

1 International Criminal Court
2 Pre-Trial Chamber II - Courtroom I
3 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul and
4 Judge Cuno Tarfusser
5 Situation in the Republic of Kenya - ICC-01/09-02/11
6 In the case of the Prosecutor versus Francis Kirimi Muthaura,
7 Uhuru Muigai Kenyatta, and Mohammed Hussein Ali
8 Confirmation of Charges Hearing
9 Tuesday, 4 October 2011
10 The hearing starts at 2.31 p.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE TRENDAFILOVA: Please be seated.
15 Good afternoon, everyone. I welcome the parties, the
16 Prosecutor's team, the Defence teams of Mr. Muthaura, Mr. Kenyatta, and
17 Mr. Ali, those who are sitting in the public gallery, and of course
18 everyone who is supporting us in our work.
19 I would ask the Court Officer to please call the case.
20 COURT OFFICER: Good afternoon, Madam President, your Honours.
21 This is the Situation in the Republic of Kenya, in the case of the
22 Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and
23 Mohammed Hussein Ali, case reference ICC-01/09-02/11. Thank you,
24 Your Honours.
25 PRESIDING JUDGE TRENDAFILOVA: Thank you, Court Officer. Now,

1 Ms. Adeboyejo, some new faces in your team?

2 MS. ADEBOYEJO: Good afternoon, Madam President and your Honours.

3 Yes, there is. We have one of our legal reviewers with us,

4 Ms. Pila Benabu (* phon).

5 PRESIDING JUDGE TRENDAFILOVA: Good afternoon.

6 Mr. Khan.

7 MR. KHAN: Madam President, your Honours. Good afternoon.

8 Mr. Essa Faal is back in court.

9 PRESIDING JUDGE TRENDAFILOVA: Yes, we notice his presence.

10 Mr. Kay.

11 MR. KAY: No new faces, your Honour.

12 PRESIDING JUDGE TRENDAFILOVA: And, Mr. Monari?

13 MR. MONARI: No new faces, Madam President.

14 PRESIDING JUDGE TRENDAFILOVA: Yes, on behalf of the Chamber, we
15 have again with us Ms. Habiba Gani, who is legal assistant.

16 And, Mr. Anyah, I see that you are only with your assistant.

17 MR. ANYAH: Good afternoon, Madam President and your Honours,
18 that is correct. No new faces. Thank you.

19 PRESIDING JUDGE TRENDAFILOVA: Thank you, now we proceed with the
20 second witness. So, Mr. Kehoe.

21 MR. KEHOE: Yes, your Honour.

22 PRESIDING JUDGE TRENDAFILOVA: Is your witness ready to be
23 questioned?

24 MR. KEHOE: I believe so, Madam President, your Honours. If I
25 may have one administrative matters that I talked to the Court Officer as

1 well as my colleagues in the Prosecution team that might expedite this
2 questioning and allow it to move more quickly, and that was just bringing
3 up the Waki Commission report now, the testimony of this particular
4 witness, which I'm sure everybody's mindful of and has read, and as
5 opposed to the waiting period of time, it may just be easier to bring it
6 up now.

7 PRESIDING JUDGE TRENDAFILOVA: Well, we do not object if it's
8 going to expedite, and let me use this opportunity to ask you, Mr. Kehoe,
9 do you intend to use all the time allocated to you --

10 MR. KEHOE: I don't think so.

11 PRESIDING JUDGE TRENDAFILOVA: -- for the questioning of the
12 witness?

13 MR. KEHOE: I don't think so, Madam President. We talked about
14 that prior to coming in. I just don't think so.

15 PRESIDING JUDGE TRENDAFILOVA: Thank you very much. We shall be
16 grateful to be concise to the point asking the questions that are vital
17 to your case.

18 MR. KEHOE: I will do my best. One last administrative point --

19 PRESIDING JUDGE TRENDAFILOVA: Yes.

20 MR. KEHOE: -- as we go through this testimony and I know my
21 colleagues probably noticed this as well, the testimony in the
22 Waki Commission, for purposes of the record has Mr. Amin's name with two
23 Ms in the Mohamed. In fact, it is one M. I understand that's that is
24 not exactly a big deal, except in the age of computerisation when we're
25 trying to look for someone's name based on the correct spelling, so it's

1 actually M-o-h--m-e-d as opposed to two Ms as in the Waki Commission.

2 PRESIDING JUDGE TRENDAFILOVA: Yes, that is exactly how it is
3 written here in the interview that you have conducted, Mr. Kehoe, and
4 Mr. Otachi.

5 MR. KEHOE: Yes, your Honour.

6 PRESIDING JUDGE TRENDAFILOVA: Okay. Now I would ask -- you have
7 something, Court Officer?

8 COURT OFFICER: Indeed, your Honour. I just want to clarify that
9 for purposes of the record, although the Waki report is indicated as
10 confidential in Ringtail, it has been shown in court in open session and
11 it can now be considered a public document. Thank you.

12 PRESIDING JUDGE TRENDAFILOVA: Yes. And I would ask very much
13 the Defence team of Mr. Ali and everyone else who is going to ask
14 questions to the witness if there are some concerns regarding
15 confidential information, please just notify the Chamber so that we
16 switch into a private or closed session.

17 MR. KEHOE: Yes, Madam President. I will be mindful of that.

18 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kehoe.

19 Now, Court Usher, would you be so kind to invite the witness into
20 the courtroom.

21 MR. KEHOE: And, Madam President, while the Court Usher is
22 escorting the witness into the courtroom, if I can give the Court, the
23 Chamber, the EVD number for Mr. Amin's testimony before the
24 Waki Commission. It is EVD-PT-OTP-00067.

25 (The witness entered court)

1 PRESIDING JUDGE TRENDAFILOVA: Good afternoon, Mr. Witness.

2 THE WITNESS: Good afternoon, Madam President.

3 PRESIDING JUDGE TRENDAFILOVA: You're, as you know, before
4 Pre-Trial Chamber II of the International Criminal Court. You have been
5 called to testify. You have been called by the Defence team of Mr. Ali,
6 and you will be asked some questions by the members of the Defence team
7 of Mr. Ali. Thereafter, the Prosecutor's Office, the representative of
8 the Prosecutor's Office, is going to examine you. Thereafter, if
9 authorised by the Chamber, the Legal Representative for Victims, and of
10 course members of the other two Defence teams of Mr. Muthaura and
11 Mr. Kenyatta. The Judges can ask questions as well. Finally, it will be
12 the Defence team of Mr. Ali to pose some questions to you.

13 We know that the Victims and Witnesses Unit within the structure
14 of the Registry has already proceeded familiarising you with the court
15 proceedings and with your rights and obligations, but the Chamber would
16 like to assure itself that you know that obligation, number one, is that
17 you make a swearing in, solemn undertaking regarding of the truthfulness
18 of the evidence that you're going to provide to the Chamber, and in this
19 regard just to inform you that the Court has jurisdiction over the
20 offence of giving false testimony. And the Court has also jurisdiction
21 regarding misconduct before the Court. That we strongly hope we're not
22 going to apply the relevant provisions of the statutory documents.

23 You have been informed, but once again the Chamber reiterates
24 your right against self-incrimination as provided for in Rule 74 of the
25 Rules of Procedure and Evidence, which means that you can object to make

1 any statement that might tend to incriminate you, and that the Bench
2 would like to assure you that the evidence you're going to provide in
3 these proceedings will not be used directly or indirectly against you in
4 any subsequent Prosecution by the Court.

5 I hope you understand your rights and obligations, and we can
6 proceed now with the swearing in that you're going to be assisted by the
7 Court Officer.

8 COURT OFFICER: Please repeat after me. I solemnly declare.

9 THE WITNESS: I solemnly declare.

10 COURT OFFICER: That I will speak the truth.

11 THE WITNESS: That I will speak the truth.

12 COURT OFFICER: The whole truth.

13 THE WITNESS: The whole truth.

14 COURT OFFICER: And nothing but the truth.

15 THE WITNESS: And nothing but the truth.

16 WITNESS: WITNESS KEN-D14-PPPP-0001

17 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Witness. Please be
18 seated and identify yourself by stating your full name, date and place of
19 birth, nationality, education, marital status, and current occupation.

20 THE WITNESS: Thank you, Madam President, your Honours. My names
21 are Mohamed Ibrahim Amin. I was born in 1st of October, 1964,
22 Waja District, North-Eastern Province in Kenya. I'm a Kenyan by
23 nationality. My level of education is A levels, Madam President,
24 advanced level. I have recently completed my university studies at
25 Ergerton University, and I hope to graduate sometime at the end of

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 7

1 December with a Bachelor of Arts degree in criminology and security
2 studies. Currently, I'm working with the Kenya police department, that
3 is the Criminal Investigation Department Kenya. I'm a senior assistant
4 commissioner of police, Madam President, and in charge of investigations
5 at CID headquarters, Madam President.

6 PRESIDING JUDGE TRENDAFILOVA: And finally your marital status,
7 Mr. Amin.

8 THE WITNESS: Madam President, I'm married with five children.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you very much. Now the
10 floor is over to you, Mr. Kehoe. You can start.

11 MR. KEHOE: Thank you, Madam President, your Honours.

12 Questioned by Mr. Kehoe:

13 Q. Good afternoon Mr. Amin. It's good to see you again.

14 A. Good afternoon, sir.

15 Q. Mr. Amin, can I just remind you that I'm will be asking you
16 questions. Some of my colleagues on both sides of courtroom will be
17 asking some questions, and when you answer those questions, if you could,
18 could you please direct it towards the President and the Chamber that
19 sits before you.

20 A. Understood.

21 Q. Now, Mr. Amin, you noted that you currently are still working for
22 the police department in Nairobi. Can you give us again what your
23 current position is in the police department?

24 A. Madam President, your Honours. As I said, I'm a senior assistant
25 commissioner of police based at CID headquarters, and I am the officer in

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 8

1 charge of investigations at CID headquarters, your Honour.

2 Q. And, Mr. Amin, before we move into your career in the police
3 department, what ethnic group are you from within Kenya?

4 A. Your Honour, I'm a Kenyan, and I belong to the Somali ethnic
5 ground.

6 Q. Mr. Amin, just so you know, if I pause just a bit between asking
7 you the next question and your response, you and I, because we're
8 speaking the same language, just have to be mindful of the interpreters
9 who are interpreting this into French. So if I do take that pause,
10 that's what I'm doing.

11 Mr. Amin, if you could, could you take us through your career in
12 the police department chronologically, when you started, and where you
13 moved to and your various jobs as you moved up the ranks to your current
14 position?

15 * A. Madam President, I was enlisted in
16 the Kenya police force in 1989. I've got a service of 22 years,
17 Madam President, and upon successfully completing my training at
18 Kenya Police College Kiganjo. I was posted to Bungoma police station,
19 Bungoma Division, that is the Western Province of Kenya, where I served
20 as officer in charge of crime investigations and later as a deputy
21 officer, Bungoma police station. From there, Madam President, I moved to
22 Nairobi, and I was posted to Pangani police station in the same capacity
23 as the Deputy Officer Commanding Police Station. Thereafter,
24 Madam President, I was transferred to Kasarani CID department. That's
25 when I officially joined the CID department.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 9

1 Q. Mr. Amin, if I could just interrupt you. Could you possibly
2 infuse your transfers with the chronology approximate dates not exact
3 just approximate?

4 A. I was, Madam President, transferred to Kasarani CID in 1993. In
5 1996, Madam President, I was transferred to Mandare divisional CID office
6 as the officer in charge of CID. Mandare is a division in North-Eastern
7 Province of Kenya, Madam President.

8 In 1998, Madam President, I was transferred to Thika division
9 which is in Central Province in Kenya as the divisional CID officer
10 again. In 1999, Madam President, I was transferred to Langata Division
11 within Nairobi Province as the divisional CID officer. From there in
12 1999, Madam President, I was transferred to Kilindini Division in
13 Mombasa Coast Province where I again served as the divisional CID
14 officer. In the year 2000, Madam President, I was transferred back to --
15 to Nairobi where I served briefly with the anti-corruption police unit.
16 In the year 2004, Madam President, I was transferred to Western Province
17 as the provincial CID officer where I stayed until 2005 when again I was
18 transferred to Central Province as the provincial CID officer. 26th of
19 November, 2006, Madam President, I was transferred to Rift Valley
20 Province as the provincial CID officer where I stayed up to and until 1st
21 of July, 2009, when I was posted to Nairobi as the officer in charge
22 banking fraud investigation department. I stayed there for one and a
23 half years and I was later moved to CID headquarters as the officer in
24 charge of investigations CID headquarters and that is where I am
25 currently, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 10

1 Q. Mr. Amin, if we could explore for just a little bit the
2 Criminal Investigation Department of the Kenyan police and how it is
3 different from the -- those portions of the Kenyan police that patrol or
4 are in uniforms on the street.

5 Could you explain that for us in the context of exactly what the
6 Criminal Investigation Department does and how it is different from the
7 other branch of the police that does patrolling and is basically the
8 uniformed sect?

9 A. Your Honour, from the outset, I must tell that the Criminal
10 Investigation Department is one of the many formations in the Kenya
11 police department. It is a department within the Kenya police, but the
12 primary function of the CID department, Madam President, is to
13 investigate cases particularly serious cases. We take over the
14 investigations of serious cases, protracted cases and cases that the
15 department feels are of serious in nature. Part of our duty as well,
16 Madam President, is to supervise the investigation of cases undertaken by
17 the uniformed officers and as well crime branch officers. So basically
18 the CID department is the investigative arm of the Kenya police
19 department, Madam President.

20 Q. And when you talk to us about crimes that are serious crimes and
21 protracted investigations, can you give us an example or a few examples
22 of those.

23 A. Madam, my reference to serious crimes includes crimes such as
24 murders, arson, robberies, conspiracies, preparations to commit a felony,
25 kidnaps, abductions, and gender-based crimes as well. So it is a whole

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 11

1 range of crimes is what I'm referring to as serious crimes,
2 Madam President.

3 Q. Now, before we move into the actual events in the Rift Valley in
4 2007 and 2008, could you give the Chamber an idea of the chain of command
5 within the Criminal Investigation Department starting from the
6 commissioner of police and moving down to the various CID officials in
7 the field?

8 A. Madam President, we have the commissioner of police who is the
9 head of the Kenya police. Then below him we have the senior deputy
10 commissioner of police (* indiscernible) who is the director of
11 Criminal Investigation Department. The director of the
12 Criminal Investigation Department has got various departments at the
13 headquarters, but coming down to the provincial level, we have
14 provincial -- provincial CID officers. Then at the district level we got
15 divisional CID officers who are also in charge of criminal
16 investigations, Madam President, your Honours.

17 Q. Let us turn our attention to 2006 and 2008, basically the
18 post-election violence period and the months preceding that. You were,
19 in fact, at the -- working at the provincial level for CID during that
20 time-frame I think you told us; is that correct?

21 A. Correct.

22 Q. Can you give us an idea of the geographical area that you as the
23 provincial CID director covered during that time-frame?

24 A. Madam President, the provincial CID department I was covering the
25 entire Rift Valley Province. Rift Valley, Madam President, is one of the

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 12

1 biggest provinces in Kenya. It is the largest province in Kenya, and all
2 the other provinces are bordering Rift Valley Province save for -- for
3 North-Eastern Province. Geographically Madam President,
4 Rift Valley Province we -- it borders Uganda on -- on the west, and on
5 the north it borders Ethiopia and the Sudan. Down in the south the
6 province borders Tanzania, Madam President. Suffice to say that
7 Rift Valley Province is multi-ethnic, and as at the time I was there, it
8 had a population of roughly 8.6 million people, Madam President, with
9 about 20 or so ethnic diversities.

10 Q. In terms of geographical area, do you have any idea, approximate,
11 at least, what the square kilometres are for the -- the Central Province,
12 the Rift Valley Province?

13 A. Yes, Madam President. Rift Valley Province is about 192.000
14 square kilometres, roughly.

15 Q. Now, are the townships or the areas in Nakuru and Naivasha in the
16 Rift Valley Province?

17 A. Yes, Nakuru and Naivasha, Madam President, are in the
18 Rift Valley Province.

19 Q. Let us talk and move, if we can, Mr. Amin, to the violence in the
20 Rift Valley Province coming from the post-election time beginning after
21 the election results on 30 December 2007 and focusing your attention, if
22 you may, for the most part on Nakuru and Naivasha. Can you talk to
23 Madam President, your Honours, about you being the provincial director,
24 your observations as to how this violence came about, why it came about,
25 and what form it took during the time when you were there?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 13

1 A. Thank you. Madam President, Rift Valley Province, I must say,
2 generally has been a very, very, very quiet province in terms of
3 security. We indeed conducted the party of nominations fairly well and
4 we provided the necessary security down after the election process, and
5 up to the election day the province remained fairly calm,
6 Madam President. What I remember vividly is in the month of December,
7 that is 2007, we had a few skirmishes in Molo Division, in the areas of
8 Polengrun (* phon), Kiringit (* phon), Kiptagich and Kerisoi. We moved
9 there as the provincial security team and we managed to fix a problem
10 quickly. Then came the election day. Things went quite well,
11 Madam President. And the people were casting their votes very well in an
12 area, in an environment of peace and tranquility. We never received a
13 serious incident report throughout the election period up to the election
14 day, Madam President.
15 Came on 29th of December, 2007, Madam President, there was
16 palpable tension in the province, tension. People are agitating and
17 shouting that why the delay in the announcement of the provincial
18 results? Is it that the results have been rigged? There are those
19 concerns, Madam President. There was that perception that there was a
20 deliberate attempt to delay the pronouncement of the results because of
21 rigging. And, Madam President, the situation was, in my view, wasn't by
22 what people observe on national television. Comments being made by
23 senior officials, ECK, jobs, election results being cooked, election
24 officials are not making calls. The institution was further worsened by
25 arguments after decisions between the ODM and the PPNU luminaries which

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 14

1 was being streamed live from the national tallying centre
2 Kenyatta International Conference Centre. All that tended to whip up the
3 emotions the people.

4 Then come the announcement of the provincial -- of the
5 presidential results. That was on 30th, Madam President, at about 5.00
6 p.m. I must say that Rift Valley became a theatre of large scale of
7 violence. Large scale violence. People took the law unto themselves,
8 barricading the roads and just massive destruction and a looting of
9 properties. And within two or three days we had what came to be known as
10 the IDPs. And the areas barely effected, Madam President, were the
11 North Rift, South Rift, and parts of the Central Rift, Madam President.
12 And of course, we could witness skirmishes in other parts of the country
13 and those problems had a contagion. It had a seismic effect on the
14 people of Rift Valley. This total paralysis in government operations, no
15 respect to law and order. So as a result of that, on 31st,
16 Madam President, the provincial commissioner Rift Valley Province called
17 for an *ad hoc* but an urgent provincial security and intelligence
18 committee meeting to deliberate on the lawlessness which was creeping
19 into the province. By then we'd been receiving hundreds and hundreds of
20 IDPs streaming to the police stations with charges and the Showgrounds,
21 Madam President. So our biggest priority was how do we subvert the
22 security and the interests of internally displaced persons?

23 Q. And what city -- what town are you talking about the Showgrounds,
24 sir?

25 A. That is North Rift and particularly talking about Uasin Gishu,

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 15

1 Madam President. Thereafter, we thought of how do we unblock the road?
2 How do we bring sanity back? How do we beef up security at the mainly
3 the urban -- the urban centres? Madam President, I can remember
4 subsequent to that we overflow as a basic security team the worst hit
5 areas. That was the Burnt Forest, the Kinondo and the Kiambu areas and I
6 must say that what we saw was total disillusion. Areas that were
7 hitherto life, beaming with people what we could see was homestead was in
8 ruins and ruppels (* phon), your Honour, to the extent as far as your eye
9 could see. We went and visited a nearby Kiamba (* phon) charge about
10 16 kilometres from Eldoret town, Madam President, a very, very ugly scene
11 where the -- almost -- that people were burnt inside the church. Seven
12 children. And I have the unfortunate bit of personal witness in that.

13 From there, Madam President, we -- proceeded to the IDPs camps
14 and what we saw was really horrible, Madam President. Thereafter the
15 skirmishes and violence continued. People perceived to be PNU
16 sympathisers were being moved away from -- from those areas
17 Madam President. The properties destroyed again, killed and others --
18 others maimed.

19 Next, Madam President, there was now -- there an attack on
20 government orders. Particularly the chiefs felt the brunt of the
21 election violence and even police officers themselves. I can remember
22 proceeding to a place on Cheptiret, that is in Eldoret District,
23 Madam President, where a district officer was killed together with a
24 chief inspector. I was going to go and ask for a distress call,
25 Madam President, myself, but I was almost fallen victim of those

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 16

1 marauding youths. I found that they had surrounded my own officers, 13
2 of them, Madam President, burned three police vehicles, and they were
3 almost unleashing terror to those police officers. And Madam President,
4 were it not for my presence there there would have been a very, very big
5 massacre. And when you look boys, these are very, very young boys, 13,
6 14, 15 years. You wonder will they understand the consequence of what
7 they are doing, Madam President.

8 Later, Madam President, the violence now spread to other parts of
9 the region. In Baringo people burned down a government museum, stole all
10 the properties inside, stole the livestock inside. A place known as
11 Musoret (* phon) that is in Koibatek District, Madam President, a father
12 was killed while he was (* indiscernible). In Kaleja (* phon) District,
13 Madam President, people burnt the government offices. The district
14 officer's house, his residence, and administration officer was killed,
15 five firearms were stolen.

16 Come down to Kipkelion Province which is neighbouring the bridge
17 known as Kepchion (* phon) bridge, Madam President, was damaged.
18 Transport became a probable. In Boma Division they ended up burning
19 government houses, targeting government employees, chiefs for that
20 matter. In Bomet they killed a police officer who had gone to assist a
21 person who was in distress and he suffered a brutal death,
22 Madam President.

23 Coming to Nakuru and Naivasha, Madam President, so many IDPs.
24 Displacement of people. In Naivasha the worst hit areas, that was
25 Naivasha town where a total of about 10.000 IDPs, members of the Luo

1 community and the Luos particularly had been targeted. In Nakuru the
2 same. We similar experienced there those skirmishes, Madam President.
3 And the skirmishes continued until the third week when we received IDPs.
4 We had four visiting Africa (* indiscernible) presidents:
5 President Benjamin Kappa of Tanzania; President Joaquim Chissano of
6 Mozambique; Kenneth Kaunda of Zambia; and Saka Tamaru (* phon) from
7 Botswana. And they went and visited the IDP camps, Kachibora, the
8 (* indiscernible) capital in charge in Eldoret and the ASP Showground in
9 Eldoret, Madam President.

10 We also had visits from -- by Dr. Jendayi E. Frazer, the US
11 Secretary of State for African Affairs, accompanied by the then US
12 Ambassador Michael Ranneberger. Later instructed the president
13 Raboi Mikibak (* phon) visited the IDP camps that is Kachibora and
14 Burnt Forest. And he very much emphasised on the issues of
15 peace-building and resettlement of the IDPs and how to bring back the
16 country together. Then finally, we had the UN Secretary-General Koffi
17 Annan (* indiscernible) and other international luminaries and it was
18 only after the intervention of the international community and our own
19 political leadership that somehow a sense of stability was brought back
20 to the region. Madam President, that's just a brief synopsis of the
21 post-election violence in Rift Valley Province.

22 Q. Excuse me, Mr. Amin. If we can, can we just go back to the
23 beginning of the violence in Nakuru and Naivasha, two areas within the
24 province, your province. Can you talk to us about the violence in those
25 areas, how it started. You noted, too, in your testimony to the Waki

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 18

1 report, that's EVD-PT-OTP-00067 at 0504, that "this was not an organised
2 crime, My Lord, it was a spontaneous reaction," and you then describe the
3 types of weapons. Can you talk to us, talk to the Chamber, if you could,
4 about your feelings and your understanding and your observations during
5 that period of time which caused you to describe the violence in Nakuru
6 and Naivasha in that fashion.

7 A. Thank you. Madam President, I will start with the violence in
8 Naivasha which in my estimation took place on the 27th, 27th of January,
9 long after the other regions of province had erupted into -- into
10 violence.

11 Naivasha, Madam President, has been home to the internally
12 displaced persons mainly from the North Rift and Southern Rift, and the
13 indication we had is that the coming of those internally displaced
14 persons to Naivasha really whipped up the emotions of the locals there,
15 mainly the Kikuyu inhabitants. They came and shared with them their sad
16 stories, their experiences there and how generally they had been
17 mistreated. Madam President, you -- I had an occasion to -- to talk to
18 those internally displaced persons, and they really appeared very weary,
19 disillusioned and tired, and I think the general appearance and the
20 stories really did not go down well with members of their own
21 communities. So what happened next is the inhabitants of -- of now
22 Naivasha coupled with -- with -- with the Kikuyus in the IDP camps, they
23 invested a lot of mayhem amongst the Luo and Luhyas in Naivasha District,
24 Madam President.

25 Why I'm saying those attacks were spontaneous is that we never

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 19

1 had an indication, not even for a second that Naivasha was to be
2 attacked, Madam President. It was all an oasis of peace. When the
3 entire Rift Valley Province was burning Naivasha District was very, very,
4 very peaceful, Madam President. So in my view, nothing could have really
5 caused the attacks on the Luos and the Luhyas in Limburg (* phon) apart
6 from the emotions, the emotions. I did not see any form of organisation.
7 I did not see any form of structure -- structured attacks.

8 The same applies to Nakuru, Madam President. The areas
9 (* indiscernible) were Langa Langa, Kwa Rhonda, Kaptembwa and Githima.

10 In Nakuru there was attention be -- slightly after the
11 announcement of the presidential results, particularly in the areas of
12 Nakuru bordering Koibatek District, that is from Gai and Kambiamoet
13 (* phon), what we call Kambiamoet. There were some slight tensions
14 between residents of those areas, Madam President. But the genesis of
15 the problems in Nakuru township came with the announcement of the
16 presidential results, Madam President and all hell break loose. There
17 were the stories of the IDPs. There was the allegations and the Kalenjin
18 youth were grouping themselves in Kaptembwa quarry so as to push the
19 Kikuyus back to their ancestral lands, that is it -- the perception is
20 that the Kikuyus hailed from Naivasha. On the other side there were the
21 rumours that the Kikuyus were grouping themselves people were being
22 brought from all the way from Laikipia and Naivasha to come and attack
23 Kalenjins. So there was a conspiracy of so many factors, your Honour,
24 Madam President, as actually relate to the violence in Nakuru and in
25 Naivasha.

1 Q. Now, Mr. Amin, when you were talking about this not being
2 organised and spontaneous, when you were talking to the Waki Commission
3 again on the same page 0504, you mentioned the crudeness of the weapons
4 that were being employed by the individuals attacking each other, and you
5 mentioned machetes, bows and arrows, spears, and isolated use of weapons.
6 As a police officer of many years, what did that indicate to you with
7 regard to organisation and spontaneity, et cetera?

8 A. Well, as I indicated in the Waki Commission during my testimony
9 the people, the youth were armed with the crude weapons like the
10 machetes, the *pangas*, anything that they could lay their hands on,
11 Madam President, your Honours. But even a gang is organised, I believe
12 they will be more sophisticated. They will look for more dangerous
13 firearms than going for *pangas* and *rungus*. So remained the fact that
14 they were using crude weapons too, in my estimation, really did not
15 appear to me as a very, very organised gang, Madam President,
16 your Honours.

17 Q. Much of what we've heard in this Chamber during the course of
18 these proceedings and prior to that involves the Mungiki. You know --
19 said in your Waki Commission report that there was a problem of -- in the
20 Rift with the Mungiki. What is your understanding based on your police
21 experience of the Mungiki, what they are and what they do?

22 A. Madam President, my understanding of Mungiki. Mungiki's is an
23 outlawed criminal gang. An outlawed criminal gangs, just like other
24 criminal gangs we have in the country. We have the Talibans, we have the
25 Kamjeshi, we have the Chinkororo, and we have the Mungikis, your Honour.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 21

1 These are -- these are criminal gangs out to cause misery to the
2 population of the country. They engage themselves in all sort of violent
3 acts, robberies, rape, murders and extortions, and they're ready for
4 hire. They're ready for hire, Madam President, your Honours. So in my
5 view, Mungiki is a criminal gang and it's an internal security threat
6 which the government really took very seriously, and as a
7 Provincial Security Intelligence Committee we discussed the issue and the
8 manners of Mungikis severally in Rift Valley Province, Madam President,
9 and how we should go about it and stem this menace with the Mungikis.
10 They have reeked havoc, caused a lot of misery to the population of
11 Rift Valley and Kenya by large. So Mungiki is a criminal gang, in my
12 view.

13 Q. Now, if I might have just one moment, Madam President.

14 PRESIDING JUDGE TRENDAFILOVA: Just, Mr. Amin, would you speak a
15 little bit slower because the interpreters cannot follow you. Since this
16 is their request, let us make it possible for them to do their jobs.

17 MR. KEHOE:

18 Q. Mr. Amin, you mentioned some of the other gangs. Could you spell
19 the -- the names of some of those other gangs beside the Mungiki, if you
20 may -- if you could?

21 A. Your Honour, I mentioned a gang like the Kamjeshi. Kamjeshi for
22 you is Kilo, Alpha, Mike, Juliet, Echo, Sierra, Hotel, India. Then you
23 have another criminal gang and it goes by the name the Taliban, Madam
24 President. For you Taliban is Tango, Alpha, Lima, India, Bravo, Alpha,
25 November, Madam President. Then I mentioned about the Chinkororo. For

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 22

1 you is Charlie, Hotel, India, November --

2 PRESIDING JUDGE TRENDABILOVA: Show down, Mr. Amin, slow down,
3 please.

4 THE WITNESS: Okay. Sorry. I repeat Madam President. Sorry for
5 that. Chinkororo is Charlie, Hotel, India, November, Kilo, Oscar, Romeo,
6 Oscar, Romeo, Oscar, Madam President.

7 PRESIDING JUDGE TRENDABILOVA: Mr. Amin, could I ask you what are
8 you reading from?

9 THE WITNESS: Madam President (* indiscernible).

10 PRESIDING JUDGE TRENDABILOVA: You're make your self notes,
11 please.

12 MR. KEHOE: Your Honour, I know the Chamber may know this, but
13 for some clarity to those in the courtroom or not, but it's quite common
14 in the military or in the police when you try to spell a name so there is
15 no miscommunication especially over the radio, et cetera, to give a name
16 such as Charlie to say it begins with a C, Alpha to begin with an A.

17 PRESIDING JUDGE TRENDABILOVA: Yes, we know this, Mr. Kehoe.

18 MR. KEHOE: Thank you, Madam President. I'm not certain
19 everybody did. Some of my colleagues are looking at me quizzically
20 saying --

21 PRESIDING JUDGE TRENDABILOVA: I just didn't want to wait until
22 you exhaust the alphabet.

23 MR. KEHOE: We were getting there soon, Madam President.

24 PRESIDING JUDGE TRENDABILOVA: Please proceed.

25 MR. KEHOE:

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 23

1 Q. Staying with the Mungiki, Mr. Amin, and quite seriously in your
2 testimony before Waki, you noted that quite often the name Mungiki is
3 used, and I believe the term you used is scarecrows, and you noted, and
4 this is again at 0506, you will hear rumours like 200, 300 Mungikis but
5 nothing goes on. Can you just elaborate on that just a bit and tell the
6 Chamber exactly what you were discussion and what you had in mind?

7 A. My -- Madam President, what I say these Mungikis, the -- the word
8 Mungikis is something pervasive into the very province. Whenever any
9 incident of robbery or violence occurs in the province the first suspect
10 that would come in mind is the Mungikis. And when people are scaring
11 their counterparts they will say that we shall send Mungikis to you. We
12 will send a hundred Mungikis. We will send 200 Mungikis. So it is more
13 or less it has become like a scarecrow to scare people, whereas that
14 doesn't mean that the Mungiki problem is not there. It is there, but it
15 has been further -- it has further been used to scare away communities.

16 Q. During the course of the post-election violence, did you hear
17 rumours about Mungiki being in the area, be it in Naivasha or in Nakuru?

18 A. Yes, your Honour. We have heard rumours about the presence of
19 Mungikis in -- in Naivasha. We have heard about rumours about the
20 presence of Mungikis in Nakuru. There was even one time we got
21 information that there were Mungikis strategies -- strategising at
22 Stem Hotel. This is in Nakuru town, Madam President, and I personally
23 went there but could not find the presence of any Mungikis. So whenever
24 the slightest incidence occurs, the name of Mungiki will pop up. So that
25 is it, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 24

1 Q. During the course of your investigations, did you see any
2 tangible evidence that the Mungiki was involved in the violence in
3 Naivasha or Nakuru?

4 A. No, Madam President.

5 Q. Now, I believe you called it a rumour, but you mentioned that you
6 had heard that thugs were being brought from outside Naivasha prior to
7 the outbreak of violence in Naivasha. Did you ever hear or did you see
8 any evidence that the Mungiki had been transported to either Naivasha or
9 Nakuru prior to the violence be it *matatus* or army trucks or other types
10 of lorries?

11 A. Your Honour, I did not get information that Mungikis were being
12 transported to either Naivasha and Nakuru. The information we had is
13 that Kikuyu youth and the Mungikis were out to unleash terror in Naivasha
14 and Nakuru. Transportation, that I did not. The issue about the
15 transportation of Mungikis in military trucks, your Honour, that was
16 there. Those allegations were there. I really did not find anything
17 tangible.

18 Q. Did you ever hear allegations or did you ever learn of
19 allegations that the Mungiki in Naivasha and Nakuru were operating in
20 concert with the Kenyan police to allow violence to occur against
21 non-Kikuyu citizens?

22 A. I've heard those allegations, Madam President, your Honours.
23 Very, very outrageous allegations indeed. Very outrageous,
24 Madam President. As police officers, we undertook a solemn oath to
25 protect life and property, to preserve peace, to maintain law and order,

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 25

1 and to detect crimes? As I said in my testimony, Madam President,
2 Mungiki is an outlawed criminal gang. The last person a Mungiki will
3 love to see alive is a police officer, and there's no way we can form an
4 intention with Mungikis to be spectators and watch Mungikis leashing
5 terror against fellow Kenyans. We would not have done that,
6 Madam President, your Honours. And if somebody were to tell me to do
7 that, I would have been the last person to execute such orders,
8 Madam President.

9 Consulting with Mungikis to unleash terror against my fellow
10 Kenyans, Madam President, it would be like somebody asking me take a rope
11 and go and commit suicide, hang myself. It's impossible. There's no way
12 we would allow that. No way we would allow that, Madam President.

13 In Naivasha, the division, Madam President, we had a total of 272
14 police officers, the entire Naivasha division. Out of the 272,
15 Madam President, we had 57 Kikuyu officers. The rest were representing
16 other Kenyan tribes. What will I tell these officers? Because the
17 people in Naivasha being targeted were the Luos, were the Luhyas. Where
18 I tell the Luo officers, the Luo officers stand aside so that Mungiki can
19 go and unleash terror against members of your community. That was not
20 practicable, Madam President.

21 The Officer Commanding Police Division, there was PD (* phon)
22 Nakuru, was not coming from the Kikuyu community nor was his deputy now
23 was his number three. My district CID officer was not coming from the
24 Kikuyu community. He was coming from the affected communities. The same
25 applies to his deputy. How naive would they be to allow their fellow

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 26

1 tribesmen to be executed by the Mungikis, Madam President, and what type
2 of a commander would I be to allow a criminal gang to unleash terror
3 against innocent Kenyans. That is impossible, Madam President.

4 Q. Mr. Amin, you talked to us about approximately 272 officers in
5 the Naivasha area. Was there a comparable amount in the Nakuru area and
6 was their ethnic diversity similar?

7 A. Madam President, in Nakuru, if my memory serves me well, the
8 entire Nakuru division we had a total of 638 police officers at that
9 time, that is during the month of January, and the members of the Kikuyu
10 formed roughly 97. The rest were coming from all the other tribes of the
11 country. So really executing such an order again would be a tall order,
12 Madam President.

13 Q. While these crimes are taking place and thereafter, Mr. Amin,
14 what did the police do? What did you and the other Kenyan police
15 officers do to stop the violence, to prosecute, to arrest? Could you
16 tell Madam President and the Chamber what steps the police took?

17 A. Thank you. Madam President, during the -- the height of the
18 post-election violence, there was a multiplicity of incidences here and
19 there. As I indicated in my testimony, Madam President, the situation
20 was almost akin to civil disobedience, civil disobedience. So we were
21 doing both operational and investigative duties, answering to calls of
22 distress, safeguarding the lives of the IDPs in the camps. Of course,
23 investigation of cases, security of vital government installations,
24 Madam President, and opening up of the road. So it was a multiplicity of
25 actions, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 27

1 Q. (* Microphone not activated) ... apologies, Madam President.

2 As part of those activities, did it also call upon the arrest and
3 prosecution of individuals for acts and crimes taking place both in
4 Naivasha and Nakuru?

5 A. Yes, Madam President. Like in the Naivasha attack of 27th, we
6 rounded up and arrested about 157 accused persons and took them to court,
7 Madam President, and Nakuru the same. We took a couple of -- about 37
8 people to court and arraigned them before court, Madam President. So
9 indeed we did some arrest and subsequent prosecutions, Madam President.

10 Q. And the cases that you brought, Mr. Amin, can you give the
11 Chamber an idea of what type of crimes you were arresting these people
12 for?

13 A. Basically the offences we preferred, the charges we preferred,
14 Madam President, was preparation to commit a felony at that time.

15 Q. And why was that charge of preference?

16 A. That was the charge of preference, Madam President, because that
17 was what we were able to prove before the court of law, because for us to
18 take a person to court for a particular offence, it must meet the
19 threshold of evidence. So if we were comfortable that the Prosecution
20 would be able to prove a charge of preparation to commit a felony, we
21 will proceed and charge the person with that particular offence,
22 Madam President. So the determining factor basically is what is the
23 evidence? What evidence do you have?

24 Q. Mr. Amin, during your testimony before the Waki Commission,
25 Justice Waki and some of the other officials talked to you about bonding

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 28

1 over individuals. Could you explain to the Chamber exactly what that
2 means and whether that particular method was employed when you were
3 trying to quell the post-election violence?

4 A. Yes, Madam President. In the -- the absence of any watertight
5 evidence against a suspect, we have a provision in our Statute where a
6 police officer will go and swear an affidavit before the Court trying to
7 convince the Court that whereas I do not have sufficient evidence, I feel
8 that Mr. X is a threat to the security of this particular area, and I --
9 I request the Honourable Court that Mr. X executes a bond of maybe two
10 years or one year so as to keep peace. And that is the -- a tool we
11 applied in large measure. In the entire Rift Valley Province I can
12 remember we bonded over 60 -- 64 people to keep peace, and that is mainly
13 due to lack of other incriminative evidences, Madam President,
14 your Honours.

15 Q. Now, Mr. Amin, as we move forward, let us just talk about the
16 investigation that you and the other CID officers employed, and can you
17 talk to us a little bit about some of the problems that you incurred as
18 you looked at potential allegations or evidence of a crime, how your
19 officers went about it and again what difficulties they had to overcome.

20 A. Thank you. Madam President, in the course of our investigations,
21 indeed we overcame several problems. I explained the magnitude of the
22 problem in Rift Valley, and one can imagine what type of meaningful
23 investigations can be conducted by the police in such a volatile
24 situation. Nevertheless, I said we were able to conduct some
25 investigations, and I can remember that for the last maybe two, three

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 29

1 months into the violence we were able to investigate an upward of about
2 6.000 cases.

3 Generally we had our own impediments in terms of investigations.
4 One is the unavailability of witnesses, Madam President, to come forward
5 and lodge their complaint with the police and try to explain to the
6 police how the incident occurred for fear of one reprisals. One will say
7 that "My car was stolen by my neighbour," but when you ask him, "Who is
8 your neighbour?" That person will be reluctant to go further with that
9 discussion for fear of reprisals, Madam President.

10 Others were fearing victimisation by their own community members,
11 Madam President, your Honours. Others were not able to give us a proper
12 recount on the sequence of evidence due to trauma or memory failure,
13 Madam President. We had the challenges of trauma. The other challenge,
14 Madam President, we confronted was our inability to access scenes of
15 crimes promptly. As I indicated, Madam President, there was total
16 breakdown of transport. Roads were hardly accessible, barricaded with
17 rocks, trees, trucks. I can remember one time we had a distress call in
18 a place known as Bayeti - Bayeti is in Uasin Gishu District,
19 Madam President - whereby the youth, the youth forcefully took away keys
20 of 65 trucks, 65 trucks, and they used those trucks to block the road.
21 So we had to seek for assistance from the military. A chopper came with
22 a technician and we're able now to unblock the road. So accessibility
23 was also a big challenge. And of course other obviously things like
24 tampering with the scenes of crime. As regards gender-based violence,
25 sexual cases, the victims were not reporting their cases instantly to the

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 30

1 police. They were not seeking medical attention. So examination was a
2 problem. So generally we had those problems, Madam President,
3 your Honours.

4 Q. You talked, Mr. Amin, during the course of your Waki testimony
5 and again this is at page 05 (* indiscernible) 5 of the Waki testimony
6 about "big guys" with the idea that the police simply directed their
7 attention towards smaller level players without going after people who
8 may have been responsible for more serious crimes or, in fact, creating
9 the unrest to begin with.

10 Could you comment to Madam President and the Chamber on those
11 allegations and your position in that regard?

12 A. Madam President, during my testimony before the Waki Commission,
13 I was asked that question, whether the police with only keen on arresting
14 the small fishes and sparing the -- the so-called big guys, and my take
15 on that was that the law says any person who commits a crime is not
16 selective. So it is immaterial whether you're a big guy, whether you're
17 a small guy. So long as you have broken the statutes of the country then
18 appropriate action would be taken against that particular person. That
19 was our stand, Madam President.

20 Q. Well, let us talk about the level of proof that you also
21 discussed in your Waki Commission testimony when there were allegations
22 of improprieties by particular leaders. Can you comment on that?

23 A. A levels of proof, your Honour, is let's take the example of an
24 offence of murder. The law is very clear. For one to prove an offence
25 of murder, you must prove the ingredients of the offence of murder. Was

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 31

1 the *actus reus* there? Was the *mens rea* there? Was the evidence of
2 eyewitness there? Do you have the evidence of a person who said, "I saw,
3 I heard"? Are you able to build a case against this particular person?
4 Those are the levels of proof. If it is arson, do you have the
5 witnesses, the people who saw this person burn the house? If the
6 property has been appropriated, who appropriated the property? So those
7 are the thresholds of proof. They must be sufficient enough for the
8 Prosecution to initiate prosecution against the person, Madam President.

9 Q. You were also asked about investigations directed against police
10 officers and potential improprieties or crimes committed by police
11 officers, and you noted that you -- the question is whether or not of
12 this post-election violence any police officer was arrested and charged
13 with the post-election violence-related crime and you said, "No, My
14 Lord." And then Justice Waki asked you:

15 "Is it because no police officer committed any offence, or is it
16 that after investigation they were absolved?" Your answer is:

17 "I can't say that definitely no police officer committed any
18 offence. If an officer commits an offence, he is subject to the due
19 process of law."

20 What's your comment on that sequence, Mr. Amin concerning police
21 officers and improprieties and what exactly you believe their proper
22 response should be?

23 A. My Lord, Madam President, a crime is a crime, and as I said,
24 there isn't an exclusively application of the law. If a police officer
25 commits a crime, he or she must be subjected to the due process of the

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 32

1 law. When in the Waki Commission I was asked whether we managed to
2 arrest police officers, that was within the confines of the Rift Valley.
3 But I can remember a police officer was arrested and prosecuted for the
4 offence of murder in Nyanza Province, was taken to court. So indeed some
5 officers were arrested in Rift Valley. We did not manage to arrest any
6 police officer, but that's not to say that we were not to arrest. Should
7 we have had evidence to that effect, then nothing would have stopped us
8 from arresting the police officer or any other person, for that matter,
9 Madam President, your Honours.

10 Q. Mr. Amin, just a few more questions, if we may. The allegation
11 from the Prosecution in this case is that an order came down from the
12 commissioner of police, General Mohammed Hussein Ali, to the police in
13 the field to not stop Mungiki from travelling to the Rift Valley so that
14 they could fight alongside the Kikuyu against other ethnic groups.

15 Did you ever get such an order from anyone in the police
16 department at any point while the violence was taking place in the
17 Rift Valley or thereafter?

18 A. Your Honour, Madam President, your Honours, I did not. I did not
19 get any such orders from anybody that the police should allow the
20 Mungiki -- the Mungikis to go -- to cause terror and mayhem to my own
21 fellow citizens. I did not get. And if at all I was to get,
22 Madam President, those, that would be an unlawful order, and I will not
23 really imagine of executing such an order, allowing my fellow Kenyans,
24 Madam President, to be butchered by a criminal gang. I don't think so,
25 and I did not take that solemn oath. I took the solemn oath to protect

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Kehoe

Page 33

1 the lives and properties of our citizens. So I did not receive any such
2 order. Neither will I have executed, Madam President.

3 Q. Let me extend it out just one bit, Mr. Amin. Did you ever hear
4 of any other of your fellow officers receiving such order?

5 A. No, Madam President, I did not hear.

6 Q. When the violence was ongoing in the Rift Valley, did you in fact
7 get instructions regarding security and law and order from the
8 commissioner's office and police headquarters in Nairobi, and, if so,
9 what were they?

10 A. Madam President, indeed we used to get daily instruction. As on
11 my -- as per the chain of command personally, I was answerable to the --
12 the director of the Criminal Investigation Department, and we were
13 receiving instructions in terms of what efforts are we making to quell
14 the violence, what efforts are we making to arrest the people behind the
15 violence, what efforts are we making to apprehend the perpetrators. So I
16 can remember on daily basis we had been given an update to the CID
17 headquarters on the status of all the cases under investigation in the
18 Rift Valley Province, Madam President.

19 Q. And within any of those instructions were you ever told not to
20 address or prosecute any individual because of that person's ethnic or
21 political affiliation?

22 A. No, Madam President.

23 Q. Mr. Amin, you were asked several questions by Justice Waki at
24 again EVD-PT-OTP-00067 at 0511 and 512, with regard to measures taken to
25 quell violence and to ensure that this violence didn't happen again, and

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 34

1 Justice Waki noted that the obvious measure is to take them to court and
2 get them punished. So what are -- what are these other measures which
3 you can think about which can serve the same purpose? And you noted at
4 the top of page 0512, this is your comment:

5 "The own measure I have in mind, My Lords, I do recommend, and I
6 have faith in the police institution, if somebody has committed a
7 criminal offence, he has to be prosecuted."

8 Mr. Amin, do you stand by that statement as you sit here today?

9 A. Precisely, Madam President, your Honours.

10 MR. KEHOE: Madam President, your Honours, I have no further
11 questions.

12 Thank you, Mr. Amin.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you very much, Mr. Kehoe.

14 Now, the Office of the Prosecutor, I think that we have 16, 17
15 minutes that you can start with your questions. Who is going to --

16 MS. ADEBOYEJO: I will be putting the questions, Madam President,
17 your Honours.

18 PRESIDING JUDGE TRENDAFILOVA: (* overlapping speakers)
19 Ms. Adeboyejo.

20 Questioned by Ms. Adeboyejo:

21 Q. Good afternoon, Mr. Witness.

22 A. Good afternoon, Madam Prosecutor.

23 Q. My name is Adesola Adeboyejo, and I will be putting questions to
24 you just like my friend on the other side has put questions to you. I
25 want you to listen to me carefully when I put questions to you, but also

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 35

1 look at the Judges, as you heard earlier, so that you will be in a
2 position to answer the questions properly.

3 Since we're both going to be speaking in English, I would be
4 observing a pause when I ask you a question, and I will ask you to also
5 observe a pause before you respond to me. Yes? Okay. Thank you.

6 Now, my first question to you is going to be directed to the
7 interviewing process that you had. Can you tell this Chamber how long
8 did your interview take?

9 A. Madam President, it took about two hours.

10 Q. About two hours.

11 A. Yes, Madam President.

12 Q. And where did the interview take place?

13 A. Rhondro (* phon) house, that is within the central Bisan (* phon)
14 District in Nairobi.

15 Q. And were you provided with a copy of your statement after you
16 finished?

17 A. Yes, Madam President.

18 Q. Did you read the statement?

19 A. Yes, Madam President.

20 Q. Did the information in the statement reflect all that you had
21 discussed with the Defence counsel?

22 A. Yes, Madam President.

23 Q. And is the statement an accurate reflection of what you said
24 during the interview?

25 A. Yes, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 36

1 Q. Did you sign the statement?

2 A. Correct, Madam President.

3 Q. Okay. Now, my learned friend has spent the past hour or so
4 putting questions to you from your statement to the Commission of Inquiry
5 into the Post-Election Violence. Can you explain to the Court why the
6 statement that you provided to the Defence in most parts is an exact
7 replica of your statement to CIPEV?

8 A. Say again, Madam President?

9 Q. Okay. I will repeat the question. Can you explain to this Court
10 why your statement to the Defence is almost exact replica, word-for-word,
11 of what you gave to CIPEV?

12 MR. KEHOE: With all due respect, I object to that
13 characterisation. That's simply not accurate. I think the best -- if I
14 propose to, Madam President, is to allow the witness look at both of
15 those statements and let him answer on based on that.

16 PRESIDING JUDGE TRENDAFILOVA: Mr. Kehoe, I disagree with you
17 just because those that have the two statements before the
18 Waki Commission and before you and compare them and see that there is a
19 similarity.

20 MR. KEHOE: There is no question about that. But that's a lot
21 different than an exact replica. I agree that the information
22 transmitted by Mr. Amin in both statements is very similar but exact
23 replica is something, again, quite different.

24 PRESIDING JUDGE TRENDAFILOVA: Well, refrain from
25 (* indiscernible). She said, as Judge Tarfusser points out almost. She

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 37

1 didn't say this is an exact replica.

2 MS. ADEBOYEJO: That's right.

3 PRESIDING JUDGE TRENDAFILOVA: And let us avoid the issue of
4 questions containing the answer.

5 Mr. Amin, please.

6 THE WITNESS: Thank you, Madam President. During my testimony
7 before the Waki Commission, Madam President, I was given my testimony
8 from the (* indiscernible) perspective of a witness, a person who was on
9 the ground. I was giving testimony on what I saw and what I heard, and
10 if I am to record ten other statements whether it is before the advocate
11 or before the Waki Commission or before the Court, the contents of my
12 testimony, Madam President, would be the same.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you.

14 Ms. Adeboyejo, please.

15 MS. ADEBOYEJO:

16 Q. Thank you, Witness. I will come back to this question of the
17 exact replica, I will point out to you, and I'm looking at
18 EVD-PT-D14-00042.

19 PRESIDING JUDGE TRENDAFILOVA: Ms. Adeboyejo, exact or almost?

20 MS. ADEBOYEJO: Almost.

21 PRESIDING JUDGE TRENDAFILOVA: Yes. Let us be correct.

22 MS. ADEBOYEJO: Yes. That's what I said, your Honour.

23 If I can ask the Court Officer to put that up.

24 COURT OFFICER: Indeed, your Honour, but before we do this, can
25 you kindly clarify the confidentiality level of this document. Thank

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 38

1 you.

2 MS. ADEBOYEJO: If my learned friend has no objection, it's the
3 statement of the witness.

4 MR. KEHOE: We have no objection at this point, Madam President.
5 There had been some concerns later, but with all due respect, my
6 colleague can put it up on the screen.

7 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kehoe.
8 Court Officer, please proceed.

9 MS. ADEBOYEJO:

10 Q. Now, Witness if you look at the screen, you will see that your
11 statement is before us. In the -- I'm going to look at page 2, page 2 of
12 the document.

13 If you see the second paragraph. I will read to you:

14 "I did not receive any instruction from any quarter on how to
15 treat the people who were rioting any differently than we normally would.
16 Neither did I receive instructions not to arrest or prosecute people."

17 Witness, can you comment on this particular portion of your
18 statement?

19 A. Madam President, this is what I said. That I did not receive any
20 instruction from anybody. And the only instructions we receive is if we
21 are investigating and a file is to be forwarded to the (* indiscernible),
22 the file will naturally be forwarded to the Attorney General for advice
23 and other instructions.

24 MR. KEHOE: Madam President, if I could ask the Chamber to ask
25 the witness to look at the Chamber, if we can.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 39

1 PRESIDING JUDGE TRENDAFILOVA: Yes, this is correct. Mr. Amin,
2 please.

3 THE WITNESS: Sorry, sorry.

4 MS. ADEBOYEJO:

5 Q. Thank you, Witness. Now, you testified that your present
6 position is a senior assistant commissioner of police at police
7 headquarters.

8 A. Not at police headquarters, at CID headquarters --

9 Q. CID headquarters.

10 A. -- Madam President.

11 Q. Thank you for the correction, Witness. Can you tell the Chamber
12 what was your role as the provincial criminal investigation officer in
13 the Rift Valley in 2007.

14 A. Madam President, as I said, my role was basically to investigate
15 serious or (* indiscernible) crimes. Mine was the investigative arm of
16 the Kenya police. My role was to investigate cases and guide both the
17 crime branch and the uniformed personnel in the investigation of cases,
18 Madam President.

19 Q. Thank you, Witness. And in responding to questions put to you by
20 my friend, you had referred to your reporting line. In other words,
21 those superiors that you reported to. Can you tell the Chamber who were
22 your down line, your subordinates, during the period of post-election
23 violence.

24 A. My subordinates were the divisional CID officers,
25 Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 40

1 Q. Is it possible to provide the name?

2 A. Rift Valley Province, Madam President, constituted of about 27
3 divisional CID officers, so it may not be possible to recall their names
4 at this point in time.

5 Q. But did you have an immediate subordinate that sat in your place
6 when you went for PSI meetings?

7 A. Immediate subordinate like -- maybe some more clarification,
8 Madam President, because at my headquarters I had about 45 officers, so I
9 don't know which immediate subordinate counsel is referring to.

10 Q. I will ask you the question again. When you had meetings at the
11 provincial security and intelligence committee and you were unable to
12 attend, who attends in your place?

13 A. My deputy, the deputy provincial CID officer, Madam President.

14 Q. And what would be the name of this deputy?

15 A. He was Mr. Monyasia.

16 Q. Thank you. And how often did he have to report to you during the
17 period of the post-election violence?

18 A. We were meeting almost on daily basis, Madam President, when I
19 will be in the office or when he will be in the office.

20 Q. And during this period of the post-election violence, how often
21 did the Provincial Security and Intelligence Committee sit?

22 A. Madam President, as I said, on the 31st, a day after the
23 pronouncement of the presidential results we had an *ad hoc* provisional
24 security committee meeting. Then on the 3rd of the following month, I
25 think we had about four or five other meetings. So we sat on several

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 41

1 occasions, Madam President.

2 Q. Were your sittings weekly or were they daily?

3 A. It was on *ad hoc* basis in view of what was happening in the
4 country. In a time when they need advises they will sit. I can remember
5 in our first sitting we had the session at the PC's residence. So
6 (* indiscernible), Madam President.

7 Q. And can you tell the Chamber what did you deliberate upon when
8 you sat as the PSIC?

9 A. As I said, Madam President, the first priority was how do we
10 secure the IDPs? They were facing (* indiscernible) at the camps. How
11 do we ensure the smooth flow of traffic along the international highway?
12 How do we safeguard the major towns? How do you provide peace and
13 security? Basically that was our deliberation, Madam President.

14 Q. Thank you, Witness. And what was the decision-making process
15 like on the PSIC?

16 A. It was a consensus. We discuss issues. We come to a consensus,
17 Madam President.

18 Q. Thank you, Witness. And how were the decisions of the committee
19 implemented?

20 A. They were being implemented by the respect department. If it is
21 a matter relating to the police, it will be the PPO to implement that for
22 his tasks. If it is a matter relating to the provincial administration,
23 it will be the PC. If it's something on -- on education it will be
24 provincial director of education, so on and so forth. So it is asked by
25 the particular department, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 42

1 Q. Thank you, Mr. Witness. So I take it from your answer, Witness,
2 that the reporting lines went upwards according to who they were
3 representing. So it went upwards from the PSIC upwards according to
4 which department they were representing, yes?

5 A. Upwards. I really don't know what you mean by upwards,
6 Mr. President. It will go upwards or downwards.

7 Q. Very good, Witness, thank you for your clarification. So if it
8 had to be implemented at district level, you would -- the various
9 components of the security intelligence committee would then need to give
10 instructions to their subordinates?

11 A. You are, correct, Madam President.

12 Q. Thank you. And can I also ask you what was the reporting process
13 if you had to report to the national -- at the national level?

14 A. With me, I was reporting directly to the director of Criminal
15 Investigation Department, Madam President.

16 Q. Thank you, Witness. How long were you on the Provincial Security
17 Intelligence Committee?

18 A. As long as I was the provincial CID officer of Rift Valley I was
19 a member of the provincial security committee, Madam President.

20 MS. ADEBOYEJO: I see, your Honours I am approaching 4.00.
21 Can I -- because I want to go into a new set of questions.

22 PRESIDING JUDGE TRENDAFILOVA: So in order not to interrupt the
23 serious of questions --

24 MS. ADEBOYEJO: (* overlapping speakers)

25 PRESIDING JUDGE TRENDAFILOVA: -- relating to one and the same

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 43

- 1 topic now we shall make a break --
- 2 MS. ADEBOYEJO: Yes, your Honour.
- 3 PRESIDING JUDGE TRENDABILOVA: -- and we shall resume our session
- 4 at 4.30.
- 5 MS. ADEBOYEJO: Thank you, Your Honour.
- 6 COURT USHER: All rise.
- 7 (The witness stands down)
- 8 Recess taken at 3.57 p.m.
- 9 On resuming at 4.30 p.m.
- 10 (Open session)
- 11 COURT USHER: All rise.
- 12 PRESIDING JUDGE TRENDABILOVA: Please be seated.
- 13 Ms. Adeboyejo, please proceed. Oh, I'm sorry.
- 14 Court Usher, would you escort the witness. I didn't notice.
- 15 (The witness takes the stand)
- 16 PRESIDING JUDGE TRENDABILOVA: Mr. Amin, are you ready to
- 17 proceed --
- 18 THE WITNESS: Yes, Madam President.
- 19 PRESIDING JUDGE TRENDABILOVA: -- with the questions and your
- 20 answers?
- 21 Ms. Adeboyejo.
- 22 MS. ADEBOYEJO: Thank you, Madam President and your Honours.
- 23 Q. Welcome back, Mr. Witness. Don't forget again when I ask you
- 24 questions to direct your answers to the Bench.
- 25 Okay. When my learned friend was asked you some questions

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 44

1 earlier today, he asked you about the Mungiki. You recall that, don't
2 you?

3 A. Yes, Madam President.

4 Q. Do you know whether the Mungiki were planning attacks in Nakuru
5 and Naivasha?

6 A. Madam President, as I said, the general information was there in
7 the -- from the members of the public, from our own police forces. There
8 was the information that some Kikuyu youth were planning attacks. So
9 that general information was everywhere.

10 Q. And you said earlier that you had conducted investigation. Can
11 you tell the Chamber how did you conduct investigations?

12 A. Investigations in relation to the post-election violence,
13 Madam President?

14 Q. My question to you, because we're still -- I'm still asking you
15 the series of questions with regards to the Mungiki. You said earlier in
16 your testimony that there was information that there were Mungiki in
17 Stem Hotel, and my follow-up question to you is how did you conduct the
18 investigation?

19 A. Precisely. After -- upon receipt of that information that there
20 were Mungikis in Stem Hotel, actually, we were just been -- we were told
21 that they were in the conference room. I went there personally,
22 Madam President, with a team of my officers, and we made some inquiries
23 and there was not any meeting as alleged, Madam President.

24 Q. Thank you, Witness. You made you made some inquiries. What were
25 the specific nature of the inquiries?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 45

1 A. Madam President, we were told that there was a gathering of
2 people at the conference rooms. We went there discreetly and entered the
3 conference room, and there wasn't any people assembling there,
4 Madam President. In any case, we would not have gone out and asked the
5 proprietor of the hotel were there Mungikis. What we did is the
6 information was very precise. There's some Kikuyu youth suspected to be
7 Mungikis holding a meeting at Stem Hotel. Where? The conference hall.
8 So we went and proceeded and discovered nothing, Madam President.

9 Q. Thank you, Mr. Witness. I will now proceed to ask you did you
10 have information that the Mungiki would try to penetrate the police?

11 A. Not that I recollect, Madam President.

12 Q. Okay. I will put to you a particular document. It will come on
13 your screen, and then you'll be able to read. It's EVD-PT-OTP-00013, at
14 0064.

15 PRESIDING JUDGE TRENDAFILOVA: Is it a public document, as
16 Judge Kaul reminds me about the level of confidentiality, Ms. Adeboyejo.

17 MS. ADEBOYEJO: It's a sitrep report, that one of the ones my
18 learned friend had referred to yesterday. I can just make reference to
19 it, your Honours, if that would be a problem.

20 PRESIDING JUDGE TRENDAFILOVA: Are there some objections,
21 Mr. Kehoe, about the CIPEV report?

22 MR. KEHOE: Personally we don't have an objection. They were
23 given to us in a confidential form. I believe that they were OTP
24 documents that I used. I think there was one that we put in, but the
25 others, Madam President, if my recollection serves me correctly, came

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 46

1 from the OTP, and I do think that there was some information in those
2 sitreps that I trust was confidential, so I only -- that's why when I
3 went through this we didn't show the public, and we just showed it on the
4 screens in an abundance of caution.

5 PRESIDING JUDGE TRENDAFILOVA: So thank you, Mr. Kehoe. As far
6 as these documents were disclosed by the Office of the Prosecutor, what
7 is your recollection about the level of confidentiality? Were they
8 confidential, public?

9 MS. ADEBOYEJO: Your Honours, they were disclosed to the Defence
10 as confidential materials.

11 PRESIDING JUDGE TRENDAFILOVA: So we can just go into private
12 session.

13 MS. ADEBOYEJO: Yes, your Honour, that would be -- out after
14 abundance of caution.

15 PRESIDING JUDGE TRENDAFILOVA: Court Officer, let us for security
16 reasons do this.

17 (Private session at 4.36 p.m.)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 47

- 1 (Expunged)
- 2 (Expunged)
- 3 (Expunged)
- 4 (Expunged)
- 5 (Expunged)
- 6 (Expunged)
- 7 (Expunged)
- 8 (Expunged)
- 9 (Expunged)
- 10 (Expunged)
- 11 (Expunged)
- 12 (Expunged)
- 13 (Expunged)
- 14 (Expunged)
- 15 (Expunged)
- 16 (Expunged)
- 17 (Expunged)
- 18 (Expunged)
- 19 (Expunged)
- 20 (Expunged)
- 21 (Expunged)

22 (Open session at 4.39 p.m.)

23 COURT OFFICER: Madam President, your Honours, for the record,
24 we're back in open session. Thank you.

25 MS. ADEBOYEJO:

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 48

1 Q. Mr. Witness, you referred earlier to the role that you had as the
2 provincial PCIO at Nakuru and Naivasha. Did you have a unit that dealt
3 specifically with operational matters?

4 A. I was not, Madam President, your Honour, the PCIO for Nakuru and
5 Naivasha. I was the PCIO for Rift Valley Province and Nakuru Naivasha so
6 are just two districts within the larger Nakuru, but at my headquarters,
7 of course, I have -- have had investigations and operations department,
8 which -- which had functions within the department.

9 Q. And these operations department, from where did they receive
10 their instructions?

11 A. They were receiving from -- from me, the PCIO, Madam President.

12 Q. So you, yourself, were also involved in operational matters?

13 A. Both administrative and opinion. Depends on that particular
14 matter at hand, Madam President.

15 Q. Thank you, Witness. You testified earlier that you had charged
16 persons to court for the offence of preparation to commit a felony. Do
17 you recall?

18 A. Correct, Madam President.

19 Q. Can you tell the Chamber what is the minimum sentence for this
20 offence?

21 A. I -- I will not tell that immediately, Madam President, but it is
22 provided for. It is in the statutes.

23 Q. By virtue of your position as a very senior police officer, and
24 you said you had charged some of these persons for these offences, can
25 you inform the Chamber what is the maximum sentence you can get for this

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 49

1 offence, preparation to commit a felony?

2 A. As I said, Madam President, I cannot for a fact say this is the
3 maximum, but the maximum is in the statutes, and we can make reference to
4 it -- to our statutes, Madam President.

5 Q. Now, are you -- during the period of the post-election violence,
6 what was the maximum sentence for a misdemeanour, to your knowledge?

7 A. Not actually for the post select -- of post-election violence,
8 but the (* indiscernible) assistance for all misdemeanours, whether it is
9 a post-election violence case or not, I assume it to be about two to
10 three years, Madam President.

11 Q. Now, I'm going to put questions to you from a particular
12 document, EVD-PT-OTP-00002, at 302.

13 PRESIDING JUDGE TRENDAFILOVA: What is the level of
14 confidentiality, Ms. Adeboyejo?

15 MS. ADEBOYEJO: This is public, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: Fine.

17 MS. ADEBOYEJO: Okay. Thank you very much.

18 Q. At 302. And I'm going to read to you from that report. If you
19 look at the very last paragraph before you, it starts with the word
20 "Between." Can you see it? Between --

21 MR. KEHOE: Excuse me. With all due respect, Madam President,
22 can we tell the witness what the name of this report is and what the
23 nature of this report is so he has some frame of reference.

24 MS. ADEBOYEJO: I did. I said it was a Human Rights Watch
25 report.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 50

1 MR. KEHOE: I missed that. I apologise.

2 PRESIDING JUDGE TRENDABILOVA: I hope Ms. Adeboyejo will be left
3 to do her job.

4 MS. ADEBOYEJO:

5 Q. Now, Witness, can you see the very last paragraph of that report?

6 A. I can see, but the sentence is hanging incomplete.

7 Q. Yes, it will move to the next page. It reads:

8 "Between February 3 and 18, he had made," referring now to the
9 officers commanding the police district in Nakuru, "approximately 30
10 arrests in connection with the attacks but all of those suspects were
11 released on bail."

12 Witness, can you enlighten the Chamber on why those suspects were
13 released?

14 A. Madam President, I will not be in a position to enlighten the
15 Chamber, because for one I'm not personally aware about the arrest of
16 these suspects and their subsequent release, so I really would not be
17 competent to be able to comment on that, Madam President.

18 Q. But you will agree with me, Witness, that these were
19 circumstances that would ordinarily have been within your knowledge?

20 A. If at all they existed, yes, Madam President, but I'm not aware
21 about the release of 30 people by the police unconditionally having
22 committed crimes. That I'm not aware, Madam President.

23 Q. Okay. Would I put to you another document, and this is
24 EVD-PT-OTP-00093, at 0197. This one is confidential, so I'm just going
25 to read an excerpt for you:

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 51

1 "On January 31, 2008, the Naivasha District Security Committee
2 held a special meeting and the minutes of the meeting reveal that the
3 committee recommended the arrest and prosecution of 14 of the local
4 organisers of the violence."

5 Now, that particular document then goes on to list all of these
6 persons. Can you tell the Chamber what was the outcome of this
7 recommendation?

8 A. Madam President and your Honours, as I said while I was
9 explaining the functions following the prompting by the Prosecution, the
10 functions of the Provincial Security Intelligence Committee, how they
11 make decision and how are those decision executed. The same, same
12 decision-making process and the execution cascades to the DICs. My
13 humble opinion, Madam President, is if the DIC Naivasha was of the view
14 that concern category of people were deemed to be perpetrators of a
15 particular offence, it was within their purview it was in their
16 responsibility to execute -- to arrest, apprehend those people, prosecute
17 and take them to court. There will be no reason why DSIC would abdicate
18 its responsibilities and ask the PSIC or the NSAC to arrest. They would
19 not need any blessings from the PSIC or NSAC to -- to apprehend
20 criminals, particularly criminal gangs, Madam President.

21 Q. Now, Witness, you told the Chamber earlier that information or
22 instructions came from the PSIC either upwards or downwards because I
23 asked you that question specifically.

24 Now, the question that I have put to you is with regards to these
25 particular sets of people that have been referred to in this document,

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 52

1 were there any steps, to your knowledge, that the Naivasha DSIC took to
2 conduct those investigations?

3 A. No, nothing, Madam President. And as I said, if the DSIC in
4 Naivasha was of the view that some people were about to commit a criminal
5 offence, then it was squarely their responsibility and not that of the
6 PSIC or (* indiscernible) to make sure those criminals are apprehended,
7 Madam President.

8 Q. I'm going to now read to you a particular document.

9 MS. ADEBOYEJO: And, Madam President, your Honours, for this
10 particular document I will also request that we go very briefly into a
11 private session so that I would have the liberty to put the document to
12 the witness.

13 PRESIDING JUDGE TRENDAFILOVA: Yes. Court Officer, we again ask
14 you.

15 (Private session at 4.48 p.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 53 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 54

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 54 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 55

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 55 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 56

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 56 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 57

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 57 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 58

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 58 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 59

1 (Expunged)
2 (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged)

21 (Open session at 5.03 p.m.)

22 COURT OFFICER: Madam President, your Honours, for the record we
23 are now back in open session. Thank you.

24 MS. ADEBOYEJO: Thank you.

25 Q. Mr. Witness, you testified earlier about the fact that police

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 60

1 officers can also be investigated, so I'm going to ask you a series of
2 questions about that. Is that --

3 A. Go ahead, Madam President.

4 Q. Now, can you tell this Chamber what is the process if a member of
5 the public wants to make a complaint concerning police misconduct?
6 What's the process that needs to be followed?

7 A. Madam President, if a member of the public wants to lodge a
8 complaint against the police, he has got two options. Either he goes to
9 the officer in charge's office and lodges a complaint directly with the
10 officer in charge who will give directions as to the investigation
11 matter. Alternatively he can just walk into the report office where we
12 have the occurrence book and the complainant lodges his complaint at the
13 report desk whereby later the officer commanding police station or
14 whoever's in charge will give instructions of the matter being
15 investigated by Mr. So-and-so.

16 Q. And once that's -- complaint has been lodged through either of
17 the two mediums that you have described, who takes the final decision on
18 the investigation?

19 A. Your Honour, according to our force standing orders, one's own
20 case, own complaints about against the police are investigated, the fine
21 is forwarded to the director of criminal investigation for onward
22 submission to the DPP or the Attorney General for that matter who gives
23 final directions on the manner of disposal of that particular case file.

24 Q. And when such a complaint comes to you, what would be the first
25 order? What would be the first step that you would take?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 61

1 A. The first step is to narrow down that complaint in writing. It
2 will be booked in the occurrence book, and thereafter I naturally will
3 interview the complainant, Madam President, your Honours, and after the
4 interview I reduce that interview into writing and then the investigative
5 process starts.

6 Q. Can you tell the Chamber what was the name officer in charge of
7 the station of Nakuru during the period of the post-election violence?

8 A. I cannot recall off head, Madam President.

9 Q. Okay. If I propose to you the name of Mohamed Bakuli, would that
10 help you?

11 A. Correct, yeah. He was the OCS Nakuru police station at that
12 time.

13 Q. Thank you, Mr. Witness. Was this officer investigated at any
14 time during the period of the post-election violence?

15 A. Yes, he was investigated, Madam President.

16 Q. Did you carry out the investigation?

17 A. No, I did not carry it out. It was conducted by the provincial
18 police officer. What happens is complaints against the police normally
19 investigated by the provincial police officer unless otherwise directed,
20 Madam President, so the complaint against Chief Inspector Bakuli was
21 conducted by the PPOs.

22 Q. And what was the outcome of this investigation?

23 A. I wouldn't know, Madam President.

24 Q. Okay. If I put to you EVD-PT-OTP-00337 --

25 PRESIDING JUDGE TRENDAFILOVA: Is this a public document?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Ms. Adeboyejo

Page 62

1 MS. ADEBOYEJO: Yes, your Honour. This is public. Your Honours,
2 I apologise. This is my misstatement. It was actually disclosed in a
3 confidential manner, but I will just read from it to the witness.

4 Q. Witness, I'm just going to read a portion of this to you, and
5 this portion I'm reading is from the testimony of Mr. Everet Wasike to
6 CIPEV:

7 "My Lord, the OCS was arrested on allegations that he had
8 released the chief in Kambi Moto are which is just beyond Kabarak that
9 the chief was perceived to have been actively involved in the
10 post-election violence. That information of the arrest came to me ...
11 the officer called me to tell me, '*Afande nimshikwa, nisaide.*'" That's
12 Swahili, of course. "My Lord, I told him to tell me the truth on what
13 transpired, and I told him there was an incoming PPO in Trans Mara and
14 that one had worked very well and later we would see whether there is a
15 way to assist him. I left the matter at that level and later on the
16 officer was taken in for disciplinary proceedings for that particular
17 misconduct and I think he's serving somewhere in Nyanza."

18 And then further on it says that this officer was actually
19 released and never prosecuted.

20 What would be your reaction to this, Witness?

21 A. As I said, Madam President, I was not involved in the
22 investigations or anything concerned with the OCS. That matter was being
23 handled exclusively by -- by the then PPO Rift Valley Province. That
24 would be my comment, Madam President.

25 Q. Did you, yourself, get involved in the prosecution or

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 63

1 investigation of any of those responsible for the post-election violence
2 or alleged to be responsible for the post-election violence?

3 A. Yeah. As a PCO I was involved in investigations of all those
4 persons alleged to be responsible, Madam President.

5 Q. And can you give this Chamber the name of one such person that
6 you were involved with?

7 A. Maybe in private, Madam President.

8 PRESIDING JUDGE TRENDAFILOVA: Court Officer, let's switch into a
9 private session.

10 (Private session at 5.09 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 64

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 64 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 65

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 65 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 66 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 67

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 67 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 68

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 68 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Ms. Adeboyejo

Page 69

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 69 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Questioned by Mr. Anyah

Page 70

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Open session at 5.21 p.m.)

7 COURT OFFICER: Madam President, your Honours, we're back in open
8 session.

9 PRESIDING JUDGE TRENDAFILOVA: Thank you.

10 Mr. Anyah, please, the floor is over to you.

11 MR. ANYAH: Thank you, Madam President.

12 Questioned by Mr. Anyah:

13 Q. Good evening, Mr. Amin.

14 A. Good evening, Mr. Anyah.

15 Q. I have a few questions for you. I represent the victims in this
16 case, and I would ask that you listen to my questions carefully and
17 please ask me to repeat myself if you do not understand anything I ask
18 you. Do you follow?

19 A. Correct.

20 Q. Earlier this evening counsel for the Prosecution asked you a few
21 questions about the availability of police officers at the
22 Naivasha police station to receive reports about gender-based violence.
23 Do you remember that set of questions?

24 A. Correct, Madam President.

25 Q. And your response, if I am accurate, was that there were two to

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 71

1 three police officers available to receive such reports.

2 A. At the report stations, yes, madam.

3 Q. Now, there was a fellow who testified yesterday in this court.

4 His name is Peter Otieno, and I want to read you what he told the Court
5 yesterday. This is from yesterday's transcript, transcript of the 3rd of
6 October, 2011, page 175, starting at line number 19. Mr. Otieno was
7 asked a question by counsel for the Prosecution:

8 "Q. Witness, would it have been possible for a woman to report
9 a sexual crime committed against her at the time?"

10 I will give you the answer in a minute but there is a context to
11 Mr. Otieno's evidence. He testified that he was at the
12 Naivasha police station for about five days from the 27th of January,
13 2008, through the 31st of 2008. Mr. Otieno answered that question at
14 line 21:

15 "A. Your Honour, it would have not been possible.

16 "Q. Can you tell the Court why.

17 "A. It -- your Honour, the police there was normally we have a
18 desk at the police station for gender-based violence and where people do
19 report but on that day most of the officers were in the field and me, I
20 was," we're now at page 176, "I was there I talked with Grace Kakai about
21 the situation. The situation was because everybody was out trying to
22 help people who were trapped, people who were besieged, people who were
23 in trouble, so it was possible because as long as they were -- had wished
24 to report, there was nobody to, at that particular moment, to -- to
25 listen to them properly."

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 72

1 Did you hear what I just read?

2 A. I've heard, Madam President, and I think --

3 Q. Can I -- I apologise for interrupting you, but I wish to ask you
4 a question. I want to establish if you heard. Do you agree with
5 Mr. Otieno said about the Naivasha police station during the period of
6 the violence?

7 A. I -- I totally don't agree Madam President. For one reason. I
8 think in terms of police operations and police procedures, I'm more
9 authoritative than Mr. Otieno for that matter. As I said in my earlier
10 testimony, Madam President, your Honours, there is no single one time a
11 police report offices would remain unmanned. As I said, Madam President,
12 report offices are manned 24/7. And I swear all reports of all kinds are
13 received, so Mr. Otieno's testimony, Madam President, isn't fact. And
14 I'm saying that from a point of authority.

15 Q. Mr. Otieno says he was there. You told us during your testimony
16 a few minutes ago that you were not there at the Naivasha police station,
17 so I ask you were you at the Naivasha police station during the period
18 immediately after the 27th of January?

19 A. Your Honour, I did not say I was not there always at Naivasha
20 police station what I say as matter of administrative procedure there is
21 no any one single time a police report office will stay unmanned. It
22 would be unimaginable Madam President.

23 Q. I'm not asking you about administrative procedure. My question
24 now is were you at the Naivasha police station in the period immediately
25 following the 27th of January, 2008. Did you go there?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 73

1 A. Madam President, on the 27th, during that time of the incidents
2 the person who was actually manning the Naivasha report office was none
3 other than my deputy Disaio Kalistas Momoko (* phon). He was the person
4 receiving complaints, reducing those complaints into writing. So that
5 statement by Mr. Otieno is not correct, Madam President.

6 Q. Do you want me to read the question I just asked you? I didn't
7 ask you about your deputy. I asked you, Mr. Mohamed Amin, were you at
8 the Naivasha police station?

9 A. Certainly I was not there, Madam President.

10 Q. Thank you. Now, I represent the victims in this case. The
11 victims have some views about the police and what happened in Nakuru and
12 Naivasha. I want to read you some of what the victims have indicated in
13 their applications to the court and ask for your opinion.

14 One victim -- and there is a part of the applications that
15 victims fill out where they can articulate who in their view they feel is
16 responsible for their suffering --

17 PRESIDING JUDGE TRENDABILOVA: Please, Mr. Anyah, I hate to
18 interrupt you. Interpreters are asking kindly that you slow down.

19 MR. ANYAH: Thank you, Madam President.

20 PRESIDING JUDGE TRENDABILOVA: And make a pause.

21 MR. ANYAH: I am. I will do my best.

22 Q. One victim, for example. Victim number E879211. The question
23 is: Who was responsible for their harm? Kikuyus, Kalenjins and the
24 Kenya police. Another victim 879311. Kikuyus, Kalenjins, and policemen.
25 Another victim - and I will give you a chance to respond - this victim is

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 74

1 a man, a Luo from Naivasha. Question: Who is responsible? Answer: The
2 government. The government. Why I believe this, there was no protection
3 from the administration or police. Instead, the police were helping
4 them.

5 Do you agree with what that victim has articulated to the Court?
6 Did the police help those who actually harmed the victims in this case?

7 A. Madam President, your Honours, I entirely disagree with the
8 statements by those witnesses, much as they're entitled to their
9 opinions, and I would like to (* indiscernible), Madam President, that
10 the role played by the Kenya police and the provisional assistant for
11 that matter, in as far as the post-election violence was concerned was a
12 monumental role. The police did out of their way to ensure that law and
13 order was restored. Whereas people were watching what was happening in
14 the country from the comfort of their TVs, relaxing on their big sofa and
15 fluffy pillows the police were out there running helter-skelter trying to
16 save the country from slipping into anarchy. It is very painful for such
17 allegations to be made against the Kenyan police, Madam President. It is
18 very painful.

19 Q. Did the Kenya police, to your knowledge, shoot at any victims or
20 civilians?

21 A. There were many exchanges and in assertion of violence, Madam
22 President, collateral is always there. So the issue of shooting, I will
23 not rule it out, Madam President.

24 Q. Were any victims intentionally killed by the police during the
25 violence?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 75

1 A. Not correct, Madam President.

2 Q. Well, let me read you what another victim says they saw. This is
3 victim number A929511. He says that business tycoons from the Kikuyu
4 community were responsible for the violence. He says:

5 "The police force was as responsible, because I saw somebody
6 being beaten, and the police officers were not concerned."

7 Another victim says -- this is victim number A939111. This
8 victim says:

9 "The person responsible is Mr. Hussein Ali. The victim says, I
10 believe it's Hussein Ali, because even the Mungiki shot and killed, and
11 even wearing uniforms, when you seek help from them, they will shoot
12 you."

13 Another victim said, and this is victim A9393, "the police shot
14 people carelessly."

15 You've heard what I've read, what victims who sustained pain and
16 suffering and injuries in this case, in some cases, have said to the
17 Court. Did the police or persons wearing police uniforms shoot at
18 victims in this case?

19 A. Police did not shoot at any victim, Madam President. And comment
20 on his earlier comment, Madam President, were it not for the General Ali,
21 the counsel is referring to, and the police, good forbid our country
22 would not have been a conflict situation now, but the police did a very
23 commendable job, in my view.

24 Q. You gave us figures about police officers that were present in
25 both Naivasha and Nakuru, and you said that there were 272 police

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 76

1 officers in Naivasha, in the Naivasha Division, as you referred to it,
2 and 638 police officers at the Nakuru Division. Now, these are Kenya
3 police officers, true?

4 A. Correct.

5 Q. They are different from administrative police officers.

6 A. They -- they are different, Madam President. I'm talking about
7 Kenya police officers.

8 Q. Do you know the numbers of administrative police officers that
9 were present in either Naivasha or Nakuru during the post-election
10 violence?

11 A. No, Madam President, because they are not fully directly under my
12 docket. I wouldn't know that.

13 Q. Were they involved in policing civilians and attempting to
14 suppress the violence?

15 A. Those that were involved, Madam President.

16 Q. Were others besides the administrative police such as prison
17 guards also involved in trying to quell the violence?

18 A. In the Naivasha, yes.

19 Q. And the prison guards who were involved in Naivasha, they were
20 not under your command, were they?

21 A. They were under the command of OPCD. The OCPD is the commander,
22 the person in charge of that division. So they were directly under the
23 command of the OCPD, your Honours.

24 Q. They were not under your commander were they?

25 A. By saying they were under the command of the OCPD essentially

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 77

1 means they were not directly under my command, Madam President.

2 Q. Was something called the Anti-Theft Stock Unit also involved in
3 quelling the violence in either Naivasha or Nakuru?

4 A. Not anti-theft but it is Anti-Stock Theft Unit, Madam President.

5 Q. Very well. Anti-Stock Theft Unit. Were they involved?

6 A. They were involved particularly in the Naivasha.

7 Q. Were they under your command?

8 A. They were under the command of the OCPD who was in charge of that
9 operation.

10 Q. So they were not under your command?

11 A. I answered that, Madam President. They were under the command of
12 the OCPD.

13 Q. My question was not about the OCPD. My question was about you.
14 Were they under your command?

15 MR. KEHOE: Excuse me, your Honour. This witness has asked and
16 answered three times with regard to the chain of command.

17 PRESIDING JUDGE TRENDABILOVA: Yes.

18 MR. ANYAH: Madam President, the witness would make things easier
19 if he just answer the question posed.

20 PRESIDING JUDGE TRENDABILOVA: Well, shortly answer the question.
21 Yes or no.

22 THE WITNESS: They were not under my command, Madam President.

23 PRESIDING JUDGE TRENDABILOVA: No.

24 MR. ANYAH: Thank you.

25 Q. Do you know what actions were taken in relation to civilians, in

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Anyah

Page 78

1 particular Luos, by the prison guards, the administrative police, or the
2 Anti-Stock Theft Unit?

3 A. I know the action taken by the police the prison guards. They
4 were involved in saving of life and property, Madam President.

5 Q. And the Anti-Stock Theft Unit, do you know what they did during
6 the post-election violence?

7 A. They were involved also in the saving of lives and property and
8 opening up of the roads and the major highways, Madam President.

9 Q. Amongst all of those groups of agencies and officers involved,
10 you've told us that as far as the police is concerned, you did not arrest
11 even a single police officer for any unlawful act during the
12 post-election violence in Nakuru or Naivasha. Do you know if any members
13 of the other groups, the administrative police, the prison guards, the
14 Anti-Stock Theft Unit were arrested for misconduct against victims?

15 A. Not that I can recall, Madam President.

16 MR. ANYAH: Thank you, Madam President.

17 PRESIDING JUDGE TRENDABILOVA: Thank you, Mr. Anyah.

18 Are you still fine, Mr. Amin, so the Defence of Mr. Ali could ask
19 some questions, and maybe the members of the other two Defence teams?

20 THE WITNESS: Thank you for your concern, Madam President. I'm
21 fine and (* indiscernible).

22 PRESIDING JUDGE TRENDABILOVA: So we can proceed.

23 I can see a member of Mr. Muthaura's team.

24 MR. OGETTO: Yes, your Honour. We have a few questions that we
25 intend to ask this witness with the permission of the Court.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 79

1 PRESIDING JUDGE TRENDAFILOVA: Yes, please go ahead.

2 Questioned by Mr. Ogetto:

3 Q. Good afternoon, Mr. Amin.

4 A. Good afternoon, sir.

5 Q. My name is Kennedy Ogetto. I don't think we have met before.

6 And I represent together with my colleagues Ambassador Muthaura in these
7 proceedings. I have a couple of questions for you. Please bear with me.

8 It won't take long. And my questions will relate to the testimony that
9 you provided this afternoon just to seek a few clarifications.

10 Now, in the course of the direct testimony that you provided
11 early in these proceedings, you mentioned the killing of a particular
12 individual that you described as a father. Do you recall that?

13 A. I don't recall. Maybe you can jog my memory.

14 Q. Yes. You -- you mentioned a place known as Musereci.

15 A. You are correct. I did not understand the term father. I
16 thought it was an ordinary father. I understand father, a priest.

17 Q. Can you be kind enough, please, to spell the name of that place,
18 Musereci?

19 A. Musereci, Madam President, is Mike, Uniform, Sierra, Echo, Romeo,
20 Echo, Charlie, India, Musereci.

21 Q. Where is that place? Where is it located?

22 A. Koibatek Division. Koibatek Division, Madam President.

23 Q. How far is it from Nakuru town?

24 A. Madam President, it's about 25, 30 minutes' drive from Nakuru
25 town. It's on the highway between Nakuru town and Eldama Ravine.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 80

1 Q. Now, you say this individual was a Catholic father. Did I get
2 you right?

3 A. Correct, your Honour.

4 Q. What was his ethnicity?

5 A. A Kikuyu. He's called Father Michael Kamau.

6 Q. Do you know who killed this father?

7 A. No, I don't know who killed him. If I knew then I would have
8 arrested and taken him to court.

9 Q. Do you know the ethnicity, the possible ethnicity, of his
10 attackers, those who killed him?

11 A. I -- I really don't know that, Madam President.

12 Q. Now, Koibatek is in -- which ethnic community is in Koibatek.

13 A. Koibatek is -- it's largely occupied -- occupied by the Kalenjin
14 community, but we also have Kikuyus there. We have Luos, there. We have
15 Kisiis there. So that is it, Madam President.

16 Q. Do you know why this -- this father was killed?

17 A. I wouldn't know why he was killed, but I tend to suspect he was a
18 victim of post-election violence. The father was a teacher at a seminary
19 in Kapsabet and he was heading to Nakuru township, Madam President, and
20 he was in the company of two other people. One was critically injured,
21 and the other person left unscarred.

22 Q. Do -- are you able to recall approximately when this incident
23 took place?

24 A. It was more or less about the first week of the post-election
25 violence, Madam President.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 81

1 Q. And that would be when?

2 A. That will be from -- from 2nd to 9th of -- of January, 2008.

3 Q. You also mentioned at some point in time His Excellency the
4 president visited Burnt Forest and --

5 A. Correct.

6 Q. -- that he emphasised the initiative of peace-building. Do you
7 recall that?

8 A. I do recall that, Madam President.

9 Q. When did that happen?

10 A. That was also towards the second week of the post-election
11 violence. That is between 9th to 13th of January.

12 Q. Were you present?

13 A. I was present, Madam President.

14 Q. Can you elaborate a bit about what the president said at
15 Burnt Forest on that occasion?

16 A. This, Madam President, the president regretted all the incidents
17 that took place within the post-election violence, the miseries the
18 people were suffering, and he addressed the Kenyans and he reiterated the
19 need to live harmoniously and people not resorting to the killing one
20 another. So in other words, he -- the president essentially was talking
21 about peace-building and conflict resolution within the affected areas,
22 Madam President. So he was basically on a peace mission.

23 Q. Thank you. Now, you speak about the PSIC, the Provincial
24 Security Intelligence Committee, and I want to ask you a few questions on
25 that. You said you were a member of the PSIC for Nakuru during the

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 82

1 post-election violence. Am I correct?

2 A. Correct, Madam President.

3 Q. Can you kindly give us the names of the other members of the PSIC
4 in Nakuru or in Rift Valley during the post-election violence period?

5 A. Madam President, we had our provincial commissioner. He was
6 Mr. Hasan Noor Hasan --

7 Q. Let's -- let's -- sorry for interrupting you. Let's take it one
8 by one. As you give out the name, also give us the ethnicity of that
9 specific individual.

10 A. Fine. Madam President, we had Mr. Hasan Noor Hasan.
11 Mr. Hasan Noor Hasan was the provincial commissioner of
12 Rift Valley Province and was a Somali in terms of ethnicity. The other
13 PSIC member during the post-election violence was the provision
14 commanders. The first one we had was Mr. Everet Wasile (* phon). Wasile
15 was a Luhya. There were some Transverse, and then there was some
16 incoming PPO, Mr. Ashimala (* phon). Ashimala was also a Luhya. Also
17 the other member was me, Mr. Mohamed Amin. I'm Somali by tribe. And the
18 original commissioner, that is the original co-ordinator of the NSIC, I
19 don't quite recollect his full names, but I can remember he was a Meru by
20 tribe. And of course, Madam President, we had the secretary to the PSIC.
21 I also don't recollect his name, but he was a Luhya by tribe. Thank you.

22 Q. Thank you. Did you know the district commissioner for Nakuru at
23 that time?

24 A. Madam President, if my memory serves me well, I think it was
25 somebody, a Mr. William Monyama (* phon). He was a Luhya by ethnicity.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 83

1 Q. Did you also known the OCPD, Officer Commanding Police Division,
2 Nakuru?

3 A. Yes, Madam President. I think it was David Kiambu. He was a
4 Kamba by tribe.

5 Q. Now, you mentioned -- or, rather, you asked questions about
6 Mr. Bakuli who was the OCS Nakuru. Do you recall that?

7 A. Yes, Madam President.

8 Q. What was his ethnicity?

9 A. Bakuli, he was a Mijikenda, one of the coastal tribes in Kenya,
10 Madam President.

11 Q. And you -- it was mentioned that Mr. Bakuli was involved in a
12 case where he had released a certain chief who was suspected to have been
13 involved in post-election violence. You recall that?

14 A. I do recall that, Madam President.

15 Q. What was the ethnicity of this chief, if you know?

16 A. He was a Kalenjin, Madam President.

17 Q. Now, I want to ask you a couple of other questions in relation to
18 the post-election violence itself. Do you know where the KANU offices
19 are situated in Nakuru.

20 A. Yes, Madam President. They are situated at the central business
21 district of Nakuru.

22 Q. Now, during the post-election-violence period, did you receive
23 any information regarding the recruitment of pro-PNU youth at the KANU
24 offices to participate in the attacks in Nakuru?

25 A. We did receive such information, Madam President. We made

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 84

1 general inquiries but really we did not get anything leading us to the
2 existence of those pro-PNU gangs.

3 Q. When did you receive this information?

4 A. That was the second week of the post-election violence,
5 Madam President.

6 Q. And that would be mid-January?

7 A. Correct, Madam President.

8 Q. And you carried out investigations?

9 A. We carried out inquiries, and we did not come out with anything
10 substantive, Madam President.

11 Q. Now, during your tenure of office in Nakuru and specifically
12 during the post-election violence, did you come across attackers wearing
13 military uniforms?

14 A. No, Madam President.

15 Q. Did you come across attackers wearing police uniform?

16 A. No, Madam President.

17 Q. Did you receive any information about attackers either in
18 military or police uniform?

19 A. That information, Madam President, as I indicated
20 (* indiscernible) the general information was there. The rumours were
21 there that there were some peoples clad in police and military uniforms
22 but nothing beyond that. We did not get any actionable intelligence
23 leading us to these people who allegedly wearing military or police
24 uniforms. We did receive (* indiscernible) actionable intelligence.

25 Q. What do you mean by actionable intelligence?

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 85

1 A. Intelligence that can lead us to the arrest of those people. If
2 there are people in police uniforms and who are not police officers, who
3 are they? Where are they? When are they coming? When are they going to
4 attack? That kind of intelligence.

5 Q. Now you spoke about an incident where you received information
6 about Mungiki persons at the Stem Hotel. Do you recall that?

7 A. Yes, Madam President.

8 Q. When did you receive this information?

9 A. I received that information at the first week of the
10 post-election violence.

11 Q. And how far is Stem Hotel from Nakuru town?

12 A. It's actually in Nakuru town, about maybe 2 kilometres,
13 Madam President, but essentially Stem Hotel is within Nakuru town.

14 Q. And you said according to the information you received, there was
15 supposed to be a meeting being held in a room at the hotel; is that
16 correct?

17 A. Yes, yes, Madam President, at the conference room.

18 Q. And you said you personally proceeded to the hotel and you found
19 nothing?

20 A. (* indiscernible)

21 Q. Did you see any signs that there had been a meeting of the
22 Mungiki at the hotel?

23 A. There weren't. There weren't any signs, Madam President. We
24 exercised due diligence and we did not find any evidence of any meeting.

25 Q. And so what was your professional assessment of the information

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Questioned by Mr. Ogetto

Page 86

1 that in the first place took you to the hotel?

2 A. My assessment was like many others that information was not
3 factual, Madam President.

4 Q. And how would you describe that information?

5 A. Just as I described it was not factual it was not -- it was not
6 true, Madam President.

7 Q. Now, during your tenure of office in Nakuru during the
8 post-election violence and after the post-election violence, did you
9 receive any information at all that Ambassador Muthaura was in any way
10 involved in the violence in Nakuru and Naivasha?

11 A. Did I not receive, Madam President, any such information.

12 MR. OGETTO: Thank you very much, Madam President. That's all.

13 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Ogetto.

14 The team of Mr. Kay?

15 MR. KAY: I have no questions, your Honour. Thank you.

16 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kay.

17 And, of course, I have to ask Mr. Monari and Mr. Kehoe whether
18 they would like to proceed with some questions.

19 MR. KEHOE: Yes, I -- thank you, Madam President. I do have a
20 few questions of the witness. I don't think it will be too lengthy. I
21 think it might bleed over a little bit into the -- past the 6.00 hour,
22 but if the interpreters would want to proceed and finish and your Honours
23 are willing to stay through that, certainly we will proceed accordingly.

24 PRESIDING JUDGE TRENDAFILOVA: We, anyway, are going to stay
25 through the break, so I ask, of course, the indulgence. Thank you very

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Further Questioned by Mr. Kehoe

Page 87

1 much. As always, very, very supportive. Thank you.

2 Mr. Kehoe, you can proceed, please.

3 MR. KEHOE: Thank you, Madam President, and thank you to the

4 interpreters. I'm sure that everybody would like to go home early.

5 So ...

6 Further Questioned by Mr. Kehoe:

7 Q. Mr. Amin, I'm going to ask you a few questions. They will --

8 those questions will jump around a little bit, because, of course, we're

9 not going to go through any questioning that we did directly, but it will

10 cover some issues that had been addressed my colleague across, as well as

11 well as Mr. Ogetto. So bear with me if you could while we just jump

12 through this, and we'll try to expedite this as quickly as possible.

13 To follow up on a -- some questions by the Prosecution and also

14 by Mr. Ogetto on actionable intelligence, can you just explain to us a

15 little bit in your work with the Criminal Investigation Department what

16 you're talking about on actionable intelligence.

17 A. My understanding of actionable intelligence, Madam President and

18 your Honours, is it's an intelligence which answers all the five

19 interrogatives - that is, the who, the when, the why, and how - which can

20 successfully lead you to the operationalisation of that particular

21 incidence. If you receive an intelligence that later say a group of

22 people are going to attack, that intelligence should be able to cover

23 aspects such who is going to attack, when, why, so on and so forth. That

24 is my interpretation of actionable intelligence, Madam President.

25 Q. And, Mr. Amin, without the answers to those questions, does it

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Further Questioned by Mr. Kehoe

Page 88

1 make it difficult for someone in your position or with any commander in
2 the field to make accurate decisions on where to deploy your forces or
3 when and where to investigate?

4 A. Madam President, in absence of that, then it will just be like
5 any other general information.

6 Q. So when -- I'm sorry.

7 A. And it will not be of any operational significance.

8 Q. I apologise for cutting you off at that point. So the
9 information that you did receive, the intelligence that you received
10 concerning the meeting at the Stem Hotel, you took steps to bring
11 personnel, in addition to yourself, to go to that location, deploy your
12 men for an event that didn't take place because the evidence or the
13 information was faulty. Is that accurate?

14 A. That is accurate, Madam President.

15 Q. Turning to the issue of court proceedings and questions asked by
16 my learned friend concerning release on bail, in -- in Kenya, an
17 individual has a constitutional right to bail; is that correct?

18 A. That is correct, Madam President.

19 Q. When an individual is brought to a court hearing before a
20 magistrate, who makes the decision on whether or not that person should
21 or should not be released on bail or bond?

22 A. That is ordinarily within the discretion of the trial court,
23 Madam President.

24 Q. And that would be the judge.

25 A. That would be the magistrate or the judge.

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Further Questioned by Mr. Kehoe

Page 89

1 Q. Now, we talked a bit about this issue of this individual looking
2 for police officers at the Naivasha station on the 27th of January of
3 2008. Now, what was going on that day on the 27th of January, 2008, when
4 he talks about police ferrying individuals back to the police stations?

5 A. Well, in Naivasha town there was some demonstrations and there's
6 a lot of violence within Naivasha town. So the police were involved in,
7 as I said, a multiplicity of -- of activities. So Naivasha town was
8 basically in chaos, Madam President.

9 Q. And when we talk about the police stations in Naivasha and the
10 272 police officers, you are not just talking about the police station in
11 Naivasha town. You're talking about the entire district as well as the
12 district headquarters. Isn't that right?

13 A. That is right, Madam President.

14 Q. And how many stations were there in Naivasha town, how many
15 police stations?

16 A. Madam President, in Naivasha, apart from the division, we have
17 the Naivasha Police Station. We have -- at the police station now we
18 have patrol bases. We have the Suswa Patrol Base. We have the Longonot,
19 we have the Greenback (* phon), and we have the Kaioli (* phon) Patrol
20 Bases within Naivasha town.

21 Q. Now, these 272 police officers, they were also out within the
22 Naivasha Division, throughout the division. Isn't that right?

23 A. Correct, your Honour. The division now encompasses
24 Naivasha Police Station. We have Kongoni Police Station, which caters
25 for Ngondi, Moi and Ndabibi, and Amoiela (* phon). Then we have

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Further Questioned by Mr. Kehoe

Page 90

1 Gilgil Police Station, which was catering for Gilgil Police Station,
2 Elmontoieta (* phon), and the Kipkoti -- Kipkopai (* phon) Patrol --
3 Patrol Base.

4 Q. So within the 272, we have four police divisions around the
5 Naivasha Division -- four stations around the Naivasha Division, the
6 Naivasha town, plus the division headquarters; is that right?

7 A. We have the division headquarters and then the Naivasha town.
8 That is right, Madam President.

9 Q. And then you had -- were there police stations out -- or police
10 stations outside Naivasha town?

11 A. Correct, Madam President. We had the Kongoni and the Gilgil
12 Police Stations with their now outlying patrol bases and police patrol
13 posts.

14 Q. Now returning to Nakuru, the 600 -- approximately 600 officer in
15 Nakuru, I mean, they weren't all in Nakuru town, were they?

16 A. That is Nakuru Division, Nakuru District, which also encompasses
17 Madam President, several police stations starting up from the Mau Police
18 Station, the Likia, Kamtonjoro (* phon), and Nakuru Police Station
19 itself, Bondeni, Bahati, Kiligero (* phon), Subuki (* phon). And so we
20 have many police stations. That is a general (* indiscernible) for the
21 officers stationed at Naivasha Police Division.

22 Q. Now, just finishing off on these questions asked by victims'
23 counsel and for the Prosecution, are you aware if any instances when
24 police stations or posts close?

25 A. I'm not aware, Madam President. Police stations are -- and posts

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Further Questioned by Mr. Kehoe

Page 91

1 are open throughout, 24/7.

2 Q. Let me change subjects and move to one comment that you made in
3 the Waki Commission and that would be at page 0509. Excuse me. I
4 apologise. That is the wrong page. But you noted in your testimony that
5 a person in Kenya cannot be detained without evidence; is that correct?

6 A. That is very correct, your Honour.

7 MR. KEHOE: May I go briefly into private session,
8 Madam President.

9 PRESIDING JUDGE TRENDAFILOVA: Court Officer, please.

10 MR. KEHOE: And I made a mistake on the page, Madam President.
11 It's -- it's 0508. It's where the witness said, "We cannot detain a
12 suspect with that concrete evidence."

13 PRESIDING JUDGE TRENDAFILOVA: Yes. You're referring to the
14 Waki Commission.

15 MR. KEHOE: Yes, your Honour.

16 PRESIDING JUDGE TRENDAFILOVA: Yes. Page 0508, you say.

17 MR. KEHOE: Yes, your Honour.

18 (Private session at 6.02 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Further Questioned by Mr. Kehoe

Page 92

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 92 expunged – Private session.

Witness: Witness KEN-D14-PPPP-0001 (Private Session)
Further Questioned by Mr. Kehoe

Page 93

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 6.05 p.m.)

8 COURT OFFICER: Madam President, your Honours, we're back in open
9 session.

10 MR. KEHOE: Thank you, Madam President.

11 Q. Let me address one issue very briefly and that has to do with the
12 task force to investigate gender-based crimes, and you noted that they --
13 a series of 35 females investigated approximately 379 different cases
14 throughout the country. Is that right?

15 A. That is right, Madam President.

16 Q. Who set up the task force?

17 A. The then-commissioner of police, Major-General Ali,
18 Madam President.

19 Q. So it was pursuant to an order issued by General Ali; is that
20 correct?

21 A. That is correct, Madam President.

22 Q. Lastly, you talked about the monumental role of the police in
23 establishing law and order at this very dark time in Kenyan history.

24 Tell Madam President and the Chambers, as an experienced police officer
25 with well over 20 years of experience, what would have happened to Kenya

Witness: Witness KEN-D14-PPPP-0001 (Open Session)
Further Questioned by Mr. Kehoe

Page 94

1 without the efforts of the Kenyan police during this very difficult time?

2 A. Madam President, your Honours, as I said, the police really
3 played a very, very critical role in terms of the post-election violence,
4 and it was literally carrying the burden of a nation almost sliding
5 into -- into anarchy, and were it not, I said, for the role of the
6 police, this country, God forbid, would have been in a conflict or
7 post-conflict situation, Madam President.

8 Q. And who was the commissioner of police through this entire period
9 of time?

10 A. Major-General Ali, Madam President.

11 Q. Thank you, Mr. Amin.

12 MR. KEHOE: Thank you, Madam President, your Honours, and to the
13 interpreters for allowing me to go past the 6.00 break. I have no
14 further questions. Thank you.

15 PRESIDING JUDGE TRENDAFILOVA: Thank you, Mr. Kehoe.

16 Mr. Amin, we thank you very much for appearing before the Chamber
17 and giving us evidence regarding the Prosecutor's case versus Mr. Ali
18 and, of course, Mr. Muthaura and Mr. Kenyatta. We wish you a safe trip
19 back to Kenya.

20 And I would ask the Court Usher to escort Mr. Amin.

21 THE WITNESS: Thank you very much, Madam President.

22 PRESIDING JUDGE TRENDAFILOVA: When are you going back to your
23 country?

24 THE WITNESS: As soon as possible.

25 PRESIDING JUDGE TRENDAFILOVA: I have received -- it's not

1 related to you, Mr. Amin.

2 (The witness withdrew)

3 PRESIDING JUDGE TRENDAFILOVA: I have received the information
4 about the parties willing to rectify some parts of the transcripts, but I
5 would suggest that we do this tomorrow. Tomorrow we shall start at 9.30,
6 and -- 9.30. It's not -- yes. Yes.

7 (The Trial Chamber confers)

8 PRESIDING JUDGE TRENDAFILOVA: Just because we have the closing
9 statements, and there is just half an hour allocated to each team, the
10 Prosecutor's team, and the Defence, of course Mr. Anyah as well, and we
11 shall proceed with these organisational matters. I think that it was
12 you, Mr. Khan, to raise the issue of rectifying the transcripts.

13 MR. KHAN: Indeed, Madam President, and we will do that tomorrow,
14 with your leave.

15 There was an additional matter that I raised with the
16 Court Officer this morning and it relates to your guidance at the outset
17 that time saved could be used later on. Your Honour, the current
18 schedule allows 30 minutes to the parties for closing speeches. I wanted
19 the guidance of the Court. It's our understanding that we have -- we
20 saved about 15 or so minutes from our second witness and about five or so
21 minutes from our first witness. So I wanted the Court's guidance in
22 advance so there's no complication. Do we have leave to speak for the 55
23 minutes or thereabouts? Do we calculate it ourselves, or will your
24 Honours instruct one of your court officers to give the amounts of time?

25 PRESIDING JUDGE TRENDAFILOVA: Mr. -- I got your point, Mr. Khan.

1 MR. KHAN: Thank you so much.

2 PRESIDING JUDGE TRENDAFILOVA: If I have to be -- to express my
3 personal opinion, it was your team that took most of the court time, and
4 I don't believe that you have so much time. Regardless of this, I shall
5 ask some of the court officers to count the time, because you remember
6 the opening statement. You spoke yourself half an hour, Mr. Muthaura,
7 you were referring to 10, 12 minutes. He spoke more than half an hour,
8 and he deserves this time. So I do not believe this is the case. But
9 then let us play safe. Let us start then at 9.00. Yes. Judge Tarfusser
10 was making this suggestion. I will ask very much the interpreters that
11 we start at 9.00 so that we do not in any way prejudice the -- the job to
12 be done by -- by all the teams, the Prosecutor's team. Mr. Anyah, as
13 well, has the right to speak on behalf of the victims and we shall try to
14 accommodate your request, Mr. Khan, asking you still to be very concise
15 and to the point.

16 MR. KHAN: I'm most grateful.

17 PRESIDING JUDGE TRENDAFILOVA: So we will proceed tomorrow. I
18 thank, very, very much the interpreters, and all the parties, the public
19 in the public gallery, our legal support staff, the stenographers, the
20 recorders, the security officers, the court officers, and we shall start
21 tomorrow, then, at 9.00 sharp in this courtroom.

22 Thank you. Have a nice evening.

23 COURT USHER: All rise.

24 The hearing ends at 6.11 p.m.

25 CORRECTION REPORT:

- 1 The Court Management Section has made the following correction in the transcript:
- 2 * Page 8 line 15 "PRESIDING JUDGE TRENDAFILOVA" is corrected by "A."