

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
5 and Joshua Arap 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 Monday, 20 January 2014
10 (The hearing starts in open session at 9.40 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 announce the case.
16 THE COURT OFFICER: (Interpretation) Good morning, your Honour. Your
17 Honours, Situation in the Republic of Kenya, in the case The Prosecutor against
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 Appearances?
22 MR STEYNBERG: Good morning, your Honours. Appearances for the
23 Prosecution are the same as last week.
24 PRESIDING JUDGE EBOE-OSUJI: Defence?
25 MR KHAN: Mr President, your Honours, good morning. Mr William Ruto, who

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- 1 is present in court, is represented by Mr Essa Faal, Mr David Hooper QC,
2 Ms Shyamala Alagendra and Ms Leigh Lawrie at the back. Your Honours, my
3 name is Karim Khan.
- 4 MR KIGEN-KATWA: Good morning, your Honours. Mr team -- Mr Sang's team
5 remains the same and Mr Sang is present in court. Thank you, your Honours.
- 6 MR NARANTSETSEG: Good morning, Mr President, your Honours. For victims
7 Orchlon Narantsetseg and Caroline Herzig. Thank you.
- 8 MR BOURGON: Good morning, Mr President. Good morning, your Honours.
9 Representing Witness 356, Stéphane Bourgon. Thank you.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Indeed the record will
11 show that Mr Ruto is in court present.
- 12 We will in a moment continue with the testimony of Witness 356, but I thought I
13 should again remind everyone of the logistical need for us to observe the pauses and
14 avoid overlapping speeches. I thought I'd mention that. Thank you.
- 15 We will continue with the testimony of the witness, Mr Garcia. We ended in
16 private session on Friday.
- 17 MR GARCIA: Good morning, your Honours. Good morning, your Honours.
18 Yes, indeed I'd ask that we go back into private session to continue the testimony of
19 the witness.
- 20 PRESIDING JUDGE EBOE-OSUJI: How much longer do we anticipate remaining
21 in private session?
- 22 MR GARCIA: Your Honours, it's difficult to estimate. As I had indicated to the
23 Court, I want to lead a whole block of evidence in private session, so it might take
24 the first two sessions of today for that block of evidence.
- 25 PRESIDING JUDGE EBOE-OSUJI: If I recall, you did indicate private session

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1 would take the greater part of the day, and you were speaking on Friday once we
2 began. So we spent all of, more or less, Friday in private session as regards the
3 testimony of this witness and you're saying you expect to finish after two sessions
4 today, in private session that is?

5 MR GARCIA: That's correct, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We will then go into private
7 session.

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

9 Witness, welcome back.

10 (Private session at 9.44 a.m.) Reclassified as open session

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

12 PRESIDING JUDGE EBOE-OSUJI: Proceed please.

13 MR GARCIA:

14 Q. Good morning, Mr Witness.

15 A. Good morning, your Honour.

16 (Redacted)

17 (Redacted)

18 (Redacted)

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15 MR GARCIA: I will be going into that after the break, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will rise for 30 minutes, but of
17 course we will rise only after we've gone into closed session with the blinds down.

18 (Closed session at 10.58 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. Could you please escort the
21 witness from the courtroom then.

22 (The witness stands down)

23 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

24 THE COURT USHER: All rise.

25 (Recess taken at 10.59 p.m.)

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- 1 (Upon resuming in private session at 11.38 a.m.) Reclassified as open session
- 2 THE COURT USHER: All rise. Please be seated.
- 3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 4 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.
- 5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, please proceed.
- 6 MR GARCIA:
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18 PRESIDING JUDGE EBOE-OSUJI: Counsel, you said you had one question. Now
19 we're beginning to trail it longer than one question. If we want to ask questions
20 about (Redacted), we understand it's a matter of public. So let's not stay in closed
21 session to discuss that.

22 MR GARCIA: With the Court's permission, I just have this last question, and then
23 I'll move on to another.

24 PRESIDING JUDGE EBOE-OSUJI: We've heard that two questions ago.

25 MR GARCIA: That's fine, your Honour. I will, I will pursue this in public session

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1 then.

2 Q. Mr Witness, I understand that during your testimony, the first day of your
3 testimony, you told the Court that you had visited Mr William Ruto at his house,
4 one of his houses, the one in Sugoi. Do you recall that?

5 A. Yes, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Are you opening up a new area?

7 MR GARCIA: Yes, your Honour.

8 (Redacted)

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14 PRESIDING JUDGE EBOE-OSUJI: We will take a luncheon break at this time and
15 come back at 2.30. First we'll bring down the blinds to let the witness out.

16 MR KHAN: And, Mr President, whilst that's being done with your leave, I wonder
17 if my learned friend could be so kind as to give a revised estimate as to how much
18 longer he thinks he'll be in chief. If he could, I would be most grateful.

19 PRESIDING JUDGE EBOE-OSUJI: Can we let the witness out?

20 MR GARCIA: Yes, yes.

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR GARCIA: Your Honours, I'll be in a better position to answer that question at
24 the end of today's last session. But I can say that we are progressing according to
25 the schedule that I had anticipated. So for the moment I don't see unnecessary

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1 delays, but I can't give my colleagues any guarantees as to when exactly I'll be
2 finished.

3 PRESIDING JUDGE EBOE-OSUJI: We can leave it at that. The Court will rise
4 now.

5 THE COURT USHER: All rise.

6 (Recess taken at 1.01 p.m.)

7 (Upon resuming in private session at 2.38 p.m.) Reclassified as open session

8 THE COURT USHER: All rise.

9 Please be seated.

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

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

12 Counsel, before we adjourn for today's sitting, we would like to preserve some time
13 towards the end of the sitting, say about ten minutes, to visit some -- revisit some
14 housekeeping issues or even matters that go to the testimony of the witness as well.
15 So if we can have a brief time, keep that in mind, towards the end of today so we can
16 get around to that.

17 MR GARCIA: Certainly, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigan-Katwa, you're on your feet.

19 MR KIGEN-KATWA: Yes, Mr President. Mr President, I wanted to explain that
20 the arrangement is that I will go first on this witness. I -- we on our side as the
21 Defence, especially through Mr Karim, we've been inquiring exactly when the
22 Prosecution would complete, and it seems to be a bit fluid. I just wanted to indicate
23 that I will be able to put in my documents by 5 today, and I just wanted to give that
24 notice so that it is understood that my -- I will be going first and that is the earliest I
25 could put in the documents in view of the alternative that came from the

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1 Prosecution, and I very kindly request the Prosecution also to accommodate me on
2 that account.

3 PRESIDING JUDGE EBOE-OSUJI: That is, as we indicated before, a matter between
4 counsel, accommodation and all that. We have the Court's ruling on our rules of
5 the road. It says what it says. And we indicated earlier, if on a matter on that
6 specific issue of indulgences, if there is any difficulty, it is best that counsel on both
7 sides try and resolve it among themselves.

8 All right, we will continue then.

9 One question. Counsel for the Defence, on 16 January 2014 in the course of
10 submissions on protective measures there appear to have been a request made orally
11 for disclosure of the video of the preparation session conducted by the Prosecution
12 with this witness. Is this something you are insisting upon a ruling or are you
13 prepared to abandon that request?

14 MR KHAN: Mr President, your Honours, we're most grateful and would be
15 similarly grateful for a ruling from the Court on that application.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please proceed.

17 MR GARCIA:

18 Q. Good afternoon, Mr Witness.

19 A. Good afternoon, your Honour.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

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1 (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: And for how long?

3 MR GARCIA: In private session a short amount of time just to introduce the topic
4 and to explain to the witness how I'd like to proceed in that usage of the PIS form
5 briefly and then move into that subject matter so we can explore it and exhaust that
6 part of his testimony.

7 PRESIDING JUDGE EBOE-OSUJI: All right. All right. So we will then -- that will
8 be it for private sessions as far as you're concerned in your examination in chief; is
9 that the understanding?

10 MR GARCIA: Your Honours, there will be other private sessions but limited
11 private sessions on specific matters. We can now -- I will -- I'm attempting to go
12 into other -- I will go into other matters publicly with the usage of the PIS form
13 whenever it is possible. If there's any other subject matter which is highly
14 identifying, then obviously I'll not be able to go into public with that and I'll do that
15 in private session, but again, I'm striving to, in light of the fact that we've already
16 had a certain amount of time in private, to publicise as much as I can of the rest of
17 his testimony.

18 (Redacted)

19 (Redacted)

20 (Redacted)

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- 20 PRESIDING JUDGE EBOE-OSUJI: All right. So we'll now go into public session.
- 21 (Open session at 3.01 p.m.)
- 22 THE COURT OFFICER: (Overlapping speakers)
- 23 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 24 THE COURT OFFICER: We're in public session, Mr President.
- 25 MR GARCIA:

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(Open Session)

ICC-01/09-01/11 Witness:

1 Q. Now, Mr Witness, just to start, I understand that you were in the location
2 number 4. Could you tell us, after having been in location number 4, what is the
3 number of the location that you went to?

4 A. I went back to location number 5, your Honour.

5 Q. And after having been at location number 5, what other location -- did you go
6 to another location after that?

7 A. I went back to location number 1 on 4 January, your Honour.

8 Q. Now, Mr Witness, to get to location number 1, did you have to go through
9 other locations? And if yes, please tell us the names of these -- the numbers of these
10 locations.

11 PRESIDING JUDGE EBOE-OSUJI: Numbers.

12 THE WITNESS: Yes. You have to pass through location number 4, location
13 number 8, location number 9.

14 MR GARCIA:

15 Q. We can start, Mr Witness, by -- by location number 8 and then afterwards
16 we'll -- we'll move along in your testimony. Can you tell the Court what you saw at
17 location number 8?

18 A. That day, your Honour, I didn't pass through location number 8 and number
19 9, but I branched at location number 8 to a rough road leading to location number 6.

20 Q. Just so we can understand that clearly, Mr Witness, you say "I didn't pass
21 through location number 8 and 9, but I ..." and we didn't read -- we didn't
22 understand the rest of what you said. What happened? Did you pass or did you
23 not pass by these locations?

24 A. I took -- your Honour, I took a shortcut from location number 8 to location
25 number 7.

Trial Hearing
KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11 Witness:

1 Q. Thank you, Mr Witness. Now, do you remember what date this would have
2 been that you would have passed through this shortcut between locations number 8
3 and location number 7?

4 A. It was 4 January 2008, your Honour.

5 Q. Now, did you encounter any problems going from one location to another?

6 A. The first problem I encountered, your Honour, is that there were no means of
7 transport. From location number 8 to location number 7 I went by foot, your
8 Honour.

9 Q. Just for the transcript, I read here "The first public I encountered, your
10 Honours, that there were no means of transport." Is that what you meant? The
11 first what?

12 PRESIDING JUDGE EBOE-OSUJI: "Problem" he said.

13 MR GARCIA:

14 Q. Is it "problem", Mr Witness?

15 A. Yes, your Honour.

16 Q. Now, you state that that was the first problem. Were there any other
17 problems that you encountered?

18 A. The other thing that I saw is that there were many roadblocks which had been
19 erected by Kalenjin youths from location number 8 to location number 7, your
20 Honour.

21 Q. Now, you say that there were many roadblocks which had been erected. Do
22 you remember how many roadblocks?

23 A. Your Honour, there were about ten roadblocks or even more than ten
24 roadblocks, your Honour.

25 Q. Now, in regards to these roadblocks, can you describe exactly what was being

Trial Hearing
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(Open Session)

ICC-01/09-01/11 Witness:

1 used to block the roads?

2 A. Your Honour, it was pot trees and -- it was pot stones and tree logs, your
3 Honour.

4 Q. Did you say, Mr Witness, pot stones and tree blocks? Is that what you
5 stated?

6 A. I said it was stones and tree blocks.

7 Q. And we have here on the transcript "three blocks." What -- what -- you
8 mentioned blocks, obviously, but what is the first word? Is it trees?

9 A. Trees.

10 Q. Okay. So tree blocks and stones, is that correct?

11 A. Yes, your Honour.

12 Q. Now, who was at these roadblocks?

13 A. All of them I met because I was in the road, located (indiscernible) -- I was
14 questioned by the roadblocks. They were all Kalenjin youths, your Honour.

15 Q. Now, were -- the Kalenjin youth that were at the roadblocks, can you tell us if
16 they had any weapons?

17 A. Your Honour, I saw them with spears, rungus and pangas, your Honour.

18 Q. Can you also tell the Court how they were dressed?

19 A. Your Honour, they were dressed just like where -- when I'm dressed now.
20 They were not wearing any different clothes, your Honour.

21 Q. Now, could you explain to the Court what would happen when you would
22 arrive at one of these roadblocks?

23 A. Your Honour, the first thing was for you to -- you were asked to identify
24 yourself. You say your names, where you come from and your home and where
25 you are going.

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ICC-01/09-01/11

1 Q. And do you remember how many -- how many of these Kalenjin youths there
2 would be per roadblock? How many of them were there?

3 A. Your Honour, I didn't count, but there were many.

4 Q. Just for us to get an idea when you say they were -- there were many, were
5 there more than ten or less than ten per roadblock?

6 A. Even more than 30, your Honour. There were many.

7 PRESIDING JUDGE EBOE-OSUJI: Counsel, one minute. We do not want to, of
8 course, descend to trivialities, but the record needs to be accurate.

9 You said they were dressed the way you are dressed now. Are you telling us they
10 were wearing suits --

11 THE WITNESS: No, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: -- and tie?

13 THE WITNESS: I meant they are wearing normal clothes, your Honour.

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

15 MR GARCIA: Most grateful, your Honour. Your Honour, I'd like to go into
16 private session for a couple of questions. Very limited.

17 PRESIDING JUDGE EBOE-OSUJI: We go into private session for a few -- some
18 moments.

19 (Private session at 3.10 p.m.) Reclassified as open session

20 THE COURT OFFICER: (Interpretation) Mr President, we are in private session.

21 MR GARCIA:

22 Q. Now, Mr Witness, you said that the first thing that they would ask you was to
23 identify yourself and say your names. Did you encounter any problems in getting
24 through when you would say -- when you would identify yourself?

25 A. No, your Honour, I didn't encounter any problems when I identified myself.

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1 Q. And why is that?

2 A. The first thing is that I was a Kalenjin, and I was speaking pure Kalenjin, and
3 (Redacted), your Honour.

4 Q. How would you identify yourself? What names would you give to these
5 Kalenjin youth?

6 A. I could say that (Redacted),
7 (Redacted) and that was enough, your Honour.

8 Q. Now, line 15 it's (Redacted); is that correct, Mr Witness?

9 A. Yes, your Honour.

10 Q. And the name (Redacted) refers to whom exactly?

11 A. It is (Redacted) name, your Honour.

12 Q. Now, once you said that, when you would say that -- when you would
13 identify in this manner to the Kalenjin youths, what would be their reaction?

14 A. I -- I can -- I can't -- I don't even know how to answer your question. The
15 only thing I can say is that when they have heard that you are a Kalenjin, not
16 specifically that you come from (Redacted) or -- but when they have heard you are a
17 Kalenjin, they have asked you -- you have mentioned your (Redacted), it was -- that
18 was the whole questions they can ask you about your identity.

19 Q. And just finally, so you were able to get through these roadblocks, the ten
20 roadblocks?

21 A. Yes, your Honour, I did.

22 MR GARCIA: We can go back to public session, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.

24 (Open session at 3.13 p.m.)

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

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1 MR GARCIA:

2 Q. Now, Mr Witness, you've just indicated to us that there were roadblocks
3 between location 8 and 7. Did you finally arrive at location number 7?

4 A. Yes, your Honour. I arrived at about 7 p.m. in the evening.

5 Q. Now, just so that it be clear, were you alone or with anyone else when you
6 arrived at location number 7?

7 A. All the way, your Honour, I was walking alone.

8 Q. Now, Mr Witness, when you did arrive at location number 7, using the PIS
9 document that is before you, can you please tell us what you saw?

10 A. Your Honour, when I reached location number -- number 7, I saw many
11 youths which were grouped together in the road -- in the middle of the road, and
12 when I approached there, I saw that (Redacted) was -- (Redacted)
13 (Redacted)

14 Q. That's fine. You said that -- what did you see?

15 MR GARCIA: Could I ask, your Honour, if we can go into private session for just a
16 minute.

17 PRESIDING JUDGE EBOE-OSUJI: Private session.

18 (Private session at 3.16 p.m.) Reclassified as open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Garcia.

21 MR GARCIA:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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21 (Open session at 3.23 p.m.)

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

23 MR GARCIA:

24 Q. Now, Mr Witness, my questions are again in regards to what person number

25 1 was saying.

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1 A. I heard him telling the youths that they are still waiting for orders from above
2 whether they will stop the roadblocks -- roadblocking or not, your Honour.

3 Q. Thank you for that clarification, Mr Witness. You have already responded as
4 well to that question. You said "...the above was ODM party because all the
5 Kalenjins were in ODM party." Now, Mr Witness, was there one particular person
6 within the ODM party that they were waiting for a response?

7 A. Your Honour, I recall, I don't know if it was December or November,
8 whereby the Kalenjin or some section of leaders told the Kalenjin community that
9 they have elected their spokesman, your Honour. And according to me and
10 according to what happened in (Redacted) was referring that he was waiting to
11 know from Honourable William Ruto, because by then he was the only Kalenjin
12 spokesman, your Honour.

13 Q. Thank you, Mr Witness. We'll -- we'll be dealing with that subject most
14 probably in all likelihood tomorrow, so we'll ask you more questions in that regard.
15 Now, Mr Witness, was there anything else that was said by the person at number 1
16 apart from what you've just told us?

17 A. Your Honour, I can't remember for now. What I heard is the youths were
18 telling him that we will wait. That's what I heard.

19 Q. Now, apart from person number 1, was there anybody else accompanying
20 this person on that day? Did you observe anyone else?

21 A. Your Honour, I saw number 24 also there.

22 Q. Was there anyone else apart from number 24?

23 A. Your Honour, before I reached location number 7, there was another
24 roadblock about two kilometres to location number 7 and there I met number 20.

25 Q. Thank you, Mr Witness, for that, but before we do get to that point, I'd like to

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1 just take you back to the same -- the same location, location number 7. You said
2 there were Kalenjin youth. Can you tell us how many Kalenjin youths you saw on
3 that day?

4 A. Although it was almost dark, there were many youths. I can't describe how
5 many were they.

6 Q. Now, just for an estimate, Mr Witness, if you're able, would you be able to tell
7 us if there were less or more than 50 Kalenjin youths at location number 7 at that
8 time when you were there?

9 A. I can't say, but they were full the left hand of the road, the side hand of the
10 road and also they had surrounded (Redacted) all over, but I -- I can't remember and
11 I can't describe how many they were.

12 Q. Now, would you be able to tell us, Mr Witness, if these Kalenjin youths, were
13 they -- did they have any weapons with them?

14 A. The same weapons that I saw in the road while coming is the same that I saw
15 with few who are around me, because it was almost dark, but they -- they had
16 rungas, pangas and arrows, your Honour.

17 Q. And what was the reaction of these Kalenjin youths to what person number 1
18 was saying?

19 A. They -- what I heard is that they agreed with him and they told them that they
20 will wait -- they told him that they will wait.

21 Q. And just so that we can be clear on that matter, they were waiting for what?

22 A. (Redacted) had told them that they are waiting for orders from above, and the
23 youths agree that they will wait.

24 Q. How much time did you spend at location number 7 on that day?

25 A. (Indiscernible) a meeting, I didn't spend more than ten or six minutes, but I

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(Private Session)

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1 went to a -- to a hotel there. I took a cup of tea before I proceeded to location
2 number 1.

3 MR GARCIA: I'd like to go into private session for one question, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 (Private session at 3.30 p.m.) Reclassified as open session

6 THE COURT OFFICER: (Interpretation) Mr President, we are in private session.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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(Private Session)

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- 1 (Redacted)
- 2 (Redacted)
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- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 We now go back -- where are we, Mr Garcia? Do we go back into public --
- 14 MR GARCIA: We would be going back into public session, your Honour, yes.
- 15 PRESIDING JUDGE EBOE-OSUJI: All right. So we go back to public session.
- 16 (Open session at 3.35 p.m.)
- 17 THE COURT OFFICER: (Interpretation) Mr President, we are in public session.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 19 Please proceed, Mr Garcia.
- 20 MR GARCIA:
- 21 Q. Now, Mr Witness, from location number 7, can you give us the number of the
- 22 location that you went to after that?
- 23 A. I went to location number 1, your Honour.
- 24 Q. And, Mr Witness, did you encounter any problems in reaching location
- 25 number 1?

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1 A. There were no problems, your Honour, but there were three other roadblocks
2 to location number 1, your Honour.

3 Q. Now, in regards to these three other roadblocks, can you tell us what the
4 roadblocks were made of?

5 A. It was made up of stones and woods, your Honour.

6 Q. Would you be able to, Mr Witness, to tell us how many Kalenjin youths or
7 who was at these -- these roadblocks?

8 A. They were not as many they were in (Redacted), but they were
9 about -- because I talked with some youths at location number 1 for a time, and they
10 were about 30 or 40.

11 Q. And can you tell us what would happen once you would arrive at these
12 roadblocks, what would occur?

13 A. For me, I didn't have any problem because location number 1 was my home,
14 your Honour.

15 Q. Can you tell us, Mr Witness, if these Kalenjin youths were armed? Did they
16 have any weapons?

17 A. Yes, your Honour. They had arrows or rungas and pangas, your Honour.

18 Q. Now, did you see anyone that you knew at these roadblocks?

19 A. Nearly all of them I knew them, your Honour.

20 Q. Now, you mentioned -- a few minutes ago you mentioned seeing person
21 number 20?

22 A. Yes, your Honour.

23 MR GARCIA: Your Honours, if we could just go into private session for one
24 question.

25 PRESIDING JUDGE EBOE-OSUJI: Private session.

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- 1 (Private session at 3.39 p.m.) Reclassified as open session
- 2 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 MR GARCIA: We can go back into public session, your Honour.
- 17 PRESIDING JUDGE EBOE-OSUJI: Public session.
- 18 (Open session at 3.40 p.m.)
- 19 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 21 MR GARCIA: Now, there is just a spelling correction at page 114, line 1, and I can
- 22 provide that afterwards.
- 23 Q. Now, Mr Witness, what exactly did you see person number 20 doing on that
- 24 day at the roadblock?
- 25 A. I saw him talking with the youths by the roadside, though there were other

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1 youths who were manning the road.

2 Q. Could you tell what they were speaking about?

3 A. Personally, your Honour, I didn't want to go there, because person number 20
4 and I, we don't agree each other, your Honour.

5 Q. Now, Mr Witness, were you able to go through the roadblocks and return
6 back to location number 1 eventually?

7 A. Yes, your Honour, I did.

8 Q. Can you recall, Mr Witness, when you -- on what day, and if you can, what
9 time approximately you returned at location number 1?

10 A. It was by 8 a.m., your Honour -- 8 p.m., your Honour.

11 Q. And when you arrived in location number 1, can you tell the Court what you
12 saw there?

13 A. At that time of the night, I would say that my wife was the one telling me
14 stories about what has happened to some other Kalenjins who were in PNU by that
15 time, your Honour.

16 Q. Now, Mr Witness, you say that your wife was telling you about people, other
17 people who were in the PNU. Can you tell us just in general what she -- what she
18 had been telling you about them?

19 A. She was telling me about how their houses had been torched or their property
20 destroyed, your Honour.

21 Q. Did she happen to tell you when these houses had been torched and property
22 destroyed?

23 A. While I was even still in location number -- location number 5, I received
24 some calls from people from my area telling me that some houses, which belonged
25 to PNU supporters has been torched, your Honour.

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1 Q. So just for the transcript, at page 115, line 14, "Some calls from people from
2 my area," is that correct, "telling me how houses" -- is that what you stated,
3 Mr Witness?

4 A. Yes, your Honour.

5 Q. Now, these houses that have been burnt of PNU supporters, these were PNU
6 supporters of what ethnicity?

7 A. They were Kalenjins, your Honour.

8 Q. And did you find out why the houses of Kalenjin PNU supporters had been
9 torched?

10 A. Your Honour, it was because they only supported PNU during 2007 elections,
11 your Honour.

12 Q. Now, did your wife tell you who had done this, who had torched the
13 properties, the houses of Kalenjin PNU supporters in your area?

14 A. I didn't talk much with my wife that day, but in few days that came is when I
15 got all information about what happened, your Honour.

16 Q. Now, you mentioned Kalenjin PNU supporters and their houses being
17 torched. Did you receive any other information of other people being targeted?

18 A. No, your Honour. The following morning is when we heard that the father
19 of number 18 had passed away, and I and some villagers went to his home to say
20 sorry to him. Reaching his place, we saw many things that I don't want to mention.

21 Q. I'm sorry, Mr Witness, we didn't -- we didn't get that, the first part. You said
22 "his place," but not what you said before that. Can you repeat it?

23 A. I said that number 18, his father had passed away.

24 Q. You said, "No, your Honour. The following morning is when we heard that
25 the father of number 18 had passed away, and I and some villagers went to his home

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1 to say sorry to him." And after that we didn't quite get what you said. And it says
2 "his place, so many things I don't want to mention."

3 A. Your Honour, I say that there are many things which happened which if I
4 mention, I don't --

5 Q. I understand. I understand.

6 MR GARCIA: Your Honour, if we can just go into private session for a series of
7 questions on this.

8 PRESIDING JUDGE EBOE-OSUJI: Private session then.

9 (Private session at 3.47 p.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:

13 Q. Now, Mr Witness, what is it that you saw or that you heard when you went
14 back to (Redacted)?

15 A. Your Honour, even if -- before we reach the home of (Redacted), we found
16 out on our way that he has -- he's a (Redacted), and he's (Redacted).

17 And there are (Redacted), and it was burned
18 down by Kalenjin youths, (Redacted).

19 And then reaching at his home, he had (Redacted), and that when I witnessed
20 (Redacted) was still burning (Redacted) by 5 January. And also there was (Redacted)
21 which was burned down, a (Redacted) was burned down. And the (Redacted) his
22 house was burned down, your Honour.

23 Q. Thank you, Mr Witness, for that. Now we're just going to go through it item
24 per item so just as to be clear on this. You mentioned --

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, do we need to do that in private

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1 session? When he said -- I understood your need for caution when he said "there
2 were so many things I don't want to mention." We don't know whether there is a
3 reluctance to mention or the manner of saying it was overwhelming in its enormity
4 or that it is something that will identify me, now speaking from the perspective of
5 the witness.

6 Once we establish why he was reluctant to mention what he saw, then we decide
7 whether or not we'll remain in private session to get the details of that, or whether if
8 it's for the previous reason, that perhaps was something that was too big to mention
9 in terms of the enormity of the event. We can do that in public.

10 MR GARCIA: Yes, your Honour. The questions that I wanted to pose were
11 questions which by their nature would reveal in public who we're speaking about, in
12 the case of (Redacted) obviously, who he was and what had happened to him. I
13 think that's -- that's my main concern, is that it will disclose who we're speaking
14 about, and obviously then it might link the witness to (Redacted).

15 That's my main concern. I have just a couple of extra questions on that matter.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

17 MR GARCIA:

18 Q. Now, Mr Witness, can you tell us, (Redacted), who was this person?

19 A. He is (Redacted), your Honour.

20 Q. Now, prior to the post-election violence, do you know what party or which
21 party (Redacted) was supporting?

22 A. He was, your Honour, he was supporting PNU, and he was supporting one
23 (Redacted).

24 Q. I'm sorry, Mr Witness, we didn't -- we didn't get the name of the person. He
25 was supporting one Mr -- what is the name of the person?

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- 1 A. I don't know his other name, but (Redacted) is the name.
- 2 Q. Can you please spell that out, please.
- 3 A. (Redacted).
- 4 Q. Now, this person (Redacted), could you tell us what -- what party he
- 5 belonged to?
- 6 A. He belonged to (Redacted), your Honour.
- 7 Q. And did -- and just out of -- if you can clarify this, (Redacted),
- 8 how -- how was he connected to this person (Redacted) from the (Redacted)
- 9 party?
- 10 A. (Redacted).
- 11 Q. Now, do you know why (Redacted) was targeted?
- 12 A. He was mainly targeted because he didn't campaign for William Ruto or
- 13 ODM by that time, and he joined (Redacted).
- 14 Q. Now, Mr Witness, you mentioned what happened to him, and you said
- 15 the -- his (Redacted) was burnt, if I understand correctly?
- 16 A. Yes, your Honour.
- 17 Q. Now, to him personally, (Redacted), what happened?
- 18 A. At that time I met him, (Redacted), afterwards, and we talked a lot about the
- 19 violence, and he told me that they had been peeped during the day that they will be
- 20 invaded, and they had gone out -- outside the house with his family. And when
- 21 they came to invade it, he was not inside the house, your Honour.
- 22 Q. All right. Just -- just if we can go through that. You said that they -- "...and
- 23 he told me that they had been -- they had been -- that they had been invaded." Can
- 24 you please complete that? We didn't -- we didn't get all of that.
- 25 A. Your Honour, I say that (Redacted) told me that they had been warned

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1 that they will be invaded, and when the youths came, he was not inside the house,
2 but he told me that he was nearby, and he saw everything that went -- went on.

3 PRESIDING JUDGE EBOE-OSUJI: The expression you used before, was that
4 "peeped" or "pipped"?

5 THE WITNESS: "Peeped," yes.

6 PRESIDING JUDGE EBOE-OSUJI: That means warning?

7 THE WITNESS: Yes, your Honour.

8 MR KHAN: And, your Honour, before the next question is put, I know your
9 Honour advised that we -- bearing in mind the time, I think your Honours wanted
10 ten minutes at the end. I just don't want it to be forgotten.

11 MR GARCIA: I thank Defence counsel for that reminder. I had -- it had
12 completely slipped my mind. I can stop at this point, and we can continue
13 tomorrow.

14 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we will adjourn your
15 testimony and take it up again tomorrow. So we will bring the curtain down and
16 let you out of the courtroom. Do not discuss your testimony with anybody
17 overnight. All right? Thank you.

18 (Closed session at 3.55 p.m.) Reclassified as open session

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

20 PRESIDING JUDGE EBOE-OSUJI: You can escort the witness from the courtroom,
21 please.

22 (The witness stands down)

23 PRESIDING JUDGE EBOE-OSUJI: We will remain in private (sic) session. There's
24 no need to raise the blinds.

25 Counsel, we will render our decision tomorrow morning on the request for

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(Closed Session)

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- 1 disclosure of the witness preparation session.
- 2 (Redacted)
- 3 (Redacted)
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- 1 (Redacted)
- 2 (Redacted)
- 3 THE COURT USHER: All rise.
- 4 (The hearing ends in closed session at 3.59 p.m.) Reclassified as open session
- 5 RECLASSIFICATION REPORT
- 6 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24
- 7 September 2013, and the instructions in the email dated 9 may 2014, the version of
- 8 the transcript with its redactions becomes Public.