

Trial Hearing  
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap  
5 Sang - ICC-01/09-01/11  
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion, and Judge Robert  
7 Fremr  
8 Trial Hearing  
9 Tuesday, 21 January 2014  
10 (The hearing starts in open session at 9.38 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 out the case.  
16 THE COURT OFFICER: Good morning your Honours.  
17 (Interpretation) Situation in the Republic of Kenya, in the case of The Prosecutor  
18 versus William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11. We are in  
19 open session, your Honour.  
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I see there are no  
21 changes in appearances, and both accused persons are present in court.  
22 I will now read out the oral decision we promised to render -- we promised  
23 yesterday to render this morning in the matter of the Defence request for the  
24 disclosure of video recording of Prosecution preparation session with Witness 356.  
25 On 16 January 2014, during the course of their submissions on protective measures,

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1 the Ruto Defence orally requested disclosure of the video recording of the  
2 preparation session conducted by the Prosecution with Witness 356. The Sang  
3 Defence joined the request. The Chamber gives the following ruling:  
4 The Defence claimed, quote, "legitimate interest," unquote, in the manner in which  
5 the Prosecution explained to the witness how his evidence in chief would be led in  
6 circumstances where the Chamber had not yet made any ruling regarding protective  
7 measures.  
8 It is to be recalled that in addition to the applicable disclosure rules established in  
9 the Statute and the Rules of Procedure and Evidence, the Chamber's decision on  
10 witness preparation filing number 524 held that disclosure of the video recording of  
11 witness preparation may be sought, quote, "... in the event of allegations of coaching  
12 of a witness, or of any improper interference with the evidence to be presented by  
13 the witness," unquote.  
14 The Chamber specified in that decision that a party making any such request, quote,  
15 "... shall satisfy the Chamber that there is a concrete and credible basis for the  
16 request," unquote.  
17 The Chamber notes that no specific legal basis was invoked by either Defence team  
18 in support of their request of 16 January. In particular, no concrete and credible  
19 basis indicative of witness coaching or other improper interference has been raised,  
20 nor has it been established that the information sought is material to the preparation  
21 of the Defence within the meaning of Rule 77 of the Rules in particular.  
22 Moreover, the Chamber notes that it has been the general practice of this Chamber to  
23 orally rule on protective measures and just prior to the commencement of the  
24 testimony of each witness. In that respect, therefore, there is no reason to presume  
25 that the circumstances surrounding the preparation session of Witness 356 were any

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1 different from those applying to the majority of prior prosecution witnesses.  
2 The Chamber considers that it would be entirely normal and proper for the  
3 Prosecution to explain to a witness that should the requested protected measures be  
4 granted, the testimony would be organised in a particular manner with the objective  
5 of minimising the frequency of changes between public and private sessions.  
6 The Chamber does not consider that the applicable standard for disclosure of the  
7 video recording has been met in this instance. Consequently, the request is rejected.  
8 That is the Chamber's ruling.

9 Now, we will go into private session now to discuss a certain matter before we bring  
10 back the witness. Private session.

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

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

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

14 Prosecution, you said you will be getting back to the Chamber on the matter raised  
15 yesterday. Please proceed.

16 MR STEYNBERG: Thank you, your Honours.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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12 (Redacted)  
13 (Redacted)  
14 (Redacted)  
15 (Redacted)

16 We will bring down the blinds and bring the witness on the stand so we continue  
17 with the testimony.

18 (Closed session at 9.55 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. The witness will now be brought  
21 into the courtroom.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back to the witness stand.

24 We took some time this morning, the lawyers and the Court, to discuss your  
25 protection. We have heard that you wish to continue to testify as you have been

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1 doing so far, that is to testify with your identity protected from public disclosure  
2 rather than having your identity disclosed to the public. We understand that is  
3 your wish. Is that the case?

4 WITNESS: KEN-OTP-P-356 (On former oath)

5 THE WITNESS: Yes, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will continue in  
7 that manner.

8 We will now go into private session. Blinds up, please.

9 (Private session at 9.57 a.m.) \* Reclassified as Open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Mr Garcia, we were in public yesterday, were we not? We ended in public?

13 MR GARCIA: Good morning, your Honours. Unless I'm mistaken, we were in  
14 private session dealing with one matter before we went into public.

15 PRESIDING JUDGE EBOE-OSUJI: All right, yes. We were generally in public, but  
16 we returned on that specific issue. All right. Where are we on that? Do we  
17 remain in private, or public?

18 MR GARCIA: I'd like to remain in public for five/ten minutes, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: In private?

20 MR GARCIA: In private. I'm sorry, yes.

21 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Proceed.

22 MR GARCIA:

23 Q. Good morning, Mr Witness.

24 A. Good morning, your Honour.

25 Q. Now, Mr Witness, when we left off yesterday, I was asking you questions



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1 concerning person number 18, if you look on the document in front of you. And  
2 you had explained to the Court, you had said, you had said that "Person number 18  
3 told me they would have been warned that they will be invaded. And when the  
4 youths came, he was not inside the house, but he told me he was nearby, and he saw  
5 everything that went on."

6 Now, I'd like to ask you a question in that regard. Do you remember, did the  
7 person number 18 tell you what ethnicity these youths were who invaded his house?

8 A. Your Honour, he told me they are youths from (Redacted) and (Redacted)  
9 village, your Honour, and they were all Kalenjins, your Honour.

10 Q. Now, just for the village, did you, did you say (Redacted)?

11 A. (Redacted), your Honour.

12 Q. All right, so is that (Redacted)?

13 A. Your Honour, it's (Redacted).

14 Q. Thank you for that clarification, Mr Witness. And you also stated that he  
15 would have been, that person number 18 would have been warned. Can you  
16 explain that to us?

17 A. I didn't understand your question, your Honour.

18 Q. Yes, I'll be clearer, Mr Witness. Yesterday when I asked you the question  
19 regarding person number 18, you said "I say that person number 18 told me they  
20 would have been warned." Can you explain that further for us?

21 A. Your Honour, I said that Mr (Redacted) – the person number 18 had told me that he  
22 was warned earlier that they will be invaded, your Honour.

23 Q. Did he provide you any other details on who would have warned him?

24 A. I don't remember if he told me, your Honour.

25 Q. Now, Mr Witness, in regards to this person number 18, what else happened to

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1 him during the post-election violence?

2 A. What I mentioned yesterday is that his property was destroyed, your Honour.

3 What I remember again in the (Redacted), the person number 1 was

4 addressing the (Redacted). And I heard him directly accusing him of being against

5 the Kalenjin community. And he told him that since he is -- he had (Redacted)

6 (Redacted) for a very long time. (Redacted). And he

7 accused him, telling him that why could you engage in politics and be against the

8 community.

9 Q. Just one clarification. You stated, and this is page 12, line 14, "And he told

10 him that since he is ..." and did you say "... against the Kalenjin, against the

11 Kalenjin? He had (Redacted) for a very long time"? What did you say there?

12 A. Your Honour, I'm saying that he was telling him that (Redacted)

13 (Redacted). And him, he has engaged in politics. And at the same time he

14 was against, his politics was against the Kalenjin community, your Honour.

15 Q. And can you explain that to us, what exactly about his politics went against

16 the Kalenjin community?

17 A. Your Honour, according to me, he meant that the Kalenjin community at that

18 time was with Honourable William Ruto. And him, he was against, because he was

19 (Redacted), your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Now, one second, Mr Garcia. On the previous

21 page, page 12, line 12, page 12, line 12, there is something that comes in there

22 "trancing the (Redacted)." I believe the witness said "addressing the (Redacted)."

23 MR GARCIA: That's what I believe I heard as well, but I can ask the witness.

24 PRESIDING JUDGE EBOE-OSUJI: There is no need to go back on it. That's what

25 the witness said. We can proceed.

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1 MR GARCIA: Most grateful, your Honour. Yes, indeed, line 11, your Honour, the  
2 repetition that the Chamber has given is "addressing the (Redacted)," so that's 11.

3 PRESIDING JUDGE EBOE-OSUJI: Even my correction wasn't --

4 MR GARCIA: Unfortunately, your Honour, yes, indeed. (Redacted),  
5 (Redacted). I believe we finally have it, your Honour.

6 Q. Now, Mr Witness, this person number 18, now you say that there was  
7 damage done to his property, but to him himself, was there anything done? Did  
8 anything happen to him?

9 A. No, your Honour. He was not harmed in any way.

10 Q. And if you could just explain this to us, people who had been or Kalenjins  
11 who had been supporting the wrong party, if you will, what would happen to them  
12 at that time?

13 A. Your Honour, it was not person number 18 alone in (Redacted). There were  
14 about four other people who were affected also with -- who were invaded also  
15 during that period.

16 Q. And just so we understand, these people were supporters of what party?

17 A. They were supporters of PNU or KANU at that time.

18 Q. Now, do you know exactly who would, who would invade these people that  
19 were Kalenjin PNU supporters?

20 A. Your Honour, from on (Redacted), I knew even one of (Redacted) was  
21 among those people who invaded Mr (Redacted). And I knew a few of them,  
22 not all of them.

23 Q. And one of (Redacted) is this -- is (Redacted) name on the list, the PIS  
24 document that's before you? I'd ask you to just take a look at it.

25 A. He's not there, your Honour.

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1 Q. Can you give us the name of (Redacted)?

2 A. (Redacted), your Honour.

3 Q. So I see it's number, person number 12 on your list.

4 A. Yes, yes, your Honour.

5 Q. Thank you, Mr Witness. And what did, what did person number 12 do  
6 exactly?

7 A. Myself, after some time when I was at home, I went to (Redacted), and I found  
8 (Redacted)

9 (Redacted). And I asked him. So he denied they were -- it was  
10 obvious, and they were even -- (Redacted). And (Redacted)

11 (Redacted), I talked to her about it, and (Redacted) that they were

12 properties of (Redacted) which were stolen from Mr (Redacted)'s home, your  
13 Honour.

14 MR GARCIA: So just a correction, page 15, line 6, it should be "I found (Redacted)  
15 (Redacted)."

16 Q. Is that correct, Mr Witness?

17 A. Yes, your Honour.

18 MR GARCIA: And at line 7 is the same problem, so it's "(Redacted)  
19 (Redacted)."

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. Did person number 18 tell you when this happened?

4 A. I don't remember. But it was in January 2008, your Honour.

5 Q. Now, did person number 18 provide you with more details on what this, this  
6 forgiveness was all about?

7 A. What he told me is that he was -- they were accused of being against the  
8 community, your Honour.

9 Q. And because they were accused of being -- of going against the community,  
10 what did they have to do?

11 A. They were forced to seek forgiveness, though in their hearts they believed  
12 that they were the ones who should have been asked forgiveness because of what  
13 they had been done to, your Honour.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, would you establish the timeframe  
20 for this event relative to the time of the destruction of number 18's property as  
21 testified to by the witness.

22 MR GARCIA: Certainly, your Honour.

23 Q. Mr Witness, just so we can be clear on this matter, and I'll go on to other  
24 questions, when did this happen in reference to the point in time when person  
25 number 18's property was invaded?

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1 A. Your Honour, it happened immediately after, after the swearing in ceremony  
2 of President Mwai Kibaki.

3 Q. Okay. Would this have been after or before that person number 18's  
4 property was invaded that his house was burnt?

5 A. It was, it was after, your Honour.

6 Q. And when you say "after," do you mean hours after days, weeks?

7 A. Days after, your Honour.

8 Q. Thank you, Mr Witness.

9 A. There is something I would like to say in top of that according to Mr (Redacted)  
10 (Redacted), your Honour. I talked with Mr (Redacted) again, and he told me that  
11 he was very much bitter about Honourable William Ruto, because Mr (Redacted)  
12 (Redacted), as he said is, he's among (Redacted), and him and Honourable William  
13 Ruto knows each other very well.

14 But since he was invaded there was no time that Honourable Ruto called him or  
15 even went to him personally to say sorry for what happened to him. And he was  
16 saying he believed that in his heart he believed that Honourable Ruto was -- had a  
17 hand about his invasion, about him being invaded, your Honour.

18 Q. Mr Witness, just so we can be clear, you said "In his heart he believed that  
19 Honourable Ruto ..." and then all we have is "... about his invasion." Can you just  
20 repeat that please?

21 A. He said Honourable Ruto, according to him, he said -- he thought that  
22 Honourable Ruto, because there was no time, he asked him -- he said sorry to him  
23 for what happened. It came to his alert, Honourable Ruto was concerned about his  
24 being invaded, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Did you say before that Mr (Redacted) told you

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1 that because of Mr Ruto not having come to him to commiserate as it were with the  
2 destruction of his property, being his, Mr (Redacted)'s property, Mr (Redacted) told you  
3 that he believed that Honourable Mr Ruto had a hand in the destruction of his  
4 property? Was that what you said the first time?

5 THE WITNESS: Yes, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 THE WITNESS: And he also emphasised that even he was hoping that Mr Ruto  
8 would (Redacted) because Mr (Redacted) and Mr William Ruto were  
9 friends, but Mr Ruto didn't (Redacted).

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR GARCIA:

12 Q. Now, Mr Witness, did person number 18 explain to you why he believed that  
13 Mr William Ruto had a hand in what had happened?

14 A. Your Honour, he said he was expecting Honourable Ruto to call him or even  
15 to use any means to say sorry to him for what happened to him, or even to accuse  
16 those who did that action.

17 Q. Now, Mr Witness, I'd like to just ask you some questions about this  
18 forgiveness. You said that (Redacted) was present. Did person number 18 explain  
19 to you what was -- what (Redacted) function was at that forgiveness ceremony?

20 A. No, your Honour, he didn't.

21 Q. Did person number 18 provide you the details with other people who would  
22 have been also present there?

23 A. He mentioned Mr (Redacted) and others of whom I cannot remember now.

24 Q. Did person number 18 explain to you what these people were doing there,  
25 what (Redacted)? What were they doing during this

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1 forgiveness ceremony?

2 A. Your Honour, as I said earlier, they were forced to seek forgiveness from the  
3 community. And that's all he told me.

4 Q. And just -- now, I know, Mr Witness, you've explained it before, but could  
5 you just explain it to us one more time exactly why they were asking for  
6 forgiveness? What had they done, person number 18 and others who were there?

7 A. According to him, your Honour, is that they were forced to seek forgiveness,  
8 because they had gone against the Kalenjin community.

9 MR KHAN: Your Honour, can I say is there a need for this to be in closed session?  
10 We have a PIS form. It is said that many people were there. It was a  
11 community-wide meeting, as said by the Prosecution. Can this be done in public  
12 session, or do we -- is there a compelling need for it to stay in private?

13 MR GARCIA: There were compelling reasons at the start, your Honour. I just  
14 have one more question, maybe two at the maximum, and then we can move on to  
15 another subject.

16 PRESIDING JUDGE EBOE-OSUJI: There is also concern that the witness know we  
17 are in the zone of hearsay. Still the witness is testifying as to what Mr (Redacted) told  
18 him. So that might implicate identifying information. So proceed. If it was the  
19 matter of the witness witnessing it himself, then, Mr Khan, we -- your concerns  
20 would have an angle. Thanks.

21 MR GARCIA:

22 Q. Now, Mr Witness, just so it can be clear to all of us in the courtroom, can you  
23 explain how these people that had been forced to go over to this forgiveness  
24 ceremony had gone against the Kalenjin community? What had they done?

25 A. What I understand, your Honour, is that it's only because they were not in



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1 ODM, but they were in PNU by that time, your Honour.

2 Q. Now, one last question on this matter. Did person number 18 explain to you  
3 what had happened after they had gone to this forgiveness ceremony? Were things  
4 all right, or did things continue in the same way? What happened?

5 A. Your Honour, I didn't hear him telling me anything about that.

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

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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11 MR GARCIA: So that's number 22 on the PIS list.

12 Q. Now, I understand, Mr Witness, what person number 22 spoke to you and  
13 told you about village elders in general, but my question is much more specific. I'd  
14 like to know what person number 19 was doing in your village at the time of the  
15 post-election violence. What were his functions?

16 A. Are you asking because of the post-election violence only or his general  
17 functions, your Honour?

18 Q. At the post-election violence, Mr Witness.

19 A. Your Honour, only two things that I got is that he was the one who was  
20 supposed to make sure that the youths go to the roads or either go to (Redacted). And,  
21 again, what (Redacted) told me is that, (Redacted) told me and also (Redacted) told me that Mr  
22 (Redacted) was the one who was collecting the hundred shillings which were  
23 needed from each family. And he even collected the hundred shillings (Redacted)  
24 (Redacted).

25 Q. And can you tell the Court from your understanding what was this money to

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1 be used for?

2 A. Your Honour, (Redacted) told me that the money were being used either to buy  
3 food for the youths who were at (Redacted) or manning the roads or to fuel the lorries,  
4 which were ferrying youths from (Redacted) to either Moi's Bridge or Matunda, your  
5 Honour.

6 MR GARCIA: I will be changing subject, your Honour. We can go into public  
7 session at this point.

8 Just before, Mr Witness, I will be asking you questions regarding certain people in  
9 public session. I will be mentioning the name of the person, so it's not necessary at  
10 this point to go with -- to use the PIS document.

11 PRESIDING JUDGE EBOE-OSUJI: Witness, we will now go to public session.

12 Remember, Prosecution may be mentioning names himself, but try and use the PIS  
13 numbers. All right?

14 THE WITNESS: Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will go into public session,  
16 court officer.

17 (Open session at 10.27 a.m.)

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

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Proceed.

21 MR GARCIA:

22 Q. Now, Mr Witness, can you tell the Court who Mr Isaac Maiyo is?

23 A. Your Honour, he's the CDF chairman of Eldoret North.

24 MR GARCIA: Now, just for the transcript I think that what the witness is saying is  
25 "CDF chairman."

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- 1 Q. Is that correct, Mr Witness?
- 2 A. Yes, your Honour.
- 3 Q. Now, can you tell the Court briefly what CDF is if you know it?
- 4 A. Your Honour, it is a funding for poor knowledgeable youths who cannot  
5 afford education in a constituency and also some other projects in a constituency.
- 6 Q. Now, Mr Witness, to your knowledge, is this a person who is elected to this  
7 post, or was he named to this post of CDF chairman?
- 8 A. Your Honour, I'm not sure if he's elected or named.
- 9 Q. Now, Mr Witness, could you tell us, Isaac Maiyo, what party he was  
10 supporting at the time of the post-election violence?
- 11 A. He was supporting ODM, your Honour.
- 12 Q. Did he have any functions with the ODM?
- 13 A. I'm not sure. I don't know, your Honour.
- 14 Q. Now, you spoke about him being CDF chairman. Does this implicate any  
15 rallies or attending rallies?
- 16 A. No, your Honour, it doesn't.
- 17 Q. And this person Isaac Maiyo, can you tell us of what ethnicity he is?
- 18 A. He's a Kalenjin, your Honour.
- 19 Q. Now, can you also tell the Court who Mr Moses Ketter is?
- 20 A. He is a former councillor, your Honour.
- 21 Q. Can you tell us from what area, what location he's a former councillor?
- 22 A. He was a councillor of Soy location, your Honour.
- 23 MR GARCIA: Line 21 is "Ketter," K-E double T E-R for the transcript.
- 24 Q. And just so that we understand, where is Soy location, Mr Witness?
- 25 A. It is in Eldoret North constituency, your Honour.

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Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 Q. Can you tell us what ethnicity Mr Moses Ketter is?

2 A. He's a Kalenjin, your Honour.

3 Q. Do you know what party he was supporting prior to or during the  
4 post-election violence?

5 A. ODM, your Honour.

6 Q. Thank you, Mr Witness, for clarifying that. Now, Mr Witness, yesterday, I  
7 would like you to just look at your PIS document, yesterday you were speaking to us  
8 about the fact that you had -- that you were at location 7, and that you had heard  
9 person 1 speaking to youths. So I'd like to just ask you some questions in regards to  
10 that. When you heard person 1 speaking to the youth, can you tell us at what  
11 distance you were from this person approximately?

12 A. I was among the crowd, not more than 50 metres, your Honour.

13 Q. Now, what can you tell us about the surrounding noise?

14 A. There were no noise. All people were listening to him, your Honour.

15 Q. And just so that we can better understand, was person number 1 using any  
16 means of elevating his voice, or was he just speaking to the crowd?

17 A. There were no microphone, your Honour. He was using his mouth.

18 Q. Can you tell the Court whether you were -- to what degree you were able to  
19 listen to him?

20 A. I was able to listen to him, your Honour, though I was very tired.

21 Q. And do you remember, Mr Witness, for how much time person number 1  
22 spoke?

23 A. Your Honour, I met him speaking, and I left while -- I don't remember if it  
24 was him speaking or person number, person number 24.

25 MR GARCIA: Thank you for those clarifications, Mr Witness.

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(Private Session)

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1 I'd like to go, your Honour, into private session for a couple of minutes just to  
2 introduce a new subject.

3 PRESIDING JUDGE EBOE-OSUJI: Private session then.

4 (Private session at 10.33 a.m.) \* Reclassified as Open session

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

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Proceed.

8 MR GARCIA:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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Witness: KEN-OTP-P-0356

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18 (Redacted)  
19 (Redacted)  
20 Q. All right. Mr Witness, so now what I am going to do is ask the Chamber to  
21 go back into public session, and I'll ask you general questions on what you observed  
22 on the day of the ceremony.  
23 MR GARCIA: Your Honours, I'd ask that we go into public session please.  
24 (Redacted)  
25 (Redacted)

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(Private Session)

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21 PRESIDING JUDGE EBOE-OSUJI: Good. Thank you.

22 MR GARCIA: Your Honour, I'd like to go into public session for the following  
23 questions.

24 PRESIDING JUDGE EBOE-OSUJI: We'll go into public session now.

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(Open Session)

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1 (Open session at 10.43 a.m.)

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

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Please proceed.

5 MR GARCIA:

6 Q. Now, Mr Witness, can you please tell us how many people were there at the  
7 ceremony?

8 A. There were many people, your Honour.

9 Q. And can you tell us approximately how many? Were there more than a  
10 hundred, or less than a hundred?

11 A. Hundred thousands, your Honour.

12 Q. And can you tell us what kind of people were there attending this ceremony?

13 A. They were Kalenjins, your Honour.

14 Q. I understand that there were Kalenjins, but can you tell us what kind  
15 of -- what Kalenjins exactly? Were they normal people, other types of people?  
16 Which -- can you give us a little bit more of a description of them?

17 A. Majority were common citizens, your Honour.

18 Q. Now, the majority were common citizens. What about the remaining people,  
19 the remaining Kalenjins that were there?

20 A. They were politicians also in that meeting, your Honour.

21 Q. Can you tell us -- can you name a few of the politicians that were there  
22 present at the meeting?

23 A. Your Honour, I remember person number 1. And I remember also -- can I  
24 say the names?

25 Q. Yes, indeed, you can say the names.

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- 1 PRESIDING JUDGE EBOE-OSUJI: We are in private session now, yes.
- 2 MR GARCIA: We're in public.
- 3 PRESIDING JUDGE EBOE-OSUJI: Oh, sorry. We're in public session - public
- 4 session - but you can say the name?
- 5 MR GARCIA: It's okay, yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right, my mistake. We're in public, but go
- 7 ahead and say the names.
- 8 THE WITNESS: I remember also seeing Phogosio, Lina Chebii Kilimo.
- 9 MR GARCIA:
- 10 Q. Mr Witness, I'm just going to ask you, I understand that you're ready to give
- 11 us all the names, but just for the transcript it's best if we go one-by-one. The first
- 12 person you say is -- we didn't catch the name at all. Can you just repeat it and spell
- 13 it?
- 14 A. Phogisio, P-H-O-G-I-S-I-O.
- 15 Q. And who was this person?
- 16 A. He was the member of Parliament of Kapenguria.
- 17 PRESIDING JUDGE EBOE-OSUJI: Now, I see the Prosecution is asking you who is
- 18 this person. If they're related to you, do not give that information in private -- in
- 19 public session. We can take that in private session, or friends of yours especially
- 20 also that we can take in private session.
- 21 But Prosecution -- Prosecutor, please proceed.
- 22 MR GARCIA:
- 23 Q. Now, Mr Witness, you said "Kapenguria." Can you please spell that for us?
- 24 A. K-A-P-E-N-G-U-R-I-A.
- 25 MR GARCIA: I can see an "A" missing. Okay, now that's fine.

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1 Q. I'm not going to ask you for all the names of the politicians that you would  
2 have seen, but you mentioned another one as well when you started. Can you give  
3 us the name of that other person you saw?

4 A. Lina Chebii Kilimo.

5 Q. Now, Lina is L-I-N-A. And how do you spell her last name?

6 A. K-I-L-I-M-O.

7 Q. And who was she?

8 A. She was a member of parliament of Marakwet.

9 Q. Marakwet, is that M-A-R-A-K-W-E-T?

10 A. Yes, your Honour.

11 Q. Can you tell us of what ethnicity she was?

12 A. She -- she's a Kalenjin, your Honour.

13 Q. And the person you mentioned initially, Phogisio, can you tell us what  
14 ethnicity he is?

15 A. He's a Kalenjin, your Honour.

16 Q. Now, you said that person number 1 was there as well; is that correct?

17 A. Yes, your Honour.

18 Q. Do you recall what he was doing there during that ceremony?

19 A. I want to say that also person number, number 24 was there, your Honour.

20 Q. Thank you for that, Mr Witness, but returning to person number 1 do you  
21 remember what he was doing, if anything, at that ceremony?

22 A. I remember him speaking, addressing the gathering there, your Honour.

23 Q. Do you remember what he was telling the gathering?

24 A. He was not speaking directly to the gathering. But he was speaking direct,  
25 directly to William Ruto, your Honour. And he was telling him that if he's not

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1 going to join the people, the people have left, and they have left him.

2 Q. Can you explain to us what that means, what you understood it to mean?

3 A. Your Honour, that meet -- that meeting, Honourable Ruto had called the  
4 people so as to discuss with the people the political way, way forward, of whom he  
5 was going to support. Honourable Ruto was still not sure about supporting  
6 Honourable Raila Odinga at that time. But the Kalenjin community had decided to  
7 support Mr Raila Odinga. And Honourable Ruto was complaining, not even him  
8 alone, there was Honourable Franklin Bett, I remember, they were telling the people  
9 that it's not right for the Kalenjin community to support Raila Odinga.

10 Then it was person number 1 and person number 24 who were telling Honourable  
11 Ruto that people have left. I remember even saying people have reached Kapsabet,  
12 they are on their way there at Kisumu, and they will leave you here.

13 MR GARCIA: At line number 15, page 39 is Franklin Bett, F-R-A-N-K-L-I-N  
14 B-E-T-T.

15 Q. Is that correct, Mr Witness?

16 A. Yes, your Honour.

17 Q. You said, "I remember even saying people have reached Kapsabet. They are  
18 on their way there at ..." and we can't catch the -- we didn't get the last word you  
19 said. "They are at now." What did you say exactly?

20 A. I said, your Honour, I said they have reached, they have reached Kisumu  
21 now.

22 Q. Kisumu, K-I-S-U-M-U?

23 A. Yes, your Honour.

24 Q. Now, Mr Witness, was there anyone who was MC'ing the ceremony?

25 A. The master, your Honour, the master of ceremony was Joshua Arap Sang,



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1 your Honour.

2 Q. Now, just to be clear, is it the Joshua Arap Sang who is here in the courtroom  
3 today who is co-accused in the case?

4 A. Yes, your Honour.

5 Q. What was he doing during the ceremony?

6 A. Your Honour, he was the master of ceremony. He was the one who was  
7 preparing if someone is to speak. And he was the master of ceremony, your  
8 Honour.

9 Q. Now, do you remember, Mr Witness, if Mr Joshua Arap Sang said anything  
10 during that ceremony?

11 A. Your Honour, I didn't catch everything that I could remember now during  
12 that ceremony, I would say.

13 Q. Okay. Now, we understand that you don't catch -- you didn't catch  
14 everything and that you could remember, but can you tell us what you do remember  
15 today of what you would have said during that ceremony?

16 A. I remember some other things which were said before the ceremony, but -- or  
17 after the ceremony. But on the ceremony, the last thing I heard him saying -- I don't  
18 even -- I'm not, I'm not sure if it was on the meeting. I don't remember what he said  
19 there.

20 Q. All right. Now, you said that you do remember him saying something, but  
21 you're not sure if it was during the ceremony. Can you tell us what it is?

22 A. Your Honour, he was telling the people to -- for he -- he was telling the people  
23 to follow -- no, I'm talking about the other meeting which was held at Eldoret Sports  
24 Club. That's what came to my mind. It was not about the meeting which was held  
25 about on Honourable William Ruto's home.

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1 Q. And just so we can clear up this matter right now, what would he have said at  
2 this other meeting, the Eldoret Sports Club?

3 A. He was telling the people, because Honourable Ruto had been elected and  
4 named as the only Kalenjin spokesman, and he was telling the people that William  
5 Ruto is the final person, and whatever he is going to say is what we are going to  
6 respect as Kalenjin community.

7 Q. Now, what did you understand that to mean when Mr Joshua Sang said that?

8 A. Your Honour, it was not even one time Joshua Sang used the morning show  
9 of Kass FM Lene Emet to -- even sometimes someone could call, make a phone call  
10 and talk or talk opposite about William Ruto. And Joshua Sang was telling people  
11 that William Ruto is the only person we know, he's the only king we know, and  
12 whatever he is going to say, it's, it's that the Kalenjin community have said.

13 PRESIDING JUDGE EBOE-OSUJI: Now, Prosecutor, one moment, please.

14 Witness, before we continue, you testified earlier, before we continue, I want to  
15 straighten out my understanding of an aspect of your testimony. Did you say that  
16 at the meeting at Mr Ruto's home to which you are now testifying, person number 1  
17 told Mr Ruto -- I'm trying to understand -- that the people had already joined ODM  
18 and supporting Raila Odinga, that he, Mr Ruto, had to come along and join the  
19 people? Was that what you are saying? I'm trying to understand what you are  
20 saying.

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR GARCIA:

24 Q. Just on that, on that point, Mr Witness, when it was a question of you said  
25 that "... he had to join the people for Raila," but what was it? Join the people for

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1 Raila for what exactly?

2 A. Your Honour, your Honour, I would like to say that Honourable Ruto was  
3 not certain or he was not willing to walk with, fully with Mr Raila Odinga, though  
4 he knew in his heart that the Kalenjins had already -- were already supporting the  
5 candidacy of Mr Raila Odinga. And Honourable Ruto himself, he tried in all means  
6 to convince the Kalenjin community that Raila Odinga was not the best candidate.

7 Q. Thank you for that, Mr Witness.

8 Now, just some clarifications. You were speaking to us about Mr Joshua Sang.

9 You said, "Your Honour, it was not even one time Joshua Sang used the morning  
10 show of" -- and I think you said "Lene Emet," is that correct, Mr Witness?

11 A. Yes, your Honour.

12 Q. You also said -- and can you tell us what radio station this would have been  
13 on?

14 A. Kass FM, your Honour.

15 Q. You also said, "To even ..." -- you continued, "To even sometimes, sometimes  
16 go make a phone call and talk, or talk opposite about William Ruto. And Joshua  
17 Sang was telling people that William Ruto is the only person we know. He's the  
18 only ..." and what is the missing word there?

19 A. Your Honour, I can even make an example of one lawyer whom I remember.  
20 His name was Murkleman (phon). At that time he was not supporting William  
21 Ruto or Raila, Raila Odinga. And at many times he could make a phone call or he  
22 could be being questioned by Kass FM. And they had bitter words with Joshua  
23 Sang, because Joshua Sang was directly supporting with William Ruto, your  
24 Honour.

25 Q. Now, we'll deal with that subject afterwards. But you said he's the

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1 only -- and what I heard was "the only king we know," is that correct, or did you  
2 mean "thing," "king" or "thing we know"?

3 A. "King," your Honour.

4 MR GARCIA: "King," thank you.

5 Your Honour, given the time, I think it's a good time to take a break at this point,  
6 and I'll be continuing. And just for the Defence, I'm highly optimistic, we're going  
7 according to schedule, so we should be finished by today. We will be finished by  
8 today.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you for that indication. And we will  
10 take our morning break now. The blinds will come down and the witness escorted  
11 from the courtroom.

12 (Closed session at 10.58 a.m.) \* Reclassified as Open session

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

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Please escort the witness from the courtroom.

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

18 THE COURT USHER: All rise.

19 (Recess taken at 10.59 a.m.)

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

21 THE COURT USHER: All rise.

22 Please be seated.

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

24 We are in open session.

25 Prosecutor, please proceed.

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(Open Session)

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1 MR GARCIA:

2 Q. Now, Mr Witness, when we left off I was asking you questions regarding  
3 Mr Joshua Sang. I'd like to continue on the same subject. You told us in your  
4 testimony that Mr Sang had a programme called Lene Emet; is that correct?

5 A. Yes, your Honour.

6 Q. Do you remember -- first of all, actually, did you -- did you listen -- with what  
7 frequency did you listen to this programme?

8 A. Kass FM, your Honour.

9 Q. Do you remember, Mr Witness, at what times, what days this programme  
10 would play?

11 A. It was on weekdays, your Honour, early in the morning, your Honour.

12 Q. Do you remember the approximate times at which it would play?

13 A. From 7 to 8 a.m., your Honour.

14 Q. Now, what I'd like to know, Mr Witness, is whether you were able to listen to  
15 this programme and if so, at what frequency? Every day? Once every two days?  
16 Can you help us in that regard?

17 A. Your Honour, it was not every day, but three times a week maybe.

18 PRESIDING JUDGE EBOE-OSUJI: And what -- three times a week you -- how often  
19 you listened or how often the programme was broadcast.

20 THE WITNESS: I could say that if I had time in the morning or if I could be late to  
21 go out is when I listened to it, but sometimes I woke up early and I went without  
22 listening the programme, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: The Prosecutor is trying to find out how often  
24 you listened to the programme.

25 MR GARCIA: Your Honour, if I may, I think the -- the witness has just answered to

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1 it, and actually he answered that three times a week as to the amount of time he  
2 would listen to it.

3 Q. Is that correct, Mr Witness? Did I understand you well?

4 A. Yes, your Honour.

5 Q. Thank you for that clarification, Mr Witness. Now, could you tell the Court  
6 in what language this programme was in?

7 A. It was aired in Kalenjin language, your Honour.

8 Q. And who was the host of this programme normally?

9 A. Joshua Sang, your Honour.

10 Q. Can you tell the Court what type -- type of programme this was, Lene Emet?

11 A. Your Honour, before 2007 the programme was a programme of teaching in  
12 several ways and mainly teaching the Kalenjin community sometimes even about  
13 farming, different things, but in 2007, it was mainly a political programme, your  
14 Honour.

15 Q. And when you say it was a political programme, what kind of themes were  
16 discussed during the programme?

17 A. In that programme, your Honour, each and every day there were politicians  
18 invited to sell their policies through that programme, your Honour.

19 Q. Now, we're speaking still about 2007. When you say that politicians were  
20 invited to sell their policies, politicians from what parties?

21 A. It was from all parties, your Honour, but mainly whom I heard several times  
22 were from ODM party, your Honour.

23 Q. I think you said from -- from several times ODM party; is that correct?

24 A. I said several times I heard ODM party politicians, your Honour.

25 Q. Would you be able to recall in 2007 which party politicians from the ODM

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1 were on the programme Lene Emet?

2 A. I can recall Honourable Raila Odinga, William Ruto, Franklin Bett, many of  
3 them, your Honour.

4 Q. Now, you stated that there were politicians from other parties. What would  
5 happen when they would come onto the show, on Lene Emet show with Joshua  
6 Sang?

7 A. Your Honour, if they were politicians, Joshua Sang would only let them sell  
8 their policies. I didn't see any -- any difficulty, but when they have left is when  
9 Joshua Sang could be against them, will tell people things against them, your  
10 Honour.

11 MR GARCIA: So just to correct line 20, "What would happen when they would  
12 come on to the show, on the programme with Joshua Sang?", is what it should be.

13 Q. Now, you stated that Joshua Sang would let them sell their policies. Can you  
14 explain further what he would say after they left?

15 A. Your Honour, I remember him saying that Kass FM was like a cow, and we  
16 are only waiting -- we are only welcoming them so that we can milk them, but after  
17 they have gone, the Kalenjin community -- he was advising the Kalenjin community  
18 to support ODM.

19 Q. Can you explain to us what you understood by the -- by this analogy? He  
20 was saying that "We are welcoming them so we can milk them." Can you explain  
21 that? What did you understand by that?

22 A. I understood -- your Honour, I understood that Kass FM was in business, and  
23 the politicians were paying to air their views or their policies at Kass FM. That's  
24 what I understand.

25 MR GARCIA: One correction, your Honour. Page 47, line 22, is "Let them sell

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1 their policies" and not "pole cease." And 48, 3, it's the same problem, "... sell their  
2 policies" and not "properties."

3 Q. What would happen, Mr Witness, if someone would come onto the show in  
4 2007 and support the PNU?

5 A. Your Honour, it was not that someone who came to the show. What I heard  
6 is the callers or the people who were listening then call Kass FM radio, and was it  
7 Joseph -- it was Joshua who was receiving the calls, and he could react. Sometimes  
8 even he was using insulting languages against the callers, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: I believe the missing --

10 MR GARCIA: The callers, yes.

11 PRESIDING JUDGE EBOE-OSUJI: The word missing, using "insultive" languages.

12 MR GARCIA: "... using insulting languages," indeed, your Honour. And line 21 is  
13 what I heard is that "the callers" or "the people." So "callers" is the word that is  
14 highlighted. So line 21 is what I heard is that "callers". What is now there is  
15 K-A-L-E-R-S, or the people listening, just so the transcript reads right.

16 Q. Now, Mr Witness, you were speaking to us about the -- the reaction of  
17 Mr Joshua Sang. What would he say specifically about people who would support  
18 the PNU, callers who would call in supporting the PNU party in 2007?

19 A. He could even ask a caller that "Is PNU your mother? You are saying PNU.  
20 PNU. Is PNU your mother?"

21 Q. And can you tell us what you understood that to mean?

22 A. He was using a Kalenjin language, your Honour, and it was very much bitter  
23 for someone to touch or say something about your mother.

24 MR GARCIA: So the word that is missing is very much "bitter" for someone to  
25 touch or say something about your mother.



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1 Q. Is that correct?

2 A. Yes, your Honour.

3 Q. Can you tell us what other things Mr Joshua Sang would tell callers who were  
4 supporting the PNU?

5 A. What I remember, your Honour, is when Joshua Sang was campaigning or  
6 airing views on that programme, he was not referring -- when he was talking against  
7 the Kikuyus he was not referring them as Kikuyus, but he was using other  
8 languages -- other words in Kalenjin whom they could -- they could not be  
9 recognised as he was talking about the Kikuyus, your Honour.

10 Q. Now, you say that Mr Joshua Sang was using other words in the Kalenjin  
11 language. Can you tell us what words he was using to refer to when he was talking  
12 about the Kikuyus?

13 A. I remember one word, "kamurulda", and another, "kapchelit".

14 Q. Can you please spell the first word for us, kamurgelda (phon).

15 A. K-A-M-U-R-D-A -- K-A-M-U-R-U-L-D-A.

16 Q. So just -- just to make sure that we have the proper spelling, Mr Witness, we  
17 have on the screen I read K-A-M-U-R-U-L-D-A. Is that what you can remember?

18 A. Yes, your Honour.

19 Q. Now, just to be certain, that's a word in what language exactly?

20 A. Kalenjin language, your Honour.

21 Q. And what does it mean in Kalenjin?

22 A. It means tint teeth, your Honour.

23 Q. What I understand of your response is it means tinted teeth; is that correct, Mr  
24 Witness?

25 A. Yes, your Honour.

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1 Q. Now, is that a good thing or a bad thing to say to someone?

2 A. Not good, you Honour. Even we have other Kalenjins who was tint teeth,  
3 your Honour.

4 Q. Do you know, Mr Witness, why Mr Joshua Sang would refer to the Kikuyus  
5 as tinted teeth?

6 A. Your Honour, the government at that -- at that time it was so tough on  
7 broadcasting houses, and they had warned them that they would not use  
8 insult -- insulting languages on -- when they are airing, and they were also warned  
9 not to support any political party or not to promote ethnicity, your Honour.  
10 To me, I understand that Joshua was using such words so that the government -- or  
11 he might not be against the policies which the government had issued at that time,  
12 your Honour.

13 Q. I'm going to go through what you've just stated to us, Mr Witness, so we can  
14 be clear on the matter. You've started out by saying that "the government at the  
15 time, it was sought of broadcasting houses and they had warned them that they  
16 would not use insulting languages." Do you remember which branch of the  
17 government this was?

18 A. It was ministry of information, your Honour, broadcasting information.

19 Q. Now, can you tell us -- I understand that you were -- you used the word  
20 "broadcasting houses." What do you mean by broadcasting houses?

21 A. Like the TV and the radio stations, your Honour.

22 Q. So, Mr Witness, just to be clear, what did the ministry information tell TV  
23 stations, radio stations at that time, 2007?

24 A. They were warned not to use insulting languages or promote ethnicity in any  
25 kind or support any political party directly, your Honour.

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1 Q. I know that I said 2007, Mr Witness. Do you remember exactly what month  
2 ministry of information would have said this to radio stations, TV stations?

3 A. I don't remember the month, but it was earlier before the campaign started,  
4 your Honour.

5 Q. Page 52, line 1 is "they were warned not to use insulting language" for the  
6 transcript "or promote ethnicity in any" -- we didn't catch that last word, Mr Witness.  
7 "Promote ethnicity in any" what did you want to say by that?

8 A. Just to -- not -- not to promote ethnicity, your Honour.

9 Q. You stated that it was -- you don't remember the months, but it was earlier  
10 before the campaign started. When did the campaign start for the elections in  
11 Kenya of 2007?

12 A. I don't remember which month, your Honour.

13 Q. And when you say "it was before the campaign started," was it days or weeks  
14 or months; do you remember that?

15 A. I don't remember, your Honour.

16 Q. And how did you know about this information or advisement from the  
17 ministry of information? How did hear about this?

18 A. It was in the newspapers and also in the radio and the TVs, your Honour.

19 Q. Now, you say that "they were warned not to use insulting languages or  
20 promote ethnicity." What is it that you understood by the prohibition of promoting  
21 ethnicity? What was the ethnicity?

22 A. Ethnicity is to incite one tribe to another tribe, your Honour.

23 Q. When you're saying "one tribe to another tribe," do you mean against another  
24 tribe or do you mean something else?

25 A. Against another tribe, your Honour.

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1 Q. And when you spoke about insulting languages, what did you take this to  
2 mean?

3 A. Languages that -- to insult someone, your Honour.

4 Q. Now, you've mentioned in your testimony that Mr Joshua Sang would use a  
5 term kamurulda or tinted teeth to refer to the Kikuyu. Did he use any other terms?  
6 Do you recall that?

7 A. Kapchelit, your Honour.

8 Q. Can you please spell that word for us.

9 A. K-A-P-C-H-E-L-I-T, your Honour.

10 Q. We didn't catch the first letters. Is it K or A?

11 A. K-A-P-C-H-E-L-T, your Honour.

12 Q. K-A-P-C-H-E-L-T, is that correct?

13 A. Yes, your Honour.

14 Q. Thank you, Mr Witness. And can you tell us in what language this word is.

15 A. Kalenjin language, your Honour.

16 Q. And what does this word mean in Kalenjin?

17 A. Your Honour, I don't understand the meaning of that word.

18 Q. Without understanding the exact meaning of it, Mr Witness, can you tell us  
19 whether it was a good word or a bad word?

20 A. Your Honour, the only thing is that the word means something sharp. Now,  
21 I don't know -- I don't understand why it was referred to Kikuyus as kapchelit.

22 Q. You said, Mr Witness, "...the only thing is that the word means something"  
23 and we didn't get the last part of what you said. Can you repeat that?

24 A. Something sharp, just like a sharp razor blade.

25 Q. So sharp like a razor blade; that's correct, Mr Witness?

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1 A. Yes, your Honour. The only word "chelit" mean -- "lit" that means sharp.

2 Q. Now, apart from these two terms, Mr Witness, did you hear Mr Joshua Sang  
3 refer to Kikuyus in any other way?

4 A. No, your Honour. The only thing I remember is that I heard Mr Joshua Sang  
5 one time arguing about another broadcaster who was at Citizen Radio, and that time  
6 it was about -- it was -- it was about the politics that -- there was another politician, I  
7 don't know -- I don't know if he was from the Kikuyu or where, who had asked  
8 Honourable Ruto to clear his name first in corruption deals before he campaigns.  
9 And it was about the politics of 2007, and he was asking William Ruto to clear his  
10 names, and that's when I heard Joshua Sang -- the broadcaster was known as  
11 Waweru Mburu. I -- I heard Joshua Sang saying that if there were -- if there were  
12 thieves, they were Kikuyus. Why don't Waweru Mburu advise the Kikuyus to clear  
13 their name -- their names first before attacking Honourable William Ruto?

14 Q. So, Mr Witness, just to come back on what you were saying, we didn't get the  
15 name of the person, "The broadcaster was known as ..." Can you give us the full  
16 name, spelling it out, please.

17 A. Waweru Mburu. Waweru is W-A-W-E-R-U. Mburu is M-B-U-R-U.

18 Q. And this broadcaster, do you recall what ethnicity he was?

19 A. He's a Kikuyu, your Honour.

20 Q. Now, you say that this broadcaster had asked Honourable Ruto to clear his  
21 name first in corruption deals. Can you explain that to the Court a little bit more?

22 A. Your Honour, the broadcaster aired the same -- the same like for -- like Lene  
23 Emet for Joshua Sang, and it was aired early in the morning, but his was different  
24 because there was no calling, but he was only on politicians, and today he might  
25 speak of another politician, tomorrow he might speak of another politician, trying to

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1 show Kenyans or tell to Kenyans that this politician is not good, he has not done this.

2 And on that day he was talking about Honourable Ruto and corruption deals, and  
3 he was asking Honourable Ruto to clear his name first before he campaigns -- or he  
4 goes to the campaign asking the electorate that he wants votes.

5 MR GARCIA: So line 23 is the electorate that he wants votes, and line 14 is  
6 "For -- like Lene Emet for Joshua Sang."

7 Q. Is that correct? So this broadcaster had his own show as well on another  
8 radio station?

9 A. Citizen Radio, your Honour.

10 Q. And the name of the programme is Lene Emet, L-E-N-E, Emet, E-M --

11 A. No, your Honour.

12 Q. Can you spell it out for us, please?

13 A. I -- I don't remember the name of the programme.

14 Q. Okay. No, that's fine. I understand. I don't want to confuse you.

15 MR GARCIA: The name of the -- just for the transcription, the name of the  
16 programme of Joshua Sang is Lene Emet L-E-N-E, Emet, E-M-E-T. That's for the  
17 transcription.

18 Q. Can you tell us, Mr Witness, how many constituencies Eldoret is divided in?

19 A. At that time it was only three constituencies.

20 Q. Was there ever any debate or discussion as to the adding more constituencies  
21 to Eldoret?

22 A. Yes, your Honour. There were -- there -- there was a time whereby Eldoret  
23 could have -- they had brought a discussion that all major towns should be  
24 subdivided into different constituencies, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, what is the forensic bearing of that

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1 line of question?

2 MR GARCIA: Your Honour, I have a follow-up question which will make it more  
3 obvious.

4 Q. Mr Witness, was this topic, the question of Eldoret and the division into  
5 constituencies, ever evoked or raised on the radio stations or in the media?

6 A. I remember, your Honour, during that time it was in Lene Emet, and Joshua  
7 Sang were asking the Kalenjin community to reject Eldoret town being divided -- not  
8 being divided but being given a constituency of its own, your Honour.

9 MR GARCIA: Just a correction for the transcript. Page 57, line 3, it's once again  
10 Lene Emet. I've spelled it out before for the transcript.

11 Q. Now, Mr Witness, can you elaborate on that? Joshua Sang were  
12 asking -- Joshua Sang was asking the Kalenjin community to reject Eldoret town  
13 being divided. Can you explain what the problem was?

14 A. Your Honour, what Joshua Sang was saying is that the Kikuyus are mainly  
15 majority in Eldoret town, and if they -- they will divide Eldoret -- if the Eldoret town  
16 will be given a constituency of its own, that means there will be an MP from the  
17 Kikuyu and everything will be owned by the Kikuyus in Eldoret town, your  
18 Honour.

19 Q. And do you remember how Mr Joshua Sang would refer to the Kikuyus when  
20 he was speaking about this problem of Eldoret town?

21 A. It is in my mind, but I can't recall now my -- I wanted to use that term, but I  
22 will remember and I will come to it later, but it is in my mind, your Honour.

23 Q. I understand that you can't remember right now. Do you remember  
24 what -- what the term was dealing with or what it referred to? Anything come to  
25 mind?

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1 A. Your Honour, I know I would remember it and I will come with it.

2 Q. Thank you, Mr Witness. When you do come to it or you do have a  
3 recollection of it, just please indicate it and we'll come back to that.

4 Just on this same topic of the Eldoret town and it being divided, do you remember  
5 what else Mr Joshua Sang was saying in that regard? My question is actually more  
6 precise. What was the problem with having an MP who would be Kikuyu? What  
7 was there so problematic about that?

8 A. Your Honour, the Kalenjins believed that Eldoret town is their own town and  
9 if -- if they will give Eldoret town a constituency of its own, it will be taken over by  
10 the Kikuyus and they will manage Eldoret town. And that's what Joshua Sang  
11 emphasised several times, your Honour.

12 Q. And to your understanding what was -- what was problematic about  
13 Kikuyus -- or a person of Kikuyu ethnicity managing Eldoret town? Can you give  
14 us more information in that regard?

15 A. I didn't understand your question, your Honour.

16 Q. You said that the Kalenjins believed that Eldoret town is their own town. If  
17 they will give Eldoret town a constituency of its own, it will be taken over by the  
18 Kikuyus and they will manage Eldoret town. That's what you told us. My  
19 question is what was so problematic about the person of Kikuyu ethnicity managing  
20 the town? Why was that a problem for Mr Joshua Sang?

21 A. What I can say is that not for Mr Joshua Sang, but what I knew is that in  
22 Kenya when you're managing or you have any political or any position in  
23 government, first what someone could do is to employ his own people, and that's  
24 what Joshua Sang was crying about that time.

25 Q. You said that the people of Kalenjin ethnicity believed that Eldoret town was



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1 their own town. Can you explain that to us?

2 A. Not even Eldoret town alone, your Honour. The Kalenjin community  
3 believes the whole of Rift Valley is their own, and it's mainly because there are  
4 many -- or they are the majority there, your Honour.

5 Q. And what happens, Mr Witness, when people of other ethnicities in the Rift  
6 Valley try and assert themselves or try and manage Kalenjin towns? Can you tell us  
7 anything about that?

8 A. Your Honour, in my view, even Eldoret town or other towns in Rift Valley are  
9 not managed by only Kalenjins. And I don't know about now, but later they were  
10 managed by both communities. But during 2007 -- or during that time of which it  
11 was brought that it should be -- it -- it can be given a town of its own is when I heard  
12 complaints and I heard Joshua Sang advising the people not to accept. But before it  
13 was managed by both communities, because I even know some Kikuyu councillors  
14 who are there in Eldoret town, your Honour.

15 MR GARCIA: I'd ask for 30 seconds, your Honour.

16 Q. Now, Mr Witness, I've been asking you questions regarding this issue about  
17 Eldoret town. Can you tell us when this whole debate would have occurred, in  
18 what month of 2007?

19 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, all right. We've heard some  
20 testimony on that. The idea now is not to cut you off but to remind you we're in a  
21 criminal trial with specific charges, the object of which is whether or not the accused  
22 are guilty or not guilty on the charges, not in a commission of inquiry as such on the  
23 social relationships or cultural relationships in the Rift Valley. We need to keep that  
24 in mind, and we've spent some time on that. Keep that in mind, please.

25 MR GARCIA: Certainly, your Honour.

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1 Q. Do you remember, Mr Witness, when this would have occurred, this  
2 discussion about Eldoret constituency, what month?

3 A. I don't remember, your Honour.

4 Q. Now, Mr Witness, can you tell us, at that time in 2007 prior to the  
5 post-election violence, Eldoret town, can you tell us what ethnic groups resided in  
6 Eldoret town?

7 A. All communities resided in Eldoret town, your Honour.

8 Q. And if we speak about the centre of Eldoret?

9 A. That is the centre of Eldoret I'm talking about, your Honour.

10 Q. Now, do you recall, Mr Witness, what else Mr Joshua Sang would have said  
11 on his radio show Lene Emet during that time period, 2007?

12 A. I don't remember for now, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, are you in a position to refresh the  
14 witness's memory on the matter of the terminology used?

15 MR GARCIA: Yes. Yes, indeed, your Honour. And this is -- I was just seeing if  
16 the witness is going to recall on his own, but obviously not, so I would ask the -- I  
17 can ask the witness just another question see if he does remember, but if not I will be  
18 asking the Court's permission to refresh the witness's memory on this specific point.

19 Q. Now, Mr Witness, just a couple of minutes ago I asked you whether you  
20 remember this other term that Mr Joshua Sang would use to refer to people of  
21 Kikuyu ethnicity. You said you would -- you would be thinking about it and you  
22 would come back to us. Do you remember now or is it still -- you're still not  
23 remembering?

24 A. It is still far away from my mind, your Honour.

25 Q. I understand that when you met the Prosecution, is this information that you

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1 would have given the Prosecution?

2 A. I gave -- I gave the information to the Prosecution, your Honour.

3 Q. And today, from what I understand, at this point in time you don't  
4 remember?

5 A. Yes, your Honour.

6 MR GARCIA: Your Honour, I'd like permission to refresh the witness's memory on  
7 this specific point. I have a transcript number and a paragraph, lines -- specific  
8 lines, four lines that the witness can read to himself. They can be put on his screen  
9 or I can give him a paper copy, he can read through them and I'll ask him other  
10 questions afterwards, see if that refreshes his memory.

11 PRESIDING JUDGE EBOE-OSUJI: Any objections?

12 MR KHAN: Your Honour, there is an objection. Of course it's an issue that mainly  
13 relates to my learned friend Mr Katwa-Kigen. But, your Honour, this is a witness  
14 that the Prosecution have spent quite some time with in proofing over several days.  
15 He is a witness whose very first question to the Prosecution almost way back in June  
16 is whether or not he could have access to the recordings of that interview.

17 Your Honour, even after all the proofing of the Prosecution, when it was completed,  
18 again he asked for his statements and again he was given it.

19 Your Honour, in this case, where credibility is at issue, the Court has a certain  
20 number of means to assess reliability and credibility, and we say given the  
21 circumstances of this case where the witness has looked over his evidence for days,  
22 has been interviewed by the Prosecution for hours and indeed days, it's not been  
23 made out that the witness should simply be given an interview under the caveat of  
24 memory refreshing.

25 Your Honour, we've used that phrase before, and very often what happens in

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1 systems is a witness comes to Court fresh, and if in the course of testimony a witness  
2 does not remember, with the Court's leave, a witness may be shown a  
3 memory-refreshing document.

4 But, your Honour, this is a different situation. The witness has already had his  
5 memory refreshed to an amazing degree, and because of that we have grave  
6 reservations regarding the -- not just the forensic value but the actual utility of this  
7 exercise. And it has within it the capacity to erode, we say, in some measure at least  
8 the ability of the Chamber to draw an assessment as to this witness's own account.

9 Your Honour, it's important in assessing that that the witness was interviewed in  
10 2012, and he's saying that he remembered an incident that goes back some years, and  
11 yet despite all this memory refreshing, he said suddenly in the witness box he has  
12 forgotten. So, your Honours, we would say that there's a danger in this.

13 Your Honour, I will address some of the issues later when it's my turn to  
14 cross-examine, but on a few occasions the witness has said, "I'll come back to that  
15 later." Your Honours, that may have some probative value later on, but, your  
16 Honours, we say there's no need that's been shown.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

18 MR KIGEN-KATWA: Mr President, we equally object, and we would like to  
19 observe in respect to this witness that in some of the instances in the closed session  
20 he has shown amazing capacity to recall dates, events and names. And the  
21 contention now that he cannot recall and that he needs more time to recall a specific  
22 issue in respect to Mr Sang is very suspect, and we would object to him being given  
23 an opportunity to refresh his memory through the Prosecution. We object, your  
24 Honour.

25 (Trial Chamber confers)

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Objection is overruled.

2 Prosecution proceed.

3 MR GARCIA: I'd like to solicit the help of the court officer, and I'd like to give a  
4 copy of transcript KEN-OTP-0081-0801 to the witness.

5 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, you said you were going to direct  
6 the witness specifically.

7 MR GARCIA: I'm going to direct him to four specific lines that deal with the matter  
8 that was -- that I've been questioning on.

9 PRESIDING JUDGE EBOE-OSUJI: So we don't have him reading around it.

10 MR GARCIA: That's correct. Just to inform Defence counsel, it's lines 636 to 639 at  
11 page 0820 of that transcript.

12 PRESIDING JUDGE EBOE-OSUJI: What tab is it? Is it in our bundle? It's not in  
13 our bundle?

14 MR GARCIA: Unfortunately not. These are the transcripts of the interview with  
15 the witness. I'm not sure, but maybe the court officer can display them on the  
16 screen. It's transcript 0081-0828 -- actually, I'm sorry. This is backwards. It's  
17 0081-0802, and it's at 0820, lines 636 to 639. Just to be clear, 0081-0801 is the number  
18 of the transcript. The page is 0820.

19 Q. Now, Mr Witness, if you look at the page that's before you, it says 0820 at the  
20 bottom. Do you see that?

21 A. Yes, your Honour.

22 Q. Now, I'd like for you to read -- there are line numbers on the left-hand side.  
23 I'd like you to read line 636 to 6 --

24 THE COURT OFFICER: (Interpretation) I can see the document is confidential and  
25 we are in open session, Mr Garcia.

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1 MR GARCIA: If the -- perhaps we should just go into private session then, or can it  
2 be shown to the Court just confidentially then? Maybe that will resolve the  
3 problem. Thank you for that.

4 Q. Mr Witness, just to be sure, I just want you to read four lines. Do not read  
5 anything else outside of those four lines. Do you understand?

6 A. Yes, your Honour.

7 Q. All right. Now, Mr Witness, I'd ask you to read lines 636 to 639 to yourself.  
8 Do you see them?

9 A. Yes, your Honour.

10 Q. Take the time to read them to yourself and when you've finished then I'll ask  
11 you some questions.

12 Now, Mr Witness, I take it you've had the chance to read those four lines that I've  
13 mentioned?

14 A. Yes, your Honour.

15 Q. Now, Mr Witness, has this exercise refreshed your mind in any way in  
16 regards to the question that I asked you before?

17 A. Yes, your Honour.

18 Q. Can you please tell the Court how it --

19 MR GARCIA: And before we do that, perhaps the court officer can take the copy  
20 that is in front of the witness away from him.

21 Q. Sorry to have interrupted you, Mr Witness. Can you tell the Court how it  
22 has refreshed your memory?

23 A. Your Honour, I was saying that there was something else which Mr Joshua  
24 Sang used to refer the Kikuyus with, and that's what it was missing that I was  
25 thinking about it, but I have seen it now, your Honour.

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1 Q. And what is that you have seen now that you didn't remember before?

2 A. I want to say that -- I want to use the word Kalenjins -- the -- the word in  
3 Kalenjin first. Joshua Sang also referred the Kikuyus as chemulbi.

4 Q. Can you spell that word for us, please? Take your time so that we can  
5 understand it.

6 A. C-H-E-P-U -- no. C-H-E-M-U-B-A-I.

7 Q. Is that a -- I just want to make sure. It's C-H-E-M-U-B or is it P?

8 A. L-B-I.

9 Q. Okay. C-H-E-M-U-L-B-I, is that correct?

10 A. Yes, your Honour.

11 Q. So I understand that this word is in Kalenjin. Can you tell the Court what  
12 this word means?

13 A. Your Honour, it means -- let me take an example of maize plants, and there  
14 are other plants that are like maize and they are not maize. It means something like  
15 something which is not that thing.

16 Q. Can you tell us in English what would be the most approximate or the  
17 translation for that word that you just gave us?

18 A. Weeds, your Honour.

19 Q. It's weeds, W-E-E-D-S; is that correct, Mr Witness?

20 A. Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, one second.

22 Court officers, I do not recall whether the witness has a pen and paper in front of  
23 him. That should be done in case he needs to spell something.

24 Witness, that's to make it easier for you to spell. I noticed often the Prosecutor has  
25 asked you to spell some terms. Having a pen and paper in front of you may make it

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1 easier for you to spell when next he asks you for a spelling.

2 MR GARCIA:

3 Q. Now, Mr Witness, what was Mr Joshua saying -- Mr Joshua Sang saying  
4 about these weeds? Did he say anything in particular about them?

5 A. Your Honour, it was about the division of some towns, especially  
6 Eldoret -- Eldoret town -- some constituencies, and he was talking especially about  
7 Eldoret town, your Honour.

8 Q. And what was he saying in regards to the term weeds and Eldoret town?

9 A. He was telling the Kalenjin community or the electorate of Eldoret  
10 constituency that the weeds are too many in Eldoret town, and if a constitution -- a  
11 constituency of its own will be made in Eldoret town, the weeds will take over all  
12 Eldoret town, your Honour.

13 MR GARCIA: Line 19 is electorate, 19, 20 electorate of Eldoret constituency.

14 Q. Now, Mr Witness, because you --

15 A. Your Honour, not Eldoret constituency but Uasin Gishu district, your  
16 Honour.

17 Q. So it should read "He was telling the Kalenjin community or the electorate of  
18 Uasin Gishu district," is that correct, rather than Eldoret constituency?

19 A. Yes, your Honour.

20 Q. And did Joshua Sang say anything about what had to be done about the  
21 weeds?

22 A. Your Honour, what Joshua Sang was telling the -- the residence of Uasin  
23 Gishu is that they should not have to accept that Eldoret be given a constituency of  
24 its own, your Honour.

25 MR GARCIA: Your Honour, I'd like to go into private session for just one minute to



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1 introduce the next subject.

2 THE WITNESS: Your Honour, I have something to clarify. Your Honour, it's  
3 about the meeting which happened at Honourable William Ruto's home. Your  
4 Honour, I --

5 PRESIDING JUDGE EBOE-OSUJI: You can clarify, but remember we are in public  
6 session, so you can proceed because that testimony was heard in public session as  
7 well, but as long as you remember not to identify yourself in your clarification, you  
8 may proceed.

9 THE WITNESS: Yes, your Honour. I -- I wanted to clarify that after I went to  
10 break, I thought and it came clear in my mind that the meeting was not in December  
11 2007, but I don't remember the exact month. What made me remember is about the  
12 other meeting which was held at Eldoret Sports Club, and the meeting was before  
13 that which was held at Eldoret Sports Club. I don't remember the month, but it was  
14 not in December 2007, your Honour.

15 MR GARCIA:

16 Q. Now, Mr Witness, just so we can understand better, if you're able to help us,  
17 you're saying it's not in December 2007. Would you be able to tell us what month it  
18 was in, if not December?

19 A. I don't remember, your Honour.

20 Q. Okay. I think I went about this the wrong -- the wrong way possibly.

21 MR KHAN: Your Honour, your Honour, I've got no problem if the transcript is  
22 given to refresh his memory, the one that the Prosecution took from him over several  
23 days. That can be given to him to refresh his memory.

24 MR GARCIA: Your Honour, I'd like to just ask the questions to the witness and see  
25 what he recalls right now at this particular moment.

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1 Q. Mr Witness, you've stated that you're not sure about the date of this meeting  
2 at Mr William Ruto's house. Is it the month that you're not sure of, you gave  
3 December, or is it just the day?

4 A. It was not December, your Honour.

5 Q. Now, do you remember, Mr Witness, if it was after December or before the  
6 month of December?

7 A. Before the month of December, your Honour.

8 Q. Now, do you remember if it was days, weeks or months before December?

9 A. I don't remember but -- I don't remember, your Honour.

10 Q. Just one last question on this. Do you know if it was after September 2007 or  
11 before September 2007?

12 A. Your Honour, the other meeting which we have not talked about, it was  
13 before that meeting, and that meeting when -- I think it was either September or  
14 November, and it was before that.

15 PRESIDING JUDGE EBOE-OSUJI: The other meeting you say we've not talked  
16 about, would it be the meeting at the sports club?

17 THE WITNESS: Yes, your Honour.

18 MR GARCIA: All right. So, actually, we're going to be broaching that subject,  
19 your Honour. So maybe at that point we can see if we can clear up when exactly  
20 this late -- this meeting that initially the witness thought was in December 2007  
21 actually occurred. So I'll be dealing with that at that point.

22 Q. Thank you, Mr Witness --

23 PRESIDING JUDGE EBOE-OSUJI: But while we are there, the year remains 2007,  
24 the year of the meeting; is that the case?

25 THE WITNESS: Yes, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 MR GARCIA: I'd like to go into private session for just a minute.
- 3 PRESIDING JUDGE EBOE-OSUJI: We will go into private session.
- 4 MR GARCIA: Just for a minute to introduce a new subject.
- 5 PRESIDING JUDGE EBOE-OSUJI: Briefly into private session then.
- 6 (Private session at 12.33 p.m.) \* Reclassified as Open session
- 7 THE COURT OFFICER: (Interpretation) Mr President, we are in private session.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 9 Proceed, Mr Garcia.
- 10 MR GARCIA:
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: We will go into public session then.

9 (Open session at 12.35 p.m.)

10 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Mr Garcia, please proceed.

13 MR GARCIA:

14 Q. Now, Mr Witness, I'd like to ask you some questions regarding Mr Jackson

15 Kibor. Would you be able to tell the Court what kind of work -- what line of work

16 Mr Jackson Kibor was in in 2007 prior to the post-election violence?

17 A. He was a farmer and he had also a transport -- transportation company, your

18 Honour.

19 Q. Now, you say he was a farmer. Can you give us more details as to how

20 many farms or -- how many farms he had?

21 A. I know around four or five farms, your Honour.

22 Q. You also say that he had a transportation company. What kind of -- do you

23 know if he owned any lorries or any trucks?

24 A. He was owning trailer lorries, your Honour.

25 Q. Okay. Just to be clear, you said he was owning trailer lorries, that's correct?

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- 1 A. Yes, your Honour.
- 2 Q. Do you remember approximately -- would you know approximately how  
3 many trailer lorries he was the owner of?
- 4 A. I -- I'm not sure about the numbers, your Honour.
- 5 Q. Can you tell us how many houses Mr Jackson Kibor had at the time?
- 6 A. Four houses, your Honour -- five houses, your Honour.
- 7 Q. Can you tell us where these houses were?
- 8 A. One is in Kabenés.
- 9 MR GARCIA: Just to spell that, it's K-A-B-E-N-E-S.
- 10 Q. Is that correct, Mr Witness?
- 11 A. Yes, your Honour.
- 12 Q. And the other ones?
- 13 A. Kitale.
- 14 Q. So that's K-I-T-A-L-E.
- 15 A. Kipkapus.
- 16 Q. Can you please spell that for us?
- 17 A. K-I-P-K-A-P-U-S.
- 18 Q. Do you know the other places where he had houses?
- 19 A. Eldoret town.
- 20 Q. Is that all?
- 21 A. That's -- that's all that I know, your Honour.
- 22 Q. Now, Mr Witness, what can you tell us about Mr Jackson Kibor's political  
23 implication. I'd like to start out in 1997-2002. Was he a member of any political  
24 party at that time?
- 25 A. He was a member of KANU, your Honour, and he also joined other political

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1 parties. I don't know when but for a short time.

2 MR KHAN: Your Honour, I don't want to delay matters, but I wonder with the  
3 Court's help if somebody from the computer section could help me. My Transcend  
4 seems to have frozen.

5 PRESIDING JUDGE EBOE-OSUJI: Could somebody assist Defence counsel, please?

6 MR KHAN: It needn't delay matters. I can follow.

7 PRESIDING JUDGE EBOE-OSUJI: You can follow from your colleague's screen.

8 MR GARCIA:

9 Q. Now, can you just please remind us what was his position within the KANU  
10 political party between 1997-2002?

11 A. Your Honour, I think Mr Kibor after 1997, he was not having any position in  
12 KANU, but before 1997 he was a KANU chairman, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Is the year 1997? Yes.

14 MR GARCIA:

15 Q. And do you remember who Mr Jackson Kibor was supporting in 1997, what  
16 politician?

17 A. In 1997 I don't remember, your Honour.

18 Q. Now, you mentioned that in 2002 you don't recall Mr Jackson Kibor being  
19 part of KANU. Can you tell us what -- what, if any, political party he was  
20 supporting then?

21 A. He was supporting -- in 19 -- 1992 -- you said '92 or 2002?

22 Q. I was saying in 2002.

23 A. 2002, your Honour, Mr Kibor was supporting -- it was -- it was not -- he was  
24 supporting a party of which the former MP of Chernganyi was in. I don't  
25 remember the name of the party.

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1 Q. You said the former MP of Chernganyi. Can you spell that for us, please.

2 A. C-H-E-R-N-G-A-N-Y-I.

3 Q. Just to confirm with you, it's C-H-E-R-N-G-A-N-Y-I; is that correct?

4 A. Yes, your Honour.

5 Q. Now, I'd like to bring you to the year of 2007. Prior to the post-election  
6 violence, can you tell the Court what political party Mr Jackson Kibor was  
7 supporting at that time?

8 A. He was supporting ODM, your Honour.

9 Q. Was he supporting any politician in particular in the ODM at that time in  
10 2007?

11 A. As I said before, your Honour, Mr Kibor and some other Kalenjin leaders  
12 were the first ones to go to ODM, and they were supporting Raila Odinga. And  
13 later on when Mr Ruto joined them, he was supporting Honourable William Ruto,  
14 your Honour.

15 Q. Now, I'm still asking questions in reference to 2007. Do you know if  
16 Mr Jackson Kibor would attend rallies, political rallies during that year?

17 A. Your Honour, myself I didn't attend several rallies, but Mr Jackson Kibor  
18 could attend because I could hear in the radio that he was in several rallies, your  
19 Honour.

20 Q. And can you tell us briefly what were these rallies or who were the politicians  
21 who were at these rallies that Jackson Kibor attended?

22 A. Different politicians your Honour, mainly from ODM.

23 Q. And more specifically in the Rift Valley, Mr Witness, what politician did  
24 Mr Jackson Kibor support?

25 A. I can say only because I know about Eldoret North constituency. He was

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1 supporting William Ruto for the MP, and he was supporting Raila Odinga for  
2 presidency.

3 Q. Now, in regards to Mr William Ruto, you said that he was supporting him.  
4 Can you give us some examples of how he was supporting Mr William Ruto in the  
5 Eldoret North constituency?

6 A. Your Honour, he was campaigning for him. I remember even there was a  
7 time he went to Kass FM, that was all over and he was supporting him, and even in  
8 the village you could meet him in Ziwa -- at Ziwa or anywhere talking to people  
9 about it.

10 Q. Now, if you can explain to us further, when you say that he was campaigning  
11 for Mr William Ruto, can you give us some examples of what that -- what that  
12 means? What was he doing? What type of campaigning?

13 A. He was urging people to elect William Ruto as the MP.

14 Q. And where would he do this campaigning?

15 A. In several places, even in shopping centres or political rallies, your Honour.

16 Q. You also mentioned that he -- that Mr Jackson Kibor even went on Kass FM; is  
17 that correct?

18 A. Yes, your Honour, there was a time he was speaking at Kass FM.

19 Q. Do you remember on which programme he went on Kass FM?

20 A. I remember it was an evening programme, your Honour.

21 Q. Do you recall what he would have been saying at Kass FM?

22 A. I don't remember the exact words, but it was only asking the Kalenjin  
23 community to vote as a block and vote for ODM and vote for William Ruto, your  
24 Honour.

25 Q. Now, you also -- now, Mr Witness, you've also said that Mr Jackson Kibor



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1 was even in Ziwa campaigning. Can you tell us more about that?

2 A. I don't remember, your Honour.

3 Q. Mr Witness, can you tell us since when Mr Jackson Kibor had supported  
4 Mr William Ruto?

5 A. Your Honour, according to me, Mr Kibor at first was not with Mr Ruto, and  
6 the first support that Mr Ruto got from Mr Kibor to my memory is the election of  
7 2007, but later before he was not with William Ruto, your Honour.

8 Q. You say that Mr Kibor at first was not with Mr Ruto. Can you explain to  
9 that -- can you explain that a little bit more to us. When was this that he wasn't  
10 with Mr Ruto?

11 A. Later before 2007.

12 Q. Who was he with before being with Mr Ruto?

13 A. Not before 2007, your Honour. It was before 2002, because 1997 election  
14 Mr Kibor was supporting Mr Ruben Chesire, but he started supporting Mr William  
15 Ruto in 2002 general election.

16 Q. All right. Just for the transcript, you say that 1997 election Mr Kibor -- Mr  
17 Kibor was supporting Mr Ruben Chesire. Is that Ruben, R-U-B-E-N, Chesire,  
18 C-H-E-S-I-R-E? Is that the correct spelling?

19 A. Yes, your Honour.

20 Q. And Mr Ruben Chesire was a member of what political party at the time in  
21 1997?

22 A. They were all members of KANU, your Honour, but Mr Ruto won all  
23 nominations, all KANU nominations.

24 Q. And just to be clear, you say that "He start the supporting Mr Ruto in 2002  
25 general election"; is that -- is that accurate?

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1 A. Yes, your Honour.

2 Q. Can you tell the Court what, if any, was the type of relation that Mr Kibor had  
3 with Mr William Ruto in 2007?

4 A. Your Honour, not Mr Kibor alone, but most of prominent or rich Kalenjin  
5 leaders were all in support of Mr William Ruto. And what I want to say is that it all  
6 started with the meeting which was held at Eldoret Sports Club, because on that  
7 time Mr Ruto was pronounced the only speaker and the king of the Kalenjin  
8 community.

9 Q. We will get to that, Mr Witness. I just have some additional questions  
10 regarding Mr Kibor. Can you tell us, Mr Witness, how Mr Jackson Kibor was  
11 considered in the Kalenjin community in 2007?

12 A. Your Honour, even before 2007, Mr Kibor was a very strong politician whom  
13 the Kalenjin community could hear and do what he advises them to do. He was a  
14 very strong politicians, and he had the majority of Kalenjins on his hands, your  
15 Honour.

16 Q. Did he have any specific position within the Kalenjin community?

17 A. Your Honour, he had no specific position before the meeting which was held  
18 at Eldoret Sports Club, but later he was not -- he was not -- he was given a position  
19 whereby he was a member of the Kalenjin council of elders, your Honour.

20 Q. Just so that we understand you well, Mr Witness, it's after the meeting at the  
21 Eldoret Sports Club that Mr Kibor would have been given a position within the  
22 Kalenjin council of elders; did I understand you well?

23 A. I said he had no position till that time of that meeting, your Honour.

24 Q. Thank you for that, Mr Witness. When you say, Mr Witness, in regards to  
25 Mr Kibor that he had the majority of Kalenjins on his hands, can you explain that to

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1 the Court, please.

2 A. Well, your Honour, he was someone that he can -- he could speak to the  
3 people, and the people would agree with what he's saying.

4 Q. Can you give us any examples of how he had the Kalenjin people on his  
5 hands?

6 A. Your Honour, as I said before, Mr Kibor and others were the first people to  
7 join ODM. And it was Mr Kibor who was selling policies of Mr Raila Odinga and  
8 the Kalenjin community followed his policies or accepted his policies, your Honour.

9 Q. And thank you for that, Mr Witness. We've understood that part. What I  
10 wanted to know is can you give any examples to the Court of how Mr Jackson Kibor  
11 had the majority of Kalenjins on his hands? Can you give -- do you remember any  
12 examples that would illustrate that to the Court?

13 A. Your Honour, I can remember that again during the 2007 post-election  
14 violence whereby Mr Kibor, I met him at (Redacted) talking to the people, and the people  
15 were listening at him. You saw that he's strong, and the people were adoring him,  
16 your Honour.

17 Q. Do you have any examples, Mr Witness, of before then, before the  
18 post-election violence?

19 A. I don't have, your Honour.

20 Q. And just to be clear on the matter, when you're saying the majority of the  
21 Kalenjins, we're speaking about the Kalenjin people of what -- of what region?

22 A. Mr Kibor was mainly within Uasin Gishu district, but also in other parts of  
23 Rift Valley.

24 Q. Can you tell us what other parts of the Rift Valley?

25 A. I'm saying generally where Kalenjins were, his name was there. But mainly

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1 his politics was about Uasin Gishu district, your Honour.

2 Q. Now, Mr Witness, in terms of wealth, what can you tell us about Mr Jackson  
3 Kibor?

4 A. He's among the richest Kalenjin leaders, your Honour.

5 Q. Was this the case in 2007?

6 A. I don't know for now, but he was -- he was among the richest, in 2007 he was  
7 among the richest Kalenjin leaders, your Honour.

8 Q. Can you give us the names, Mr Witness, of other Kalenjin leaders that were  
9 also wealthy or very wealthy at that time in 2007?

10 A. I can remember the late -- the late -- I can't remember the names very well.  
11 The late Poit. Nicholas Biwot.

12 Q. The first name you gave, can you spell that to us, please.

13 A. Poit, P-O-I-T.

14 Q. And the second name you gave us?

15 A. Nicholas Biwot.

16 Q. Can you spell that, the first name and last?

17 A. N-I-C-H-O-L-A-S.

18 Q. And the last name?

19 A. B-I-W-O-T.

20 Q. And who was this person?

21 A. He was -- he was a former member of parliament for Keiyo.

22 Q. We understood for Keiyo. Can you please spell that?

23 A. K-E-I-Y-O.

24 Q. Is this a person of Kalenjin ethnicity?

25 A. Yes, your Honour.

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1 MR GARCIA: Your Honour, I'm looking at the time and I would suggest that we  
2 take a break at this point. I have one last theme to deal with with this witness,  
3 which will take most probably the rest of the last session, and we will finish at that.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Witness, some questions for you. You say that in 1997 Mr Kibor was the chairman  
6 of KANU. Was that your testimony?

7 THE WITNESS: Your Honour, I said from 1997 to some other years he was the  
8 chairman of KANU, but after 1997 I remember he was not the chairman of KANU.

9 PRESIDING JUDGE EBOE-OSUJI: You mean before 1997 he was not the chairman  
10 of KANU?

11 THE WITNESS: After. After 1997.

12 PRESIDING JUDGE EBOE-OSUJI: All right. What period was he chairman of  
13 KANU?

14 THE WITNESS: I don't remember he started when, but I remember in 1997 he was  
15 still the chairman of KANU.

16 PRESIDING JUDGE EBOE-OSUJI: He was the chairman of KANU in 1997? Let's  
17 begin with that. In 1997?

18 THE WITNESS: Yes, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: All right. Was he the chairman of KANU  
20 before 1997?

21 THE WITNESS: He was, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: All right. But then you were saying that he was  
23 no longer chairman of KANU after 1997?

24 THE WITNESS: Yes, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. Do you remember when he came

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1 into that position as chairman of KANU, which he was until 1997?

2 THE WITNESS: I don't remember, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Are you in a position to estimate approximately,  
4 even if you do not remember the precise date or year that he commenced serving as  
5 chairman?

6 THE WITNESS: According to him, because I was talking to him, he had been the  
7 chairman of KANU for several years now. I can't remember from when to when,  
8 your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: All right. How old would he be, do you know?

10 THE WITNESS: 70 years and above, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will then take our --

12 MR GARCIA: Yes, indeed, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: -- luncheon break. And you may ask follow-up  
14 questions from mine.

15 MR GARCIA: Thank you, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Thanks. We will bring the blinds down and let  
17 the witness out.

18 (Closed session at 1.00 p.m.) \* Reclassified as Open session

19 THE COURT OFFICER: (Interpretation) Mr President, we are in closed session.

20 PRESIDING JUDGE EBOE-OSUJI: The witness will be escorted from the  
21 courtroom.

22 Witness, please no discussion of your testimony with anyone during lunch break.

23 Thank you.

24 (The witness stands down)

25 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

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1 THE COURT USHER: All rise.

2 (Recess taken at 1.01 p.m.)

3 (Upon resuming in open session at 2.43 p.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Garcia, please

7 continue.

8 MR GARCIA:

9 Q. Good afternoon, Mr Witness.

10 A. Good afternoon, your Honour.

11 Q. Now, Mr Witness, earlier today in your testimony, and that's at page 79 of the

12 real-time transcript, in response to one of my questions, you stated to the Court,

13 "Your Honour, not Mr Kibor alone, but most of prominent or rich Kalenjin leader

14 were all in support of Mr William Ruto. And what I want to say is that it all started

15 with the meeting which was held at Eldoret Sports Club, because on that time Mr

16 Ruto was pronounced the only speaker and the king of the Kalenjin community."

17 So my questions are in reference to that excerpt of what you stated to the Court.

18 Now, can you tell us, first of all, when this meeting would have been held at the

19 Eldoret Sports Club? Do you remember that?

20 A. I remember it was in November 2009, your Honour, if not October, November

21 2009, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: 2009?

23 THE WITNESS: 2007, your Honour.

24 MR GARCIA:

25 Q. Thank you, Mr Witness. I just want to make sure, are you sure that it's 2007

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1 now?

2 A. Yes, your Honour.

3 Q. All right. Now, can you tell us exactly who was at this meeting?

4 A. Many ODM and Kalenjin leaders, your Honour.

5 Q. Can you tell us precisely where it was held?

6 A. It was held at Eldoret Sports Club, your Honour.

7 Q. Can you explain to us just briefly what the Eldoret Sports Club is? Where is  
8 that?

9 A. It is around Eldoret Show Ground, your Honour, along Eldoret-Kapsabet  
10 Road, your Honour.

11 Q. And the sports club, it's a facility that is used for what normally?

12 A. What I've seen, many political rallies have been held there. But I, I myself  
13 have not gone there when there is no political rally. I've not established what  
14 exactly is going on inside there, your Honour.

15 Q. Do you remember how many people attended this meeting at the Eldoret  
16 Sports Club?

17 A. I watch on the TV, your Honour, and there were many people, your Honour.  
18 I didn't attend it personally, your Honour.

19 Q. I understand you watched it on TV. Do you remember on which channel  
20 you would have watched this?

21 A. It is NTV, your Honour.

22 Q. Now, just so we understand that, when you were watching this on TV, was it  
23 live, or is this something that you watched on a replay?

24 A. It was on the news, your Honour.

25 Q. It was on the news. Was it of that same day or another day?



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1 A. It was that, that evening, your Honour.

2 Q. Now, Mr Witness, just so we can get an idea, when you say there were many  
3 people there, was it in the hundreds, the thousands? Can you give us an estimate  
4 or --

5 A. Thousands of people, your Honour.

6 Q. Now, can you tell us who was present amongst the Kalenjin leaders at this  
7 meeting at Eldoret Show Ground?

8 A. Your Honour, first of all, the meeting was called, it was announced in Kass  
9 FM for several days. And the main people there are Kalenjin leaders whom  
10 were later elected as representative of the Kalenjin community or the council of  
11 elders of Kalenjin community. And I recall the presence of Mr John Sei. I recall  
12 Sumbeiywo.

13 Q. One second, Mr Witness. We just need to go through those. Now, the first  
14 one you said, "and I recall the presence of Mr John Sei." Can you please spell that  
15 out for us?

16 A. J-O-H-N, Sei is S-E-I.

17 Q. And who was this person?

18 A. He was a former army officer, your Honour.

19 Q. Of what ethnicity?

20 A. Kalenjin, your Honour.

21 MR GARCIA: Line 19 is "He was a former army officer" for the record for the  
22 transcript.

23 PRESIDING JUDGE EBOE-OSUJI: Is it first name John?

24 MR GARCIA: The first name is John, yes.

25 PRESIDING JUDGE EBOE-OSUJI: I said "John," not "Jonah."

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1 MR GARCIA:

2 Q. Mr Witness, it's John, J-O-H-N; is that correct?

3 A. Yes, your Honour.

4 Q. Now, who else was there amongst the Kalenjin leaders, Mr Witness?

5 A. Retired Major Sumbeiywo, your Honour.

6 MR GARCIA: Now, simply for the record and for the transcript, it's Major  
7 Sumbeiywo, and that's number 17 on the PIS document S-U-M-B-E-I-Y-W-O.

8 Q. That's correct, Mr Witness?

9 A. Yes, your Honour.

10 Q. And just for the record you said he was a retired major; is that correct?

11 A. Yes, your Honour.

12 Q. And can you tell us what is the ethnicity of this person?

13 A. A Kalenjin, your Honour.

14 Q. Can you tell us what other Kalenjin leaders were present at this meeting at  
15 Eldoret Sports Club?

16 A. Also Retired Major General Augustin Cheruiyot, your Honour.

17 Q. Now, for the record, Mr Witness, you've mentioned that it was Retired Major  
18 General Augustin Cheruiyot. And that's number 15 on the PIS, is that correct?

19 A. Yes, your Honour.

20 Q. And the spelling is correct in the provisional transcript.

21 MR KHAN: Mr President, I'm sorry.

22 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Khan?

23 MR KHAN: Your Honour, I wonder if this was broadcast on television in Kenya  
24 why is it in private session? Are we in private, or are we --

25 PRESIDING JUDGE EBOE-OSUJI: We are in public.

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1 MR KHAN: We are in public. I'm grateful.

2 PRESIDING JUDGE EBOE-OSUJI: One point, you mentioned number 15 on the

3 PIS.

4 MR GARCIA: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Would he then be major, or major general?

6 MR GARCIA: My understanding of the witness's testimony today is that he's Major

7 General Augustin Cheruiyot.

8 Q. Mr Witness, is that correct? Is that accurate?

9 A. Retired Major General Augustin Cheruiyot, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: All right. So the correction needs to reflect in

11 the PIS then. The PIS said "Major" -- says "Major." I just wanted to clarify that.

12 MR GARCIA: I'm grateful, your Honour.

13 Q. Now, Mr Witness, were there any other Kalenjin leaders who were present at

14 this meeting at Eldoret Sports Club?

15 A. Honourable William Ruto was present also, your Honour.

16 Q. Do you recall if there were any other Kalenjin leaders who were present?

17 A. I recall also Mr Jackson Kibor was present.

18 Q. Now, Mr Witness, I'd like to bring you back to what you stated initially. You

19 said that "Mr Ruto was pronounced the only speaker, and the king of the Kalenjin

20 community."

21 Now, can you explain to that, explain to us a little bit more on that point? When

22 you say "Mr Ruto was pronounced the only speaker," what did you understand that

23 to mean?

24 A. Your Honour, they said not speaker, but spokesman of the Kalenjin

25 community. And after the meeting, what I got even that day or days later is that

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1 Honourable Ruto has been named the spokesman of the Kalenjin community, and  
2 whatever comes from the Kalenjin community should be William Ruto speaking out  
3 of it or no any other person can speak of on behalf of the Kalenjin community on  
4 behalf of William Ruto.

5 I also remember Joshua Sang saying that, if anything, if anyone speaks out without  
6 the consent of Honourable William Ruto, it will not count as if, as the Kalenjin  
7 community. But whatever William Ruto is going to say, it's as if the Kalenjin  
8 community has said, your Honour.

9 Q. Now, Mr Witness, I'd like to just go over that with you so that it can -- just to  
10 clarify some points. You said "I also remember Joshua Sang saying that if anything,  
11 if anyone speaks out without the consent of Honourable William Ruto," and did you  
12 say "it will not count as if the Kalenjin community," is that what you stated?

13 A. I said it will not be counted as he was -- the person who spoke without the  
14 consent of Ruto was representing the Kalenjin community.

15 Q. Thank you. And when you're speaking about the Kalenjin community, is  
16 it -- can you just be a little more precise? We're speaking about the Kalenjins where,  
17 in what area?

18 A. They were speaking about the Kalenjins all over Kenya, your Honour.

19 Q. Now, you said that, you clarified for us that Mr Ruto was a spokesman of the  
20 Kalenjin community. Can you explain to us and elaborate what does that mean?  
21 What does it imply when someone is a spokesman of the Kalenjin community?  
22 Explain to us in detail, and take your time.

23 A. Your Honour, I want to say first that it came only during 2007, because I  
24 remember some days back, even Retired President Daniel Moi was a Kalenjin, and  
25 he was the president, but I never heard him known as the spokesman of the Kalenjin

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1 community. Even former MPs like the late Saina (indiscernible) from Eldoret  
2 North, at no time I heard them being named the spokesman of a certain community  
3 like Kalenjin.

4 But on that day it was different, because Honourable Ruto was now not the MP for  
5 Eldoret North constituency, but he was given another post as the spokesman of the  
6 entire Kalenjin community, your Honour.

7 Q. Now, Mr Witness, just to, just to clarify, you said "Even from MPs like the  
8 late" -- and we don't have the name. Can you give us the full name by spelling it,  
9 please?

10 A. I said the late William Saina, William is W double L-I-A-M. Saina is  
11 S-A-I-N-A, your Honour.

12 Q. Now, Mr Witness, if you could just explain to us, to the Court, what does it  
13 mean or what did it mean when Mr William Ruto was named spokesman of the  
14 Kalenjin community? In practical terms, what does that mean?

15 A. Your Honour, it was clear to everyone that William Ruto is the only last  
16 person who can say anything concerning the Kalenjin community. But other people  
17 were barred from doing anything or saying anything on behalf of the community  
18 without the consent of Mr William Ruto, your Honour.

19 Q. Now, line 13, 92, is "Other people were barred from doing anything or saying  
20 anything on behalf of the community," is that correct?

21 A. Yes, your Honour.

22 Q. You also said that during this meeting Mr Ruto was pronounced the king of  
23 the Kalenjin community. Now, what does that mean in practical terms, being the  
24 king of the Kalenjin community? Can you explain that to the Court? Take your  
25 time, if necessary.

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1 A. Your Honour, in Kalenjin culture, there is a cloth whereby kings were clothed  
2 with such clothes in respect of their kingship. On that day Honourable Ruto was  
3 clothed with that cloth and was pronounced the king of the Kalenjin community.  
4 And according to me, your Honour, or other people, kingship in Kalenjin  
5 community was only found on people known as Orkoik, and it was not shared  
6 among members of parliament or politicians. It was only for one family. And it  
7 was only when the father dies is when the child takes over or the first son takes over.  
8 But in that day, William Ruto was crowned that dress, your Honour.

9 Q. Now, Mr Witness, you've mentioned that the kingship in Kalenjin community  
10 was only, only people known as -- and we don't have the word. Can you spell out  
11 the word for us, please?

12 A. Orkoik, O-R-K-O-I-K, your Honour.

13 Q. So we should understand that the kingship in Kalenjin community was only  
14 for people known as Orkoik; is that correct?

15 A. Yes, your Honour.

16 Q. Can you tell us what Orkoik means?

17 A. Your Honour, they were people with gifted mind from God, people who can  
18 even stop rain or do other things. That's old men cannot -- all human beings cannot  
19 do, your Honour. For example, Koitalel Samoei was the last king of the Kalenjin  
20 community.

21 Q. Now, can you please just say that name of the last person who was the last  
22 king of the Kalenjin community? What is the full name of that person?

23 A. Koitalel Samoei, K-O-I-T-A-L-E-L.

24 Q. Now, Mr Witness, can you, can you help us understand what are the  
25 functions of a king of the Kalenjin community?

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1 A. I read that in history, your Honour. The functions of a Kalenjin community  
2 was to lead the Kalenjin community in different ways. Maybe there is famine.  
3 They will ask the community to get ready, because maybe next year or two years to  
4 come there will be no rain, so keep your food.

5 And also when there were invaders who were about to invade the community, they  
6 will let them be ready, because invaders will come and invade you; or even when  
7 they are going to war, you can warn them not -- don't go to war, or if you go to war,  
8 you will be killed, or you will be successful, your Honour.

9 Q. Just so we understand clearly what you are saying, you say "the functions of a  
10 Kalenjin community was to lead." Do you mean functions of a Kalenjin king was to  
11 lead or community?

12 A. I meant the king, your Honour.

13 Q. So that's at line 9, page 94.

14 Now, when Mr William Ruto was pronounced king, what did that mean in terms  
15 of -- what was going to be -- what in your understanding, what were his functions  
16 going to be?

17 A. Your Honour, according to me, I didn't understand anything. But I heard  
18 some older men asking themselves if the kingship has returned again, and they were  
19 asking themselves if Honourable Ruto was among the Koitalel Samoei's family, your  
20 Honour.

21 MR GARCIA: So if -- and just to clarify for the transcript, "If Honourable Ruto was  
22 among the Koitalel Samoei's family."

23 Q. You've mentioned that name before; is that correct?

24 A. Yes, your Honour.

25 Q. Now, Mr Witness, you mentioned that Mr Sang had spoken about this. Can

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1 you tell us a little bit more about that? What did he say?

2 A. Your Honour, it was after the meeting is when I heard not even once Mr Sang  
3 telling the people that right now the Kalenjins are not like before. Now we have  
4 our king, and we have someone who was to direct us. And no one can speak on  
5 behalf of the community again. We are now alive, and no one can put us down  
6 again.

7 Q. And can you tell us where this was said by Mr Sang?

8 A. It was said at Kass FM, your Honor.

9 Q. On what programme?

10 A. It's Lene Emet programme, your Honour.

11 Q. Now, you say that this was after the meeting. Do you remember how much  
12 time after the meeting Mr Sang would have said these things on Lene Emet?

13 A. I don't remember, but it was just maybe the next day. It started from the next  
14 day, your Honour, after the meeting.

15 Q. Now, when Mr Sang was saying "Now we have our king and we have  
16 someone who was to direct us," who was he referring to?

17 A. He was referring to Honourable William Ruto, your Honour.

18 Q. Now, Mr Witness, I'd like to show you some extracts of a video and I'd like  
19 you to pay close attention and afterwards I'll have some questions for you.

20 PRESIDING JUDGE EBOE-OSUJI: Before you do that, counsel, are you going to  
21 ask, are you going to explore the questions he said that he heard old men asking at  
22 the time, first of all, whether kingship had returned, what does that mean, and  
23 second whether Mr Ruto was from the Koitalel Samoei family? Do you intend to  
24 explore that area?

25 MR GARCIA: I can ask those questions, your Honour.



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1 Q. Now, Mr Witness, just a couple of questions, if you will. You mentioned  
2 during your testimony that older men were talking and were questioning  
3 themselves as to whether the kingship had returned. Can you explain that a bit  
4 further for the Court?

5 A. Your Honour, I can say that older men were against that function which  
6 went -- took place at Eldoret Sports Club, because according to them, it was not  
7 anyone whom to be pronounced or given a kingship. There were culture which  
8 was followed, and they were saying that what took place was not right. And they  
9 were asking them self, they were asking if William Ruto was among the sons of or  
10 the family of Koitalel Samoei, because the only person who could have been  
11 crowned to be a king of the Kalenjin community is someone if kingship was back,  
12 because if kingship was back, it was back to the same people, the Koitalel Samoei's  
13 family, your Honour.

14 Q. And to your knowledge, does Mr William Ruto come from that lineage of that  
15 family, of Koitalel Samoei family?

16 A. No, your Honour.

17 Q. Now, to your knowledge, Mr Witness, your understanding, has there been  
18 any other king prior to Mr William Ruto pronounced as king in 2007 as you've  
19 mentioned, has there been any other king prior to him mentioned in the Kalenjin  
20 community?

21 A. No, your Honour. As I said before, the kingship of the Kalenjin community  
22 and that it's Mr Koitalel Samoei, your Honour.

23 MR KHAN: Your Honour, can we have a date for that? The witness has been  
24 asked specific questions regarding history. Can we have a date of when that  
25 finished?

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1 PRESIDING JUDGE EBOE-OSUJI: I'm sure the Prosecutor would have asked that  
2 question, Mr Khan.

3 MR GARCIA:

4 Q. Now, Mr Witness, if you can help us in this regard, you say the kingship of  
5 Koitalel Samoei, can you tell us when this would have happened, when he would  
6 have been king of the Kalenjin community?

7 A. Your Honour, according to history, it was during the colonial, colonial rule,  
8 and he was killed, your Honour. I don't remember the year, your Honour.

9 Q. Thank you for that clarification, Mr Witness.

10 Now, you said that, I'm just going to go back on this topic, you say that Mr William  
11 Ruto was pronounced spokesperson. Do you recall if there had been any other  
12 spokesman prior, any other spokesmen of the Kalenjin community prior to Mr  
13 William Ruto?

14 A. No, your Honour. Even in Eldoret North constituency, William Ruto has  
15 never or any other politician has never ever been pronounced a spokesman, your  
16 Honour.

17 Q. And can you just give us more details on the functions of a spokesperson of  
18 the Kalenjin community?

19 A. Your Honour, only what I heard is to speak on behalf of the community, your  
20 Honour.

21 MR GARCIA: Thank you, Mr Witness. I'd now like to proceed to show, show  
22 you, Mr Witness, some extracts of a video. And I'd ask you to please look at them  
23 carefully, because I'll be asking you some questions. Okay. So we're just going to  
24 start, Mr Witness. We'll show you an extract, and I'll be asking you questions  
25 afterwards. Just for -- just for the court record, this is KEN-OTP-0033-0102 that we'll

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1 be showing the witness. We'll not be showing the entirety of the video. It's about  
2 an hour and 40 some odd minutes. We'll be showing just some certain extracts.  
3 Now, there is a transcript and a translation which come with this video, and they're  
4 in the bundle that was given to the Court and those are tabs 20 and tab 21. Tab 20 is  
5 the transcript, and tab 21 is the translation. What I will be doing is showing extracts  
6 to the witness, asking him certain questions, and when it regards speeches or things  
7 that are said and translated, I will ask the witness to look at the extract, listen to what  
8 is being said, it's going to be only of short duration, to read the translation, and what  
9 I'll do is I'll give the witness a paper copy of it, see if it corresponds to what he's  
10 heard, and then I'll ask him specific questions in regard to those specific extracts, the  
11 same model, the same way we worked with other witnesses when showing a video.  
12 I'd just solicit the help of the court officer so I can give a paper copy of the transcript  
13 and the translation to the witness.  
14 So for the record, the transcript which is given to the witness is 0069-0127 and the  
15 translation is 0085-1200.

16 Q. Now, Mr Witness, you don't need to look at those for the moment. I'll  
17 instruct you on when you need to look at those. For the moment I'd just ask you to  
18 look at the video.

19 ((Viewing of the video excerpt KEN-OTP-0033-0102))

20 Q. Now, I've stopped at time stamp 43, 00.43 seconds. Mr Witness, do you see  
21 the image before you on the screen?

22 A. Yes, your Honour.

23 Q. Can you tell us who appears in that image?

24 A. Honourable William Ruto, your Honour.

25 MR GARCIA: Thank you. We'll just continue playing the video for the moment.

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1 (Viewing of the video excerpt KEN-OTP-0033-0102)

2 MR GARCIA: I've stopped it at time stamp 48.

3 Q. Mr Witness, do you recognise any of the two individuals that are on the screen  
4 right now?

5 A. I know one of them, but I don't recall his name, your Honour.

6 Q. And can you tell us which one of these two individuals do you recognise, but  
7 you don't remember the name?

8 A. On my left hand, your Honour.

9 Q. Can you describe to us how he's dressed?

10 A. The one with, on my right and the one with the coat, your Honour.

11 Q. Okay. So for the moment you can't remember his name. If you do  
12 remember his name further on, please indicate it to us, and we'll come back to it.  
13 I'll play -- I'll continue playing the video for you.

14 (Viewing of the video excerpt KEN-OTP-0033-0102)

15 Q. I've stopped the video at time stamp 00.57. Mr Witness, do you recognise  
16 anybody on the screen at this point?

17 A. Your Honour, I would like to say the name of the first one is Musa Sirma,  
18 your Honour. And the one appearing now is Franklin Bett, your Honour.

19 Q. Now, the first one is the one with the jacket. You said his name is Musa  
20 Sirma. Can you please spell that for us?

21 A. M-U-S-A, Sirma is S-I-R-M-A.

22 Q. Now, Mr Witness, the gentleman with the white cap on, can you tell us who  
23 that is?

24 A. Franklin Bett, your Honour.

25 Q. Now, the first name already appears on the transcript, Franklin, and Bett is

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1 B-E-T-T, is that correct?

2 A. Yes, your Honour.

3 Q. Can you tell us who Mr Franklin Bett is?

4 A. He is a famous politician, a famous Kalenjin politician from South Rift, your  
5 Honour.

6 Q. And at the time when this video was taken, do you remember what  
7 constituency or what region he was representing, Mr Franklin Bett?

8 A. He was coming from Kericho district, your Honour.

9 Q. Is this a person of Kalenjin ethnicity?

10 A. Yes, your Honour. He's a former MP.

11 Q. Now, at 102, line 2, he was coming from Kericho district, K-E-R-I-C-H-O, is  
12 that correct, Mr Witness?

13 A. Yes, your Honour.

14 Q. We'll now continuing playing the video for you.

15 (Viewing of the video excerpt KEN-OTP-0033-0102)

16 PRESIDING JUDGE EBOE-OSUJI: Can we go into private session for just one  
17 quick second?

18 (Private session at 3.20 p.m.) \* Reclassified as Open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. Prosecutor, does the witness  
21 appear in this video?

22 MR GARCIA: No, he doesn't.

23 PRESIDING JUDGE EBOE-OSUJI: He does not? All right.

24 MR GARCIA: No, he doesn't.

25 PRESIDING JUDGE EBOE-OSUJI: Okay. Witness, have you looked at this video

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1 yourself before?

2 THE WITNESS: I was shown shortly.

3 PRESIDING JUDGE EBOE-OSUJI: And you do not appear in it?

4 THE WITNESS: I was not present there, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Okay, let's go back into public  
6 session then. Thank you.

7 (Open session at 3.21 p.m.)

8 THE COURT OFFICER: (Interpretation) Mr President, we're in public session.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 Please continue with it.

11 (Viewing of the video excerpt KEN-OTP-0033-0102)

12 MR GARCIA:

13 Q. I have stopped the video at six minutes and one. Mr Witness, can you tell us  
14 if you recognise the background or where the car is circulating in the video?

15 A. I didn't understand your question, your Honour.

16 Q. Now, Mr Witness, can you tell us by looking at the video at this point in time  
17 where -- what road it's driving by or where the car is?

18 A. It is along Eldoret-Kapsabet Road, your Honour.

19 Q. Thank you, Mr Witness. We'll just continuing showing you different  
20 extracts.

21 (Viewing of the video excerpt KEN-OTP-0033-0102)

22 Q. Now, Mr Witness, can you tell us by looking at the screen right now, the  
23 image that, the shot that you're seeing, where that part of the video is taken?

24 A. It's the roundabout from, it's the High Court to Kapsabet roundabout on the  
25 way to Kapsabet Road, your Honour, from the Eldoret High Court to the

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1 roundabout going to Kapsabet at a place known as Sosiana.

2 Q. Just to be clear on the matter, is that in Eldoret town?

3 A. It is in Eldoret town, your Honour.

4 Q. Thank you for that, Mr Witness.

5 (Viewing of the video excerpt KEN-OTP-0033-0102)

6 Q. The video has been stopped at time stamp 15.15. Mr Witness, can you tell us  
7 what is depicted in the scene, the shot that you have before you on the screen?

8 A. It's Eldoret Sports Club, your Honour.

9 Q. Thank you, Mr Witness. I'll play, I'm going to play for you a specific extract,  
10 and I'd like you to listen to what is being said. Afterwards I'm going to direct you  
11 to the documents, one of the documents that you have before you, which is a  
12 translation, and I want you to read that and tell me if it corresponds to what is being  
13 said.

14 So I'd like you to just pay close attention, and if you need to listen to it once again,  
15 we can do that.

16 (Viewing of the video excerpt KEN-OTP-0033-0102)

17 Q. Now, Mr Witness, you see an image of a person before you on the screen.  
18 Can you tell us, can you identify that person for us?

19 A. Lina Chebii Kilimo, your Honour.

20 Q. Can you please spell that? I understood that the full name, the first name is  
21 Lina. What is the second name?

22 A. Chebii is C-H-E-B-I-I. Kilimo is K-I-L-I-M-O.

23 Q. Did you say Kilimo, K-I-L-I-M-O?

24 A. Yes, your Honour.

25 MR GARCIA: Okay, So just a correction to line 25, page 104.

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1 Q. Can you tell us at that point in time what Mrs Lina Chebii Kilimo's position or  
2 function was?

3 A. She was an MP from Marakwet, your Honour.

4 Q. Can you tell us what ethnicity she is?

5 A. A Kalenjin, your Honour.

6 MR GARCIA: And just for line 6, she was an MP from Marakwet,

7 M-A-R-A-K-W-E-T, for the record.

8 Q. Now, Mr Witness, I'm going to have you just listen to an extract. I want you  
9 to listen and listen close, And after that I'm going to have you read a part of one of  
10 the documents there and I'll ask you to see if the translation corresponds to what  
11 was said. If you need to hear it once again, just tell me. So we'll play it right now.

12 (Viewing of the video excerpt KEN-OTP-0033-0102)

13 Q. Did you have a chance to listen to pay close attention, or do you want to listen  
14 to it one more time?

15 A. I listened to it, your Honour.

16 Q. Now, Mr Witness, before you, you have two documents. One of them is a  
17 document, and the number on the bottom is 0085-1200. Do you see that document?

18 A. Yes, your Honour.

19 Q. I'd like you to take that to page 1213. The page is always at the bottom.

20 Now, Mr Witness, I'd like you to read from lines --

21 MR KHAN: Your Honour, could I just suggest something before the witness is  
22 taken to that? Your Honour, of course I'm not precisely clear yet what my learned  
23 friend is seeking to do. What I would suggest is the proper way of doing it or the  
24 better way of doing it is the witness can be asked questions about whatever has been  
25 said, after that, after his own interpretation has been given to the Court from the



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1 Kalenjin, of course, there is no problem with him being shown the English, but that  
2 may be a useful way of proceeding. Your Honour, it's always good to get things  
3 from the horse's mouth, so to speak. So, your Honour, that's my suggestion in any  
4 event.

5 MR GARCIA: Your Honour, if I'm not --

6 PRESIDING JUDGE EBOE-OSUJI: I'm not -- we're not sure that that's what the  
7 Prosecution wants to do. So what do you want to do?

8 MR GARCIA: Your Honour, what I'm doing is merely following what we did for a  
9 prior witness where Defence counsel actually suggested it, it wasn't Mr Khan at the  
10 time, but I think it was Mr Hooper who suggested that we read out or actually we  
11 play a portion of the video, the extract to the witness, make him listen to it,  
12 afterwards let him look at the translation, see if it corresponds, and if there are any  
13 differences, for him to point them out, and if not, well, the matter lays there, because  
14 if not, I fear that I'll not have the time to complete this exercise.

15 MR KHAN: Your Honour, I'm content with that. I withdraw the suggestion and  
16 I'm grateful to my friend.

17 PRESIDING JUDGE EBOE-OSUJI: Indeed, I thought that's what the Prosecutor was  
18 trying to do. So let's do that.

19 MR GARCIA:

20 Q. Now, Mr Witness, I'd like you to look at page 1213. And you'll see that on  
21 the left-hand side there are numbers, line numbers. I'd like you to read from line  
22 388 to line 403. I want you to read that to yourself and tell me if it corresponds or  
23 not to what you've just listened to in the extract.

24 A. Number 38 to number 43?

25 Q. 388, 388, you'll see on the left-hand side, you'll see number -- do you see

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1 number 388?

2 A. I see from number 34 to number 66, your Honour.

3 MR GARCIA: Can I just have the help of the court officer to just maybe direct the  
4 witness to the right page so we can go through this more efficiently? Just 1213 is  
5 the page, court officer.

6 PRESIDING JUDGE EBOE-OSUJI: Does he know, does he have the page he's  
7 supposed to be comparing it to? 1213 is English version, isn't it?

8 MR GARCIA: That's it. The only procedure, the only exercise is for the witness,  
9 he's listened to it already in its original language, and it's to determine whether the  
10 translation that he has before him is exact, which is the same procedure we've  
11 followed in the past.

12 Q. Now, Mr Witness, I see you've left the document. Did you have a chance to  
13 read line 388 to 403?

14 A. Yes, I did, your Honour.

15 Q. Can you tell us if what you read, the translation, corresponds to what you  
16 heard in the video extract?

17 A. It is the same, your Honour.

18 MR GARCIA: Now, just for the record, the extract that was shown to the witness is  
19 from time stamp 23.22 to 24. The translation that was shown to the witness is at  
20 document 0085-1200 at page 1213, lines 388 to 403. And the transcription that  
21 matches for that is at 0069-0127, page 0140, lines 386 to 399. Just in case any matter  
22 arises afterwards, and there is cross-examination, Defence counsel can refer to those,  
23 those references.

24 Q. Now, Mr Witness --

25 PRESIDING JUDGE EBOE-OSUJI: The last reference you mentioned was to the

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1 Kalenjin transcript, wasn't it?

2 MR GARCIA: That's correct, yes.

3 PRESIDING JUDGE EBOE-OSUJI: But the witness has not checked that, has he, to  
4 verify?

5 MR GARCIA: He has not checked it. The exercise that we did last time was a little  
6 bit -- actually we just went through the translation. If there were any issues, then  
7 we'd go to the transcript and we'd see exactly where there might have been a  
8 mistake or a problem.

9 PRESIDING JUDGE EBOE-OSUJI: I understand what you say, but I just wanted to  
10 note for the record just for future purposes so that there is no misunderstanding that  
11 the witness had looked at a Kalenjin transcript.

12 MR GARCIA: I can state that for the record.

13 PRESIDING JUDGE EBOE-OSUJI: Yes.

14 MR GARCIA: The sole reason for why I'm mentioning the equivalents in the  
15 original transcript is for ease of reference afterwards if we want to cross-examine or  
16 come back on it.

17 PRESIDING JUDGE EBOE-OSUJI: Understood.

18 MR GARCIA:

19 Q. Now, Mr Witness, I just want to ask you some questions on what was said by  
20 Lina Chebii. It is stated in the translation that she said "The elders have come to  
21 endorse a child they had blessed in Ravine." Can you explain to us what that refers  
22 to or what, if you can, what Ms Lina was referring to by saying that?

23 A. He was referring to Honourable William Ruto, your Honour.

24 Q. And the reference to "Ravine," can you explain that to us, if you can?

25 A. He was saying that the journey of endorsing Honourable William Ruto was

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1 placed as from Ravine, your Honour, Eldama Ravine.

2 MR GARCIA: Just for the record, it's Eldama Ravine in line 5, E-L-D-A-M-E (sic),

3 Ravine, R-A-V-I-N-E.

4 Q. Is that correct, Mr Witness?

5 A. Yes, your Honour.

6 Q. Now, can you explain to the Court what had happened in Eldama Ravine?

7 A. I'm not aware, your Honour.

8 Q. Now, when Ms Lina speaks about Arap Ruto, who was she speaking about?

9 A. She was speaking about Honourable William Ruto, your Honour.

10 Q. Now, in the next line you see that Ms Lina says that "they are proud to see a  
11 bull in the compound." Can you explain to us why she used the term "bull." What  
12 does that mean?

13 A. Your Honour, he was speaking in parables. He was not speaking directly,  
14 your Honour.

15 Q. Who was Ms Lina referring to when she's speaking about "a bull" or "the  
16 bull"?

17 A. He was referring to Honourable William Ruto, your Honour.

18 Q. And you say she was speaking in parable. Can you explain to us the  
19 significance to that, "a bull in the compound"?

20 A. He was referring that someone had cows but had no bull. Now, he was  
21 referring the Kalenjin community that they had no king, but right now they have got  
22 a king.

23 MR GARCIA: Thank you, Mr Witness. I'd like to show you now another extract,  
24 and I'd like to go through --

25 MR KHAN: Your Honour, before we move on, perhaps it's good now. The

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1 spelling, the witness of course can answer, but for the transcript and accuracy, the  
2 place I'm told is Eldama Ravine, E-L-D-A-M-A, and then next word  
3 W-O-W-I-N-E -- R-A-V-I-N-E, Ravine, Eldama Ravine. That can be checked with  
4 the witness.

5 MR GARCIA:

6 Q. Mr Witness, just so we're clear on the spelling, is it Eldama with E-L-D-A-M-A  
7 or Eldame with E-L-D-A-M-E? Which one of the two is it?

8 A. E-L-D-A-M-A.

9 MR GARCIA: I'm grateful to Defence counsel for bringing that correction to the  
10 record.

11 Q. One last question, Mr Witness. I read here in the translation that Ms Lina  
12 says "May our belts protect you when you go to war and we hope that you win."  
13 Can you explain to that, can you explain to us what was your understanding of that?

14 A. Your Honour, in the culture of Kalenjin community, when men go to war,  
15 women can put on their belts. And I didn't know which were Ms Lina Chemii  
16 Kilimo was meaning that time, your Honour.

17 MR GARCIA: Thank you for those clarifications, Mr Witness. I'd like to just  
18 show you another extract, and we'll go through the same exercise, if you will. Now,  
19 for the record the –

20 (Viewing of the video excerpt KEN-OTP-0033-0102)

21 MR GARCIA:

22 Q. Now, Mr Witness, can you tell us who appears there on the image before on  
23 your screen? Do you recognise that person?

24 A. I recognise him. He's an MP from Maasai land, but I don't remember his  
25 name, your Honour.

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1 Q. So it's MP from Maasai land, is that correct?

2 A. Yes, your Honour.

3 Q. Can you spell it for us, please?

4 A. M-A, M double A-S-A-I.

5 Q. And do you remember of what ethnicity this person was, is?

6 A. He is a Maasai, your Honour.

7 MR GARCIA: Now, Mr Witness, I'm going to play for you and just for the record  
8 an extract, and it's going to be time stamped 33.24 to 34.26. And I'd like you to once  
9 again play close attention to what is being stated, and afterwards I'll have some  
10 questions for you.

11 (Viewing of the video excerpt KEN-OTP-0033-0102)

12 MR GARCIA:

13 Q. Now, Mr Witness, I'd like for you one more time to look at the document, the  
14 same document that you were looking at before with the translation. I direct your  
15 attention to page 1218 at the bottom. Now, I'd like you to read lines 565 to 578, the  
16 left hand. Do you see those lines?

17 A. Yes, your Honour.

18 Q. Can you just, I'd ask you to just please read those to yourself, and when you  
19 are finished, I'll ask you one question.

20 Now, Mr Witness, I see that you finished reading the lines that I've asked you to.  
21 Can you tell us whether the translation that you've read corresponds to what you've  
22 heard in the video?

23 A. They're the same, your Honour.

24 MR GARCIA: Thank you, Mr Witness. Now I'd like to go on to another extract,  
25 and we'll be repeating the same exercise. The extract is time stamp 35.23 to 37.19.

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1 (Viewing of the video excerpt KEN-OTP-0033-0102)

2 MR GARCIA:

3 Q. Now, Mr Witness, do you recognise the person who was speaking in that  
4 extract?

5 A. I don't recognise him, your Honour.

6 Q. Now I'd like you to read, I'd like you to go to page 1219, 1219, and read, and  
7 read lines 95, line -- sorry -- lines 590 to 620 very carefully and see if they correspond  
8 with what you've just heard in the video.

9 Now, Mr Witness, you've had a chance to read the translation. Can you tell us if  
10 whether what you've read in the translation corresponds to what you've heard in the  
11 video?

12 A. They're the same, your Honour.

13 Q. I just have a couple of questions, Mr Witness. I can see here in the translation  
14 that the person says that "Mr Ruto has been chosen and will be really enthroned,  
15 because it is very important." Can you explain to us what he meant by that?

16 A. Your Honour, even I heard him talking some other things which I didn't  
17 understand by him saying "mursik," by him saying "enthroned." I didn't  
18 understand him at all, your Honour.

19 I'm saying that, your Honour, because the Kalenjins believe that they are the only  
20 ones who are making good mursik, not any other tribe, your Honour.

21 Q. Can you please spell out that word? You've said it twice, and it's not -- I've  
22 not understood it. Is it a Kalenjin word?

23 A. "Mursik" is a Kalenjin word, your Honour.

24 Q. How do you spell it?

25 A. M-U-R-S-I-K, your Honour.

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1 Q. And what does it mean?

2 A. It means sour milk, your Honour.

3 Q. Sour milk, is that correct?

4 A. Yes, your Honour.

5 Q. And just so I understand, you're not able to tell us why he was referring to the  
6 sour milk?

7 A. He was --

8 PRESIDING JUDGE EBOE-OSUJI: Sorry. Is it "sour milk" or "soy milk"?

9 THE WITNESS: "Sour milk," your Honour, "Sour milk."

10 MR GARCIA:

11 Q. Is it S-O-Y "soy milk" or "sour"?

12 A. No. S-O-U, sour milk, S-O-U-R.

13 Q. Thank you for that, Mr Witness. Would you be able to explain to us why he  
14 was using this reference to sour milk?

15 A. I didn't get his point, because he could have even say that Ruto will give us  
16 sour milk so that we can drink together. But he was saying that we will give  
17 Honour William Ruto sour milk. But I didn't understand him at all, your Honour.

18 Q. Thank you, Mr Witness. So just for the record, it's just one last question now.  
19 What language was he speaking in exactly, this person?

20 A. He was speaking in Kiswahili language, your Honour.

21 Q. Now, I just want to come back on the other people that you've heard.

22 Mrs Lina, do you remember what language she was speaking in?

23 A. She was speaking in Kalenjin language, your Honour.

24 MR GARCIA: Thank you. Now I'd like to play one last extract for you, Mr  
25 Witness, for you to comment on.



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1 (Viewing of the video excerpt KEN-OTP-0033-0102)

2 MR GARCIA:

3 Q. I've stopped the video at time stamp 133.06 seconds. Now, Mr Witness, I'd  
4 like for you, first of all, if you can describe exactly what Mr William Ruto is wearing  
5 while he's speaking, starting with what he has on his, what he's wearing on his  
6 head?

7 A. In Kalenjin language, they call it kutwet, your Honour.

8 Q. Can you please spell it for us?

9 A. K-U-T-W-E-T.

10 Q. Now, is there any significance to wearing a kutwet?

11 A. Wearing a kutwet or the other dress, your Honour, which he's also wearing  
12 means that he had been entrusted to lead or to be a king, your Honour?

13 Q. A king of whom or what?

14 A. I'm speaking of the Kalenjin community and the Kalenjin culture, your  
15 Honour.

16 Q. Now, you've referred to it as well, what is he wearing on him, on his person,  
17 on his body?

18 A. Known as samput, your Honour.

19 MR GARCIA: My colleague has just stopped the video at 129.15.

20 Q. Now, Mr Witness, you've said it was samput. Is that Kalenjin as well, the  
21 name?

22 A. Yes, your Honour.

23 Q. Can you please spell it for us?

24 A. S-A-M-P-U-T, your Honour.

25 Q. Now, can you tell us what if any is the significance of wearing a samput in the

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1 Kalenjin culture community?

2 A. It means the kingship is in your hands, your Honour.

3 MR GARCIA: Your Honour, I see the time. I haven't had the opportunity, and this  
4 was the last extract I wanted to show the witness, to just verify whether the  
5 translation was correct, and I just had a couple of extra questions on things that the  
6 witness has stated. I would need at a maximum 15 minutes of additional time  
7 tomorrow morning to cover these points, with the Court's leave obviously. I said  
8 three days.

9 I know that decision and debating this morning on one point removes some of the  
10 time that I had for today, but I estimated three days approximately. I'm asking for  
11 15 minutes.

12 PRESIDING JUDGE EBOE-OSUJI: That's not a fair point. If you need 15 minutes,  
13 ask for it. Do not attribute that to anything else.

14 Witness, the question is from me, kutwet and samput, in the video where you have  
15 the gentleman whom you said was MP from Maasai land, in the transcript you  
16 spoke about, at least as we see it on the transcript, about Mr Ruto having now  
17 become an elder or that they in the Maasai land came in great numbers to witness  
18 the event of him becoming an elder, Mr Ruto becoming an elder. My point there is  
19 on the notion of that gentleman speaking about becoming an elder.

20 Now, returning to what we saw in the video, do people who become elders dress  
21 like that? Are they dressed in kutwet and samput?

22 THE WITNESS: No, your Honour. And I beg to explain that, your Honour. In  
23 Kalenjin culture, your Honour, there is no time that you are crowned as an elder. In  
24 Kalenjin culture there is time whereby you are born. And when you crawl from  
25 childhood to manhood is when you undergo circumcision and when you go from

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1 manhood to elderlyhood is when you marry.

2 And you only be recognised as an elder when you are over 60 years. They can say

3 mzee or akwe (phon). That is an elder, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. I'll leave that there for now,

5 Prosecutor. Tomorrow morning you can also ask a follow-up question from that, if

6 you have any.

7 MR GARCIA: Yes, indeed, your Honour. Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: We will bring down the blinds and escort the

9 witness from the courtroom.

10 While this is happening, I noticed at line 18 I did not say "That's a fair point." I said,

11 "That is not a fair point."

12 (Closed session at 4.03 p.m.) \* Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) Mr President, we're in closed session.

14 PRESIDING JUDGE EBOE-OSUJI: The witness will now be escorted from the

15 courtroom.

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

18 THE COURT USHER: All rise.

19 (The hearing ends in closed session at 4.04 p.m.) Reclassified as Open session

20 RECLASSIFICATION REPORT

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

22 2013, and the instructions in the email dated 9 May 2014, the version of the transcript

23 with its redactions becomes Public.