after the election results  
11 that you went to Nandi Hills Town?

12 A. If I recall correctly, it was after two or three days, between that date. I think  
13 it -- perhaps four days. I don't have a specific recollection.

14 Q. Witness, do you know if it was before or after new year?

15 A. Your Honour, it was after the end of the year.

16 Q. Witness, you said that you left Nandi Hills and went home. Did you stay  
17 there?

18 A. Your Honour, I didn't stay there. I went -- I had to move my family so that  
19 we could go back to the place that we had come from.

20 Q. And mindful that we're in public session and using the PIS, where did you go  
21 after you left home?

22 A. I went to number 8, place number 8.

23 Q. And, Witness, did you stay at location number 8?

24 A. Your Honour, I took my family twice. First I took my family, then I went  
25 back because, you see, I couldn't take my whole family in a single trip.

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1 Q. And the second time you returned to your home, using again the PIS if you  
2 need to, which road did you take?

3 A. Your Honour, I left Nandi Hills and I went to the place I originally came from.  
4 I took road number 3, number 3 on the sheet of paper that is before me.

5 Q. And the second time you took that trip, Witness, did you see anything?

6 A. I beg your pardon, your Honour. The answer that I gave previously was that  
7 when -- you wanted to know when I left Nandi Hills or when I left the place I  
8 originally came from? Could you specify? Could you be clearer with the question  
9 so I can answer? Very well.

10 Q. Witness, when you went from location 8 to location -- to your -- to home  
11 using the road that you have pointed to on the PIS the second time, did you  
12 encounter anything?

13 A. Your Honour, I was a bit lost. Number 8 is the place that I came from, the  
14 place that I am originally from. When I left Nandi Hills I went to place number 1.  
15 And the road that I mentioned earlier is road number 3. I beg your pardon.

16 Q. On your journey, Witness, along that road number 3, did you see anything on  
17 that road?

18 A. Yes, your Honour. When I was taking my children back on the first trip to  
19 number 8, upon my return I found that there were roadblocks, there were people  
20 there on the -- along the road. Each time that we tried to go forward there were  
21 roadblocks or fires that had been set or people along the road.

22 Q. And who were the people at these roadblocks?

23 A. Your Honour, they were young people from the Kalenjin ethnic group.

24 Q. And what were they doing?

25 A. Your Honour, I don't know what those young people were doing, but when I

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1 went by I was asked where I was going and what I was doing. Those kinds of  
2 questions were put to me. And fortunately there were some people who knew me  
3 amongst the young people. And they said, no, that I could pass.  
4 But the other person who came from the other side, from 8, said this: He said to get  
5 through you have to be able to speak the language, otherwise they will -- well, they  
6 would take what you had or they would look at you in a very bad way.

7 Q. And these Kalenjins, what were they wearing?

8 A. Your Honour, they were wearing civilian clothing, but their clothing was  
9 dirty, like people who had been working.

10 Q. And were they carrying anything?

11 A. Your Honour, they had arrows and bows.

12 Q. Witness, how many roadblocks were there?

13 A. Your Honour, there were several, but myself I went through at least seven  
14 roadblocks from (Redacted).

15 Q. Witness, I'm not going to go through each one of them, but could you tell me  
16 about the first roadblock at least. Did you see anyone you recognised at the first  
17 roadblock?

18 A. Your Honour, no.

19 Q. Did you see anyone you recognised at any of the roadblocks?

20 A. Yes, your Honour.

21 Q. And who did you recognise?

22 A. Your Honour, I recognised Samson Cheramboss in his vehicle. He was the  
23 only person who went through that particular roadblock without any trouble.  
24 Otherwise, you see, the other cars were not allowed to go through that particular  
25 roadblock at that particular point when I was there.

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1 Q. And did you see what Mr Cheramboss did at the roadblock?

2 A. I saw him speaking to these young Kalenjin, your Honour. And a bit  
3 afterwards they let him through on his vehicle. He was toing and froing, but it was  
4 only his car that could go through there.

5 Q. Witness, did he get out of his car?

6 A. No. When he spoke to these young people, he was in his car. He stuck his  
7 head out of the window and he spoke to them.

8 Q. Witness, how far away from Mr Cheramboss were you at this time?

9 A. I was approximately 15 metres away.

10 Q. What type of vehicle was Mr Cheramboss in?

11 A. Your Honour, he had a Prado vehicle. It was light blue -- Pajero vehicle,  
12 light blue. I couldn't identify the number plate of that vehicle because there was  
13 mud at the time.

14 MS WEISS: Your Honour, my transcript has stopped. I'm not sure if that's the  
15 same for everybody else in the courtroom. It stopped at Prado.

16 PRESIDING JUDGE EBOE-OSUJI: I have the same problem. We can -- we can  
17 continue. There was life in the courtroom before real-time transcripts, so let's keep  
18 going.

19 MS WEISS:

20 Q. Witness, just to clarify, was it a Prado or a Pajero, if you know?

21 A. Pajero. I think a Pajero and a Prado, I think they're the same thing, but on  
22 the car it was written "Pajero", and the colour of the car was a blue sky colour -- sky  
23 blue colour.

24 Q. Witness, have you seen -- had you seen Mr Cheramboss in that same car  
25 before?

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1 A. Yes. It was the car that he had been using for a long time.

2 Q. Witness, after you passed through these roadblocks, did you get to location 1?

3 A. Yes, your Honour.

4 MS WEISS: Your Honour, I have a couple of questions which need to be asked in  
5 private session if I may.

6 PRESIDING JUDGE EBOE-OSUJI: We will go to private session, but before we do,

7 Witness, you -- just so we understand clearly on the record what you're saying,

8 occasionally you had said -- used the expression "where we originally came from."

9 I believe you said that when the lawyer was asking you whether you stayed or left

10 Nandi Hills after the election results, and you said you had taken your family to the

11 place where you originally came from.

12 Would it be the case that we are talking at -- about the place listed as number 8,

13 that's where you originally came from; is that it? Can you look at the document.

14 THE WITNESS: (Speaks English) Your Honour --

15 PRESIDING JUDGE EBOE-OSUJI: Is that where you came from originally? That's

16 what you mean, number 8?

17 THE WITNESS: (Overlapping speakers)

18 PRESIDING JUDGE EBOE-OSUJI: Are you saying -- so that's a different

19 province -- we don't need to mention it now -- a different province of Kenya; is that

20 it?

21 THE INTERPRETER: Previous answer: "Yes, your Honour." The microphone

22 was being used by the other interpreters.

23 THE WITNESS: (Interpretation) That's my place of origin.

24 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.

25 MS WEISS: If we could just move into private session if that's possible, your

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1 Honour, just for two questions. I'd be most grateful.

2 PRESIDING JUDGE EBOE-OSUJI: We will go into private session for a brief

3 moment and come back out.

4 (Private session at 3.09 p.m.) Reclassified as open session

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

6 MS WEISS:

7 Q. Witness, when you got back to location 1 or (Redacted) -- I can say that in private

8 session -- did you see anybody that you knew?

9 A. Your Honour, when I went back to (Redacted) to get the children who had

10 stayed there, the children had spent the night outside because they were afraid.

11 They feared for their safety. There was (Redacted) house that had been torched. (Redacted)

12 (Redacted) Everything had been torched.

13 And my children told me that in the evening (Redacted)

14 (Redacted)

15 (Redacted)

16 THE INTERPRETER: And the interpreter points out that he did not hear the end of

17 the answer of the witness.

18 MS WEISS:

19 Q. Witness, for the purpose of the interpretation, could you please say again the

20 end of your answer that you've just given. The interpreter did not hear you

21 properly.

22 A. Your Honour, when I came back from my region of origin when I took first

23 group from my family, when I got there I thought the children hadn't spent the night

24 in the house, they spent it in the bush because they were afraid. They feared for

25 their safety. And they said that there had been (Redacted)

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1 (Redacted)

2 And at that time (Redacted) house had been torched. It was a shock, in fact.

3 (Redacted). Everything had been

4 destroyed. I didn't have time to ask them where (Redacted)

5 All I did was to take my children and take them back to my region of origin.

6 Q. Thank you for that, Witness. Just one question about (Redacted)

7 (Redacted) was torched. What was the ethnicity of (Redacted)?

8 A. Your Honour, he was Kalenjin but member of the PNU party.

9 MS WEISS: Your Honour, that's my questioning for private session. I have a small  
10 amount to do in public and then I'll be done.

11 PRESIDING JUDGE EBOE-OSUJI: Let's go back to public.

12 (Open session at 3.13 p.m.)

13 THE COURT OFFICER: (Interpretation) We are in public session, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: I can see that the live relay has come back, live  
15 transcript.

16 MS WEISS:

17 Q. Witness, did you leave -- did you stay in location 1?

18 A. No, your Honour. When I went to get my children, I didn't stay in that  
19 place.

20 Q. Witness, where did you go?

21 A. Your Honour, I went to the place indicated at number 8.

22 Q. Did you ever go back to location number 1?

23 A. No, Mr President.

24 Q. Witness, what became of any property you may have had in location number  
25 1?

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1 A. All my goods had been pillaged, your Honour. All the goods, everything  
2 that was on my farm as well. I wasn't able to get these back from anyone.

3 Q. Witness, how did you know all your goods had been pillaged?

4 A. Some people went back there and they were the ones who informed me that I  
5 didn't have anything left there. Everything had been looted.

6 Q. And finally, Witness, and mindful that we're in public session, but how have  
7 the events of 2007/2008 post-election violence affected you personally?

8 A. Your Honour, I was very much affected by these events, personally as well as  
9 the members of my family and the people in my community as well. I'm a  
10 displaced person, an internally displaced person now, and that's made me go  
11 backwards, go backwards for several years. And all that has meant that the  
12 education of my children is handicapped.

13 I have a life of fear. I have no idea about tomorrow. Everything that I considered,  
14 all those I considered my friends, well, I'm scared of them now. That is how I've  
15 been affected. I've been very much affected by it. Every time I think of it my heart  
16 is too heavy.

17 MS WEISS: Your Honour, that concludes the Prosecution's examination-in-chief. I  
18 just have one small minor housekeeping matter to take care of and that's the photo,  
19 to tender the photo KEN-OTP-0083-0342.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, any objection?

21 MR HOOPER: No objection, your Honour. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Koech?

23 MR KOECH: Same to us.

24 PRESIDING JUDGE EBOE-OSUJI: No objection?

25 MR KOECH: Yes.



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1 MS WEISS: Thank you, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: The photo is accepted on to the record as the  
3 next in the Prosecution exhibits.

4 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0083-0382  
5 confidential will have the number EVD-T-OTP-00041 and it will also have the  
6 evidence -- Prosecution evidence number 41.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Ms Weiss, that  
8 concludes your examination-in-chief.

9 Witness, the Prosecutor has finished asking you questions. It is now for the other  
10 lawyers in the courtroom. First of all there is a matter of the request made by  
11 Mr Nderitu to ask you questions on behalf of -- in your capacity as a victim as well.  
12 He had requested that he be allowed to ask you some questions.

13 The procedure is that we would find out from him whether there's a need to ask the  
14 question after the Prosecution's own examination that covered areas. We will now  
15 take submissions from the lawyer, so bear with us and sit there for a moment.

16 Mr Nderitu?

17 MR NDERITU: Thank you, Mr President, your Honours. Very briefly in the  
18 interest of time I would say that yes, a good number of questions that I would have  
19 covered have already been covered, but there is still an issue with regard to the  
20 perspective that I would want to bring in in connection with the nature of the harm  
21 suffered, and in particular, we are talking here about the forcible displacement.

22 So I do not intend to be too long, but I would very, very kindly request that I be  
23 given the opportunity further to my application dated 3 January 2014. Thank you.

24 PRESIDING JUDGE EBOE-OSUJI: How long are you thinking? Let's begin with  
25 that. You said you don't intend to be too long. I want to first of all ask how long

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1 you anticipate before we go -- I ask you questions about the substance of  
2 questioning.

3 MR NDERITU: Mr President, your Honours, I do not anticipate that I would take  
4 any longer than the rest of this afternoon. So I see -- I see that we have about 35  
5 minutes. I would try as much as possible to not ask questions that have already  
6 been put to the witness, the only problem being, your Honours, as you might well  
7 appreciate, that sometimes it is important to ask questions that have been asked  
8 before for the purpose of introducing the issue that I would want to raise, but then I  
9 would want to be as short as possible with regard to those introductory questions.

10 PRESIDING JUDGE EBOE-OSUJI: When you say "perspective", is the  
11 understanding that the facts themselves, the facts themselves have been put in, were  
12 addressed by the Prosecution, but you just want to give perspective on those facts?  
13 What I mean is the fact of victimhood, the Prosecution -- the Prosecutor, Ms Weiss,  
14 has asked questions on those, but you just want to add some texture; is that it?

15 MR NDERITU: Yes, your Honours. It is more of texture, but then a texture does  
16 also come in with certain facts which may not have come out on account of the fact  
17 that the questions that were being asked by the Prosecutor were being asked from  
18 the perspective of criminality rather than from the perspective of harm suffered. So  
19 there is a distinction there that I would want to bring in in the -- in the questions.

20 PRESIDING JUDGE EBOE-OSUJI: Just to put things in context as well, Mr Koech, I  
21 take it you will not have questions for this witness, do you?

22 MR KOECH: Yes, your Honour, indeed. As things stand now, we are unlikely to  
23 cross-examine the witness.

24 PRESIDING JUDGE EBOE-OSUJI: You are unlikely?

25 MR KOECH: Unlikely, yes.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MR KOECH: And I would rather reserve it for -- until the end of cross-examination  
3 of Mr Hooper.

4 PRESIDING JUDGE EBOE-OSUJI: To see what comes out, if anything --

5 MR KOECH: Yes.

6 PRESIDING JUDGE EBOE-OSUJI: All right -- of interest to you. Mr Hooper, how  
7 much time are we looking at for your cross-examination as things stand, assuming  
8 that nothing --

9 MR HOOPER: (Microphone not activated)

10 THE INTERPRETER: Microphone, please.

11 MR HOOPER: (Microphone not activated) -- were to use much of the next half  
12 hour for general matters, I should hope I could conclude tomorrow.

13 PRESIDING JUDGE EBOE-OSUJI: But if you started tomorrow, you will be able  
14 to conclude?

15 MR HOOPER: Then I wouldn't be willing to give a guarantee of finishing  
16 tomorrow, but I wouldn't go very much into the next day.

17 PRESIDING JUDGE EBOE-OSUJI: What's today? Sorry. Is today Wednesday or  
18 Thursday?

19 MR HOOPER: Today's Wednesday. So I would be going into Friday morning at  
20 the very -- the very most.

21 PRESIDING JUDGE EBOE-OSUJI: So what we're looking at then is if you started  
22 your cross-examination tomorrow morning, you will be finishing by Friday?

23 MR HOOPER: Oh, yes.

24 PRESIDING JUDGE EBOE-OSUJI: Good.

25 MR HOOPER: I'm quite happy to start it this afternoon and I can finish it possibly

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1 tomorrow.

2 PRESIDING JUDGE EBOE-OSUJI: I can understand the enthusiasm to get going.

3 MR HOOPER: Yes. I thought that might tempt even Mr Nderitu.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 (Trial Chamber confers)

6 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, the Chamber will grant you leave  
7 to ask questions. We hope you don't take the rest of the afternoon doing that. We  
8 will be watching the questions in light of the indication you've given as well as  
9 information we've already received from the Prosecutor's examination in chief that  
10 also addresses harm. So you may start.

11 MR NDERITU: I thank you, Mr President, your Honours.

12 PRESIDING JUDGE EBOE-OSUJI: We are in open session now. It will be good if  
13 you can address your questions in open, but of course the need for protection of the  
14 witness's identity remains cardinal one.

15 MR NDERITU: Thank you, Mr President, your Honours.

16 QUESTIONED BY MR NDERITU:

17 Q. Mr Witness, would you please confirm that you applied to be registered and  
18 were accepted as a victim participating in these proceedings?

19 A. Yes, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, questions like that if they're not in  
21 issue, I think that's what happened, then the Defence would not be disputing it, we  
22 can dispense with it by you directly leading that sort of answer onto the record  
23 instead of asking a question, waiting for interpretation, witness answering and  
24 interpretation coming back. So let's see if we can cut out things that we don't need  
25 to ask questions about.

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1 MR NDERITU: Much appreciated.

2 Q. Mr Witness, just to take you back very slightly, you informed the Court that  
3 you were residing at location 1 immediately before the post-election violence, and  
4 round about what time or what period did you stop residing at location 1?

5 PRESIDING JUDGE EBOE-OSUJI: Don't we have that information already?

6 MR NDERITU: Mr President, the purpose is to introduce the next set of questions.

7 PRESIDING JUDGE EBOE-OSUJI: Yes. We can say we know that -- if we already  
8 have the answer from the previous exercise, we can indicate we know that and then  
9 move off to what you want to ask, rather than reintroducing the discussion as if it is  
10 a whole fresh subject area.

11 And we also, I do recall, gave a caution that we do not want to pinpoint that sort of  
12 information in the open session. I think it's what reminded me that we may have  
13 covered it, unless I'm mistaken?

14 MR NDERITU: Mr President, you're not mistaken, but at the same time I think it is  
15 important that certain things do go out into public session.

16 PRESIDING JUDGE EBOE-OSUJI: All right. What I'm saying is this: We have on  
17 record the witness's testimony as to when he stopped residing at location 1, so we  
18 don't need to ask him again, "When did you stop residing at location 1?"

19 MR NDERITU: Very well.

20 Q. Mr Witness, I will take you to the third page of your PIS, and under the  
21 heading "Personal Background" I would want you to confirm that the information  
22 contained in the second bullet there is correct, that is with regard to your marital  
23 status and whether or not you have children and if you do how many. Just state  
24 whether that is correct or not.

25 A. I don't think I have that piece of paper with me or right in front of me.

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1 MR NDERITU: Could the court officer kindly provide the PIS to the witness.

2 THE COURT OFFICER: (Interpretation) Are you speaking of your own PIS or the  
3 Prosecution's PIS?

4 MR NDERITU: (Interpretation) The Prosecution's.

5 THE COURT OFFICER: (Interpretation) The witness does have a version.

6 MR NDERITU: (Interpretation) The third page, please.

7 Q. Mr Witness --

8 PRESIDING JUDGE EBOE-OSUJI: Witness, are you with me? All right. If you  
9 look at the page number 3 of that document that has "confidential" marked on it, at  
10 page 3 you will see under the subheading "Personal Background" there's a bullet that  
11 shows the date of birth -- your date of birth, and the second bullet indicates your  
12 marital status as well as the number of children you have.

13 The lawyer's question is that the information indicated here about your marital  
14 status and the number of children you have, is that information correct?

15 THE WITNESS: (Interpretation) Yes, it is correct, your Honour.

16 MR NDERITU: Thank you, Mr Witness.

17 I ask that we go into private session for a short while.

18 PRESIDING JUDGE EBOE-OSUJI: For how long?

19 MR NDERITU: About five minutes.

20 PRESIDING JUDGE EBOE-OSUJI: Private session then.

21 (Private session at 3.36 p.m.) Reclassified as open session

22 MR NDERITU:

23 Q. Mr Witness --

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

25 MR NDERITU:

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1 Q. Mr Witness, what were the respective ages of your children as at the time of  
2 the violence at the end of 2007?

3 A. Your Honour, my children were between (Redacted) years of age.

4 Q. Mr Witness, how many of those children were going to school as at that time?

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Thank you, Mr Witness. Now, did the children go to school within that  
9 general locality?

10 A. Your Honour, you're talking about the place where I currently am or the place  
11 where I was before?

12 Q. Mr Witness, I'm talking about 2007. Were the (Redacted) children that were  
13 in school going to school within the general locality of (Redacted)?

14 A. Yes, your Honour. They were going to that school that is to be found in the  
15 locality of (Redacted).

16 Q. And, Mr Witness, did you have a farm in (Redacted)?

17 A. Yes, your Honour. I rented some land and I did grow some crops.

18 Q. Would you please tell the Court the (Redacted)

19 (Redacted)

20 A. Your Honour, I had (Redacted)

21 (Redacted) your Honour.

22 MR NDERITU: Thank you, Mr Witness.

23 I think we can now go into public session.

24 PRESIDING JUDGE EBOE-OSUJI: Back to public session then.

25 (Open session at 3.41 p.m.)

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

2 MR NDERITU:

3 Q. Mr Witness, you testified that you had lived at location 1 for a period of at  
4 least about ten years. That is correct?

5 A. Yes, your Honour.

6 Q. And so far as you recall, how many of your children were born at that  
7 location or were born when you were living at that location?

8 PRESIDING JUDGE EBOE-OSUJI: Don't tell us which children, just how many.  
9 We know the number you've indicated.

10 THE WITNESS: (Interpretation) Your Honour, when I got there, the youngest child  
11 was very young indeed. He wasn't even crawling at that time. I think he might  
12 have been one year old.

13 MR NDERITU:

14 Q. Thank you, Mr Witness. Now, during your evidence in chief you stated that  
15 at the meeting in location 2 Mr Cheramboss talked about two tribes and that he said  
16 that if the ODM won the election, then the Kalenjin would be free to do what they  
17 wanted to do and that they would take back the land which had been bought by the  
18 Luhya. Do you remember that?

19 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, can you hold that question. Let's  
20 clear up the last answer, please.

21 Witness, the lawyer asked you how many of your children were born in location 1,  
22 and you said when you got there your youngest one was not even crawling or  
23 something like that. Is it the case that none of your children, that none of your  
24 children, the number we've seen on the sheet, that none of them was born at location  
25 1?



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1 THE WITNESS: (Interpretation) Yes, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Please, Mr Nderitu.

4 MR NDERITU: Thank you.

5 Q. Mr Witness, I'll take the other question again. And you had said that at the  
6 meeting at location 2 Mr Cheramboss talked about two tribes and that he said that if  
7 the ODM won the election, then the Kalenjin would be free to do what they wanted  
8 to do and that they would take back the land which had been bought by the Luhya.  
9 Do you recall having said that?

10 A. Yes, your Honour.

11 Q. And, Mr Witness, do you recall saying that at another rally it was said that the  
12 Kalenjin should vote in massive numbers so that once the ODM took power they  
13 would uproot the tree stumps and the lands would be given back to their owners?

14 A. Yes, your Honour.

15 Q. Mr Witness, you then, correct me if I'm wrong, went to tie up the issue about  
16 the tree stumps with what happened thereafter, and that is you understood that the  
17 tree stumps that were being talked about during the election campaign were the  
18 Luhya and the Kikuyu; is that correct?

19 A. Your Honour, after seeing what happened, I remembered and I said to myself  
20 those tree stumps are the members of the other tribes who came and -- to live here in  
21 the Kalenjin area.

22 Q. Now, Mr Witness, have you to date been able to return to location 1?

23 A. No, your Honour.

24 Q. Mr Witness, why have you not been able to return there?

25 A. Your Honour, when I saw what had happened and also with the results, I

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1 became afraid for my own safety from that particular point in time.

2 Q. Thank you, Mr Witness. Now, you told the Court that you moved your  
3 family to location 8. Now, my question to you -- sorry, and that you moved the  
4 family in two trips. My question to you first is how many of your family members  
5 did you move in the first trip to location 8?

6 PRESIDING JUDGE EBOE-OSUJI: Let's take that answer in private session. We'll  
7 go to private session.

8 (Private session at 3.49 p.m.) Reclassified as open session

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

10 MR NDERITU:

11 Q. Mr Witness, my question to you was how many members of your family did  
12 you move on the first trip?

13 A. Your Honour, the first time I had (Redacted) -- I beg your  
14 pardon, (Redacted) some of the children (Redacted) that is to say, (Redacted)  
15 children. (Redacted)

16 Q. Thank you, Mr Witness. So would we be talking about (Redacted) children  
17 having remained behind?

18 A. Your Honour, amongst the children -- well, I said that there were (Redacted) children.  
19 (Redacted)

20 (Redacted) the children who were there with me, those were  
21 the children (Redacted) there were (Redacted) of them, and  
22 then the other child (Redacted)  
23 (Redacted)

24 Q. Thank you, Mr Witness. So could you help me then understand. The first  
25 trip you went with (Redacted) children. My understanding now is a bit clearer that (Redacted)

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1 were left behind, and they are the ones that you went for on the second trip; is that  
2 correct?

3 A. Yes, your Honour.

4 Q. Mr Witness, what was your state of mind when you had to leave part of your  
5 family?

6 PRESIDING JUDGE EBOE-OSUJI: All right. Can we go back in public?

7 MR NDERITU: Yes, we could.

8 PRESIDING JUDGE EBOE-OSUJI: All right, we'll go back to public session.

9 (Open session at 3.52 p.m.)

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

11 PRESIDING JUDGE EBOE-OSUJI: Witness, we are now back in open session. The  
12 reason why we went into private session for you to give the answer about how  
13 many family members moved with you was that that sort of information might have  
14 been too particular, that some people might be able to connect you -- your real  
15 identity to who is testifying.

16 Now we're back in public session, keep in mind a need to not put identifying  
17 information in your answers.

18 Mr Nderitu, you can take that question again.

19 MR NDERITU: Thank you, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: The last one.

21 MR NDERITU:

22 Q. Mr Witness, what was your state of mind when you had to leave part of your  
23 family at location 8?

24 A. Your Honour, I was very afraid for the lives of the children who remained  
25 behind. I said to myself I have to keep on going even if I am to die. They will kill

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1 me with my own children. If they don't kill me, I have to bring them back here.

2 That's what I was thinking.

3 You realise -- even my relatives said I shouldn't go, but I said that if I'm going to die,

4 I'm going to die here with them. And if I live, I will come back with them. That's

5 what I had in my mind, your Honour.

6 Q. Thank you, Mr Witness. What was the difference --

7 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, you just have five more minutes.

8 MR NDERITU: Yes, your Honour.

9 Q. Mr Witness, what was the difference in time between when you made the first  
10 trip and when you made the second trip?

11 A. The difference in time, your Honour? It wasn't a great deal of time. I left  
12 the first group, but the difference was when I came back there were many  
13 roadblocks and there were young people at those roadblocks, but the first time there  
14 weren't any roadblocks. That is the difference that I noticed.

15 Q. Thank you, Mr Witness. If you could be a bit more specific. Was it the same  
16 day? Was it a day apart, two days apart or what kind of period?

17 A. Your Honour, it wasn't much time. I just left the first group, I left them there  
18 at the house. The next day I went back, and my relatives or my parents said I  
19 shouldn't, I mustn't, and they said I shouldn't leave them there, they said I had to go  
20 and save them if God willing and bring them back here.

21 Q. Thank you, Mr Witness. Now, I want you to tell the Court how you felt  
22 when, on your second trip as you say, you found several roadblocks and fires as you  
23 went to pick your other family members, how you felt in relation to the warning that  
24 your parents had given you not to go back to location 1?

25 A. Your Honour, it was a difficult moment, the most difficult moment in my life.

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1 There was no means of transportation. I had to walk. And after, I came up against  
2 these roadblocks, very dangerous, and well, I thought this, these children that I left  
3 behind, I don't know whether they're still alive or not. So in the midst of all of that I  
4 said to myself I have to keep on going. If the good Lord wants, I -- they mustn't die  
5 alone, and if God is willing, I will be able to bring them back home. That is what I  
6 was thinking when I went to fetch my children.

7 Q. Thank you, Mr Witness.

8 MR NDERITU: Mr President, I will just take perhaps another two or three minutes  
9 and I should be done, with your leave. Thank you.

10 Q. Mr Witness, you talked about farm produce that you had on your farms that  
11 you had rented. Did you manage to recover any of this produce when you left  
12 location 1?

13 A. No, your Honour. I did not take anything.

14 Q. Mr Witness, what about household effects, did you manage to go with you  
15 with all your household goods?

16 A. Your Honour, I had nothing. You see there was no means of transportation,  
17 and all I could think of was saving my children's lives, so I said to myself, well, I'll  
18 think about everything else afterwards.

19 Q. Thank you, Mr Witness. And the children, did they continue after the  
20 violence to attend the same schools that they were attending?

21 A. No, your Honour. My children had many problems with their schooling up  
22 until now even. They go to school -- a new school. They are new and perhaps they  
23 arrive in the middle of the school year and sometimes life becomes difficult living in  
24 a place where you have nothing. It was no longer as before, so I came back to  
25 the -- really right back to square one. My children had many troubles, many

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1 problems and so did I.

2 MR NDERITU: Mr President, your Honours, that is all for this witness. Thank  
3 you.

4 PRESIDING JUDGE EBOE-OSUJI: And we will -- thank you very much,  
5 Mr Nderitu. We will leave it there for the day, and we will adjourn now and  
6 reconvene tomorrow at 9.30.

7 And, Mr Hooper, you will start then. Thank you.

8 The Court will rise. First the blinds down to --

9 MR HOOPER: Just one matter in the absence of the witness. Can I raise -- it will  
10 take a matter of a minute or two only.

11 PRESIDING JUDGE EBOE-OSUJI: Yes. We will let the witness out of the  
12 courtroom first. The blinds will come down and the witness escorted from the  
13 courtroom.

14 (Closed session at 4.02 p.m.) Reclassified as open session

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

16 PRESIDING JUDGE EBOE-OSUJI: Please escort the witness out of the courtroom.  
17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, would you want to take this up in  
19 public or private session?

20 MR HOOPER: In private I think.

21 PRESIDING JUDGE EBOE-OSUJI: In private?

22 MR HOOPER: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Okay.

24 MR HOOPER: The first matter, if I can just raise it, relates to the matter that I raised  
25 earlier in respect to the VWU, and you may recall yesterday your Honour was

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1 gracious enough to make an order in respect of disclosure of certain matters. The  
2 VWU have not, in fact, responded to that other than that they say they have  
3 difficulties in allowing the Defence to have this material. I can only ask that the  
4 Court impress on the VWU the necessity for disclosure of that material.  
5 The second matter is that I asked earlier today, and it may be that there hasn't been  
6 time to attend to it yet, for the Prosecution to raise redactions in respect of two  
7 documents where the telephone number at the time that the documents were  
8 completed by this witness were filled in. Those telephone numbers were redacted  
9 from us, and we'd like access to the telephone number.  
10 The third matter is this: Consistent indeed with his statement and other statements  
11 that he's made, this witness has spoken about a very dramatic event in Nandi Hills  
12 Town, and that is the murder, of course, of the OCS, the policeman in charge of the  
13 police station.  
14 It's such a striking matter, dramatic matter I naturally expect the Prosecution to have  
15 made some investigations in respect of it, but we've received neither confirmation of  
16 that event nor exculpatory perhaps details in respect of non-confirmation. And I'd  
17 like the Court to order the Prosecution to reveal to the Defence what investigations  
18 have been made in respect of that and what the result was and that we have that  
19 information before I start my cross-examination tomorrow.  
20 Those are the three matters.  
21 PRESIDING JUDGE EBOE-OSUJI: Can you take again your last item?  
22 MR HOOPER: Yes. We heard in this testimony this afternoon, and it's consistent  
23 with previous statements that the witness has made, the very dramatic incident, a  
24 standout incident really of his witnessing the killing by an arrow of the officer  
25 commanding the station at Nandi Hills, the police station there. It's an intrinsic part

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1 of this witness's testimony.

2 And before I cross-examine him in respect of those events I'd like the Prosecution to  
3 inform me what investigations were done, have been done in respect of that and  
4 what the product of those investigations were. Has the death been confirmed, or  
5 has it not been confirmed?

6 I'm assuming that the Prosecution would have investigated such a matter. I find it  
7 difficult to think that they wouldn't.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg or Ms Weiss, who would  
9 respond?

10 MR STEYNBERG: Thank you, your Honours. On the first issue, the issue of the  
11 redactions, we are, in fact, in the process of drafting the email now. There was a  
12 necessity to first check with VWU before revealing contact information which might  
13 potentially reveal the location of the witness, but that has been checked with VWU,  
14 and we've been cleared to disclose that information and the Defence will receive it  
15 shortly.

16 On the second --

17 PRESIDING JUDGE EBOE-OSUJI: So you will be making the disclosure then?

18 MR STEYNBERG: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 MR STEYNBERG: Well, there won't be time to do a formal disclosure, obviously,  
21 between now and tomorrow morning, but we will provide the Defence with the  
22 information, and I presume that will be sufficient.

23 And may I just confirm with my learned friend whether it will be in order to disclose  
24 that information to both Defence teams? In order. Fine. We will do the same.

25 On the second issue, may we reply in the morning before the cross-examination



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1 commences?

2 PRESIDING JUDGE EBOE-OSUJI: The telephone number issue?

3 MR STEYNBERG: No. The issue of the shooting of the officer commanding.

4 PRESIDING JUDGE EBOE-OSUJI: I thought that was the third issue.

5 MR STEYNBERG: Yes, that was --

6 MR HOOPER: The VWU matter is the first one, which has rather been merged in

7 the second address, I think. But the VWU is really a stand-alone matter, a matter

8 for the VWU, who you may recall were given (Redacted) --

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR HOOPER: -- (Redacted) and which the Court requested be disclosed to

11 us, and they have got, how can I put it, rather stuck in the mud about it, I think.

12 PRESIDING JUDGE EBOE-OSUJI: Okay. So we're all on the same wavelength,

13 Mr Steynberg, my notes say VWU disclosure following from the directive the

14 Chamber gave the last time to VWU to disclose information regarding the

15 (Redacted) And that's

16 issue number one. Do you have any response to that as now raised again by

17 Mr Hooper?

18 MR STEYNBERG: Not at all, your Honours. I didn't -- I'm sorry I got the

19 numbering wrong, but I didn't mean to respond to that one. That is a matter which

20 VWU will respond to in due course. I have no input on that.

21 Regarding the second issue, which is the first issue for the Prosecution, the phone

22 numbers, that will be taken care of shortly.

23 The third issue, we will respond in the morning before the cross-examination

24 commences, with the leave of the Court.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, that satisfies you --

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- 1 MR HOOPER: Yes, I --
- 2 PRESIDING JUDGE EBOE-OSUJI: -- as far as the Prosecution part of it is
- 3 concerned?
- 4 MR HOOPER: I am. Thank you very much.
- 5 (Trial Chamber confers)
- 6 PRESIDING JUDGE EBOE-OSUJI: Madam Registrar, can you again inform the
- 7 VWU that the Chamber's directive or direction is that they are to disclose to the
- 8 Defence counsel the information they have on the matter, on the matter of this
- 9 (Redacted)
- 10 (Redacted). They are to do that before the end of the day, because counsel for the
- 11 Defence will be cross-examining starting tomorrow. Thank you.
- 12 The Chamber will rise.
- 13 THE COURT USHER: All rise.
- 14 (The hearing ends in closed session at 4.10 p.m.) Reclassified as open session
- 15 RECLASSIFICATION REPORT
- 16 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 17 2013, and the instructions in the email dated 10 April 2014, the version of the
- 18 transcript with its redactions becomes Public.