

Trial Hearing
Witness: KEN-OTP-P-442

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and Judge Robert
7 Fremr
8 Trial Hearing
9 Thursday, 6 March 2014
10 (The hearing starts in open session at 9.36 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please announce the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 And we're in open session, your Honours.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Appearances seem to
21 remain the same?
22 MS RENTON: Yes, your Honour.
23 MR NARANTSETSEG: The same, your Honour. Thank you.
24 MR KIGEN-KATWA: The same, Mr President.
25 MR HOOPER: And we have in addition Mr Khan who's rejoined us.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan has rejoined us. All right.
2 We will continue. But quickly before we continue, housekeeping matters.
3 Mr Steynberg, for the next session how are we doing for witnesses lined up? This
4 witness was supposed to have been in the next session, but she is now with us. So
5 we will --

6 MR STEYNBERG: Yes, your Honours. We have two witnesses lined up for the
7 next session. I prefer not to mention details in the open session, but it seems that
8 we will have enough to keep the Court busy for the next session.

9 PRESIDING JUDGE EBOE-OSUJI: All right. We'll leave it there for now.
10 Witness, welcome back. Ms Renton will continue asking you questions this
11 morning. It is likely that she may finish asking you questions this morning and
12 then the Defence lawyers will start asking you their own questions. It's always
13 important to keep in mind the advice I gave to you, that is to listen to the questions
14 and then answer the particular question asked.
15 If there is something you wish to add later when the lawyer has finished asking
16 questions, you can let me know after she's done asking you questions. If there's
17 something you want to add, let me know. All right? All right, I see you're
18 nodding. But until then, just listen to her questions and just answer that. All
19 right? Thank you.

20 MS RENTON: Thank you, your Honour.

21 WITNESS: KEN-OTP-P-442 (on former oath)

22 (The witness speaks Swahili)

23 QUESTIONED BY MS RENTON: (Continuing)

24 Q. Good morning, Witness. Thank you for bearing with me these past two
25 days. I only have about 20 or 30 minutes of questions this morning and then I hope

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1 to finish.

2 I would like to start by clarifying some of the evidence that you told us yesterday.

3 You told us that on the morning of 3 January you saw many people heading towards

4 Kapsabet stadium after Mr Elijah Lagat called for a rally. Did you see any of the

5 people who went to the rally later that day after the rally was finished?

6 A. I beg your pardon, I haven't understood -- I haven't understood your

7 question. Could you ask your question again.

8 Q. No problem. I'm talking about 3 January 2008. You mentioned that you

9 saw many people heading to the Kapsabet stadium after Mr Lagat called for a rally.

10 My question is: Did you see any of the people who went to the rally later on that

11 day, 3 January, after the rally had finished?

12 A. Yes, I did see them.

13 Q. Where did you see them later that day?

14 A. The three, after we left the place where we were, we moved towards the

15 police station. We came -- we crossed their path along the road as we were moving

16 towards the police station. There was a sign saying, "No peace without Raila."

17 They were also making remarks. Someone in front of them was saying something

18 and those behind were responding afterwards. Then we got to the police station --

19 Q. Did you see --

20 A. -- at about -- at about 5.30. They were calling out "No Raila, no peace." That

21 was on the 3rd.

22 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, this is to let you know that I

23 signalled with a hand for the witness to stop it there to know whether you've got the

24 answer you wanted. Your question was where she saw people later on that day.

25 MS RENTON: I'll ask one follow-up question based on the information she's just

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1 answered.

2 PRESIDING JUDGE EBOE-OSUJI: All right.

3 MS RENTON:

4 Q. Witness, did you see them when you got to the police station?

5 A. Yes, I saw them.

6 Q. How many people did you see when you were at the police station, the
7 people for the rally?

8 A. There were many people. I couldn't give you the exact number. There were
9 many of them.

10 Q. What was the attitude of these people towards the people who were seeking
11 refuge at the police station?

12 A. Those people were angry, very angry.

13 Q. How did they express their anger towards the people in the police station?

14 A. Those people arrived and lined up. There was a very long line-up of people
15 towards the police station. It was as if they had formed a true wall. They were
16 very angry and they said, "Let us get at them so we can exterminate them." They
17 were very, very angry.

18 Q. What was the ethnicity of these people who were very angry?

19 A. The people I saw were Kalenjin people.

20 Q. Witness, I'd now like to ask you a question about something you mentioned
21 yesterday that happened at the roadblock at Namgoi junction when you left

22 Kapsabet to go to Eldoret. So this would be on 6 January. You told us that the
23 people there said that they had a container and that you were supposed to be put in
24 that container. Did they tell you how you were all going to fit in the container?

25 A. Those people were saying that we would -- should be burnt alive and ashes of

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1 our bodies should be placed in those containers.

2 Q. I now have a question about when you were at the second roadblock at
3 Namgoi junction on January 3, so when you were going towards Kapsabet police
4 station on January 3. You told us that, "The driver said he was going to make us
5 leave the vehicle. We were going to get out of the vehicle because he did not want
6 to take any risks." Did the police officer say what the risk would be if he let you
7 stay in the vehicle?

8 A. I realise I can't give you an answer in open session.

9 MS RENTON: Your Honour, may we move into private session?

10 PRESIDING JUDGE EBOE-OSUJI: Private session.

11 (Private session at 9.49 a.m.) Reclassified into open session

12 THE COURT OFFICER: We're in private session, your Honours.

13 MS RENTON:

14 Q. Witness --

15 (Redacted)

16 (Redacted)

17 (Redacted)

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19 (Redacted)

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14 (Redacted)

15 MS RENTON: Your Honour, I had intended to move into private session after this
16 question anyway perhaps for five minutes or so and then we can move back to
17 public session.

18 Q. Witness, I'd now like to continue and ask you some questions about the
19 Eldoret showground that you mentioned yesterday. You told us that you arrived
20 there on 6 January. For how long did you stay at the showground?

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 MS RENTON: Your Honour, we may move back into public session.

25 PRESIDING JUDGE EBOE-OSUJI: Public session.

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1 (Open session at 9.54 a.m.)

2 THE COURT OFFICER: We are in open session, your Honours.

3 MS RENTON:

4 Q. Witness, while you were at the Eldoret showground, did you have access to
5 radios?

6 A. Some people came from Langas and others came from surrounding villages
7 and they brought some radios along with the other items that they had brought with
8 them.

9 PRESIDING JUDGE EBOE-OSUJI: So your answer was, yes, you had access to
10 radio stations, is that it -- to radios?

11 THE WITNESS: (Speaks English) Yes.

12 MS RENTON:

13 Q. Did you listen to Kass FM while you were at the showground?

14 A. (No interpretation)

15 PRESIDING JUDGE EBOE-OSUJI: Ms Renton, that was a little too direct.

16 MS RENTON: I'll rephrase.

17 Q. Which stations did you listen to -- I'll start again. Did you listen to the radio
18 while you were at the showground?

19 A. (Interpretation) Yes.

20 Q. Which stations did you listen to?

21 A. We used to listen to Citizen. We also listened to Kass FM and Inooro as well.

22 Q. Did you listen to any of Mr Sang's programs on Kass FM?

23 A. Yes.

24 Q. Was there any discussion by Mr Sang about the ongoing violence?

25 MR KIGEN-KATWA: Mr President, I would object to that. I would have thought

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1 the question should be more general than that.

2 PRESIDING JUDGE EBOE-OSUJI: Sustained.

3 MS RENTON:

4 Q. Witness, what did Mr Sang talk about on the radio while you were at the
5 Eldoret showground?

6 A. I'm sorry, I'm speaking about myself. When I had an opportunity to listen to
7 the programmes along with other people, we heard Mr Sang saying that the work
8 had been done properly but it wasn't finished yet. In Kericho, Nyagacho, Molo,
9 Kwoke (phon) people were in the bush.

10 Q. Which people was he talking about?

11 A. In my opinion, and according to the people that I was with, they were just
12 Kikuyu people.

13 Q. How did he refer to those people?

14 A. First he said that they had not cleaned up all the kwekwe, the enemies. He
15 used several terms at that particular point in time and we understood that he was
16 talking about us, because, you see, there were no secrets at that time.

17 Q. The word "kwekwe," can you tell us what that means?

18 A. Kwekwe, that means the grass that grows in a field and the roots go down
19 into the soil and when someone is cultivating his field he has to pull out that
20 particular grass. They are -- so, you see, it's a kind of plant that grows in the field.

21 Q. What word did he use when he talked about the enemies?

22 A. I'm sorry, I did not quite follow your question. Could you please kindly put
23 it again so that I can understand it.

24 Q. You told us that he said they had not cleaned up all the kwekwe, the enemies.
25 What term did he use when he talked about the enemies?

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1 A. He used the word "bunyot".

2 Q. What language is the word "bunyot"?

3 A. That is the Kalenjin language.

4 Q. Can you recall what days or around what time you heard him talking about
5 this?

6 MR HOOPER: Can my friend just refer me to any paragraph relating to any radio
7 at Eldoret showground?

8 MS RENTON: Can I continue or shall I provide the reference now?

9 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, I think this is something you can
10 deal with in cross-examination.

11 MR HOOPER: No, I'm just asking my friend just refer me to the paragraph, that's
12 all, to help me.

13 PRESIDING JUDGE EBOE-OSUJI: It's a request he's making. If you're in a
14 position to assist him.

15 MS RENTON: Yes, it's paragraph 111 of the statement.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Then proceed.

17 MR HOOPER: Thank you very much.

18 MS RENTON:

19 Q. Witness, sorry, I'll repeat my question. Can you recall what days or around
20 what time -- what time of the year you heard Mr Sang talking about this?

21 A. It was in 2008. In the month of February. If my recollection is correct, I
22 think it was in the month of February, but I do not remember the exact date. In any
23 event, it was in 2008 towards the end of January or early February, if I'm not
24 mistaken.

25 Q. Was it while the violence was still ongoing or was it after the violence had

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1 finished?

2 A. I believe that the violence was still ongoing in some other regions.

3 MS RENTON: Your Honour, I'd just like to ask my final series of questions in
4 private session with your leave.

5 PRESIDING JUDGE EBOE-OSUJI: Before you do, Witness, there's something you
6 said and you've said this also before. You say, when you were responding to the
7 question from Ms Renton about what you heard Mr Sang say, and you said Mr Sang
8 had said something about kwekwes still remaining to be cleaned up, and you said,
9 "You see, there was no secret at that time." You said that. This is the second time
10 I've heard you say this. When you say "There was no secret at that time," what do
11 you mean?

12 THE WITNESS: (Interpretation) Thank you for your question. When I say that
13 there was no secret, what I mean is that everything was being done openly. So if I
14 wanted to say such and such a person was such and such person, I said it directly.
15 A kwekwe were the Kikuyu -- the kwekwe were the Kikuyu and when -- when they
16 wanted to talk about somebody, they would say kwekwe. And kwekwe is
17 something that grows where it is not expected to grow.

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

19 Ms Renton, you said -- do you have any follow-up from that?

20 MS RENTON: No, your Honour. I just have one correction to the record of the
21 transcript and then we can move into private session; the spellings of a couple of
22 places at page 9, line 18. My understanding is two of the places the witness
23 mentioned was Nyagacho, which is N-Y-A-G-A-C-H-O. The other place Molo,
24 M-O-L-O. I think there was one other, but I didn't catch that.

25 PRESIDING JUDGE EBOE-OSUJI: All right. Is it something you want to pursue?

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1 You can ask the witness before the matter strays too far from her mind, if it's
2 something of interest to you of course. But if it's something you can proceed
3 without for now, we can then continue.

4 MS RENTON: I will ask her if she remembers the third location that she
5 mentioned.

6 PRESIDING JUDGE EBOE-OSUJI: Do you want to do that now?

7 MS RENTON: Yes, I can do that now. Thank you.

8 Q. Witness, you mentioned I think three locations when you said that Mr Sang
9 was saying that the work had been done properly but it wasn't finished yet. I heard
10 Nyagacho and Molo. What was the other place you mentioned?

11 A. All right. I think that the place -- well, Nyagacho is in Kericho, so I said
12 Nyagacho Kericho. And Nyagacho is Kericho. When I was saying Nyagacho, I
13 can drop Kericho, or it could be the same. When I say Kapsabet and
14 Kamobo -- because when I say Kapsabet and Kamobo, Kamobo is equal to Kapsabet.
15 So when I say Nyagacho and Kericho, they are one and the same place. So Kericho
16 and Nyagacho are one and the same place.

17 MS RENTON: Thank you, your Honour. We may move into private session.

18 PRESIDING JUDGE EBOE-OSUJI: For how long now?

19 MS RENTON: My last few questions, so perhaps five minutes at the most.

20 PRESIDING JUDGE EBOE-OSUJI: Private session then.

21 (Private session at 10.10 a.m.) Reclassified into open session

22 THE COURT OFFICER: We are in private session, your Honours.

23 MS RENTON:

24 Q. Witness, I'd like to ask for some details of the losses you personally suffered
25 as a result of the violence. (Redacted)

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12 (Redacted)

13 Q. Thank you, Witness. I understand that these are very difficult things to talk
14 about. Thank you for sharing that with the Court. That's my final question.

15 PRESIDING JUDGE EBOE-OSUJI: Witness, it's definitely a very serious matter
16 you've testified to and observed during the time of these events. And we appreciate
17 how difficult it is to come and talk to the Court about it, and we appreciate that
18 you've been brave enough to withstand questions on these matters. But you
19 must -- if you need more time to compose yourself, you can tell us before counsel
20 start asking you questions in cross-examination. In the meantime, there are some
21 questions that arise from the last things you just told the Court.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted).

2 MS RENTON: The only final matter would be formally tendering the PIS. I'm not
3 sure whether, from the court officer, that's been entered into the system.

4 PRESIDING JUDGE EBOE-OSUJI: Judge Fremr has a question and then after that
5 we'll do your PIS.

6 JUDGE FREMR: Thank you for the floor.

7 Madam Witness, do you think you are ready to respond?

8 THE WITNESS: (Interpretation) I'm sorry. You can ask me a question.

9 JUDGE FREMR: Okay. Thank you very much for understanding. Madam
10 Witness, I have just one question to you and it concerns Kass FM broadcast. Have
11 you ever heard from Mr Sang at Kass FM broadcast in January 2008 any call to his
12 listeners asking them to stop -- asking them to stop using violence and become
13 reconciled peacefully?

14 PRESIDING JUDGE EBOE-OSUJI: We can do that in open session, I believe.

15 JUDGE FREMR: You are right.

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

17 (Open session at 10.32 a.m.)

18 THE COURT OFFICER: We are in open session, your Honours.

19 JUDGE FREMR: Okay. Then I will repeat my question again, Madam Witness.

20 So, Madam Witness, I would like to know whether you ever heard from Mr Sang at
21 Kass FM broadcast in January 2008 any call to his listeners asking them to stop using
22 violence and become reconciled peacefully?

23 THE WITNESS: (Interpretation) No, I didn't hear him say that.

24 JUDGE FREMR: Thank you very much, Madam Witness.

25 PRESIDING JUDGE EBOE-OSUJI: Ms Renton?

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- 1 MS RENTON: Just the matter of tendering the PIS then, your Honours.
- 2 PRESIDING JUDGE EBOE-OSUJI: We will tender the next -- the PIS in relation to
- 3 this witness as the next in the Prosecution's protected information sheets.
- 4 THE COURT OFFICER: Thank you, Mr President. This PIS will bear the following
- 5 number: KEN-PIS-0001-0044. And it will be registered as confidential.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 7 MS RENTON: Thank you, your Honours. No further questions.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you, Ms Renton.
- 9 Mr Hooper, we have 25 minutes until our morning break time.
- 10 MR HOOPER: Certainly.
- 11 PRESIDING JUDGE EBOE-OSUJI: Witness, Mr Hooper is the lawyer for Mr Ruto,
- 12 so he will now take his turn in asking you questions. I'll remind you again of my
- 13 earlier advice to you, which I've repeated through your testimony so far.
- 14 It is very important that you listen carefully to the question that Mr Hooper would
- 15 ask you, understand the question and then answer that question. If he has further
- 16 question, follow-up question, to you, he will ask you.
- 17 And also keep in mind what I told you earlier that the lawyers who ask you
- 18 questions are doing their job. Thank you.
- 19 MR HOOPER: Thank you, Mr President.
- 20 QUESTIONED BY MR HOOPER:
- 21 Q. Good morning, Witness. As you've heard, my name is David Hooper and
- 22 I'm asking you questions today on behalf of Mr Ruto, who, as you know, isn't with
- 23 us. And I anticipate that I will probably be asking you questions for much of today,
- 24 but I very much expect I'll conclude today as well.
- 25 Now, the first thing of course that we all appreciate from what you've said or

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1 understand from what you've said indeed is that you say very little about Mr Ruto,
2 but I still have a number of questions to ask you.

3 Now, the first thing I want you to understand is this: I'm not here in order to make
4 you feel uncomfortable, and I'm not here to ask you questions about your private life
5 other than those questions that I think are relevant to the Judges to understand and
6 hear.

7 I also want you to understand that if at any time you feel upset or uncomfortable,
8 you let us know, all right? And we can do something about it, give you break,
9 whatever it might be, because we know that it's not easy coming to this kind of place
10 from a long way away and being -- and being a witness. All right?

11 Now, you've obviously just been telling us over the last 20 minutes or so of things, of
12 your property, your fruit trees, mention of sheep and poultry --

13 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, remember we're in public session.

14 MR HOOPER: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: And the material was in private.

16 MR HOOPER: All right.

17 PRESIDING JUDGE EBOE-OSUJI: Keep that in mind.

18 MR HOOPER: All right. Well, it's a general statement. I'm not asking about
19 place.

20 PRESIDING JUDGE EBOE-OSUJI: Yes. So far nothing --

21 MR HOOPER: No, but thank you --

22 PRESIDING JUDGE EBOE-OSUJI: -- has gone wrong, but I thought I should warn
23 you before it does.

24 MR HOOPER: It could easily go wrong, and I'm grateful for the warning and I take
25 it on board.

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1 Q. And you've also told us more particularly about events, not all of which I
2 confess I understood, but clearly events that have been very upsetting both in -- both
3 in their happening and in your having to recall them, being cut and injured.
4 Though it's right to say that I think that's the first time you've ever told anybody
5 about that, isn't it, about being cut and injured? You haven't -- it's not something
6 you've ever told the Prosecution about, is it?

7 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, if you -- if that is a question you
8 want the witness to answer, then we must do so in private session.

9 MR HOOPER: All right.

10 PRESIDING JUDGE EBOE-OSUJI: Do you want her --

11 MR HOOPER: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: -- to answer that question?

13 MR HOOPER: Yes. Yes, I think so.

14 PRESIDING JUDGE EBOE-OSUJI: Then let's go to private session.

15 (Private session at 10.39 a.m.) Reclassified into open session

16 THE COURT OFFICER: We're in private session, your Honours.

17 (Redacted)

18 (Redacted)

19 (Redacted)

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1 A. I think I've explained properly to the Court. I said this: When we were -- as
2 we were fleeing, I fell. (Redacted). I think that's what I told the
3 Court.

4 PRESIDING JUDGE EBOE-OSUJI: That's what I heard.

5 MR HOOPER: Yes. All right.

6 Q. All right. But it's right to say the first time you've ever mentioned that was
7 sitting in that chair; is that right? You've never mentioned being injured before in
8 your discussions with the Prosecution; is that right?

9 A. I beg your pardon. When I gave my statement, I didn't say that I had been
10 injured because (Redacted). When I
11 gave the statement, I wasn't asked any questions. The people there asked if
12 someone had been injured. If we're talking about injuries, I think we're talking
13 about injuries caused by other people, but you see, in my case, (Redacted).
14 (Redacted). Even since they came back to that point, that's why I gave that
15 information.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, it seems to me that we can move
17 along from that particular one.

18 MR HOOPER:

19 Q. Yes. Just let me ask you this: Where were you injured? I mean, what
20 place?

21 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, can we move on, please. I
22 wouldn't want that question asked, please.

23 MR HOOPER: All right. It's not without relevance.

24 PRESIDING JUDGE EBOE-OSUJI: Okay. We'll do this: For now let's not ask it,
25 and when the witness is not on the stand, then you can argue the relevance and then

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1 we'll return to the matter if --

2 MR HOOPER: I understand. I understand. And -- of course. Very well.

3 Let me ask you some more --

4 Can we go into -- we are in private at the moment. I anticipate I'll be in private for
5 half an hour, probably more than that.

6 Can I just say that when the witness is talking, I'm getting - and I might not be the
7 only one - a secondary noise, parallel noise. It was happening yesterday afternoon
8 as well, but I've not heard it before. And I mentioned it to the Registry yesterday
9 evening. And it's quite distracting. It's been suggested by a fellow team member
10 that it may be interference coming from the loud speaker in the public gallery, if
11 that's possible, though in private session I'm not quite sure how that would happen.
12 But can I -- can I mention it again so that the technicians can perhaps address the
13 matter. It's a new problem that's arisen. So it's like a parallel ghosting deep
14 mumbling like a man's voice coming through the -- through my earphones and that
15 of others as well.

16 PRESIDING JUDGE EBOE-OSUJI: All right. I have not heard it, but let's watch
17 out for it. If it happens again, just signal it so that we see if we're all sharing the
18 same problem.

19 MR HOOPER: Thank you very much.

20 Q. So let me come and just ask you some general questions. Now, we're in
21 private session, all right, so anything that we talk about now is between just the
22 people here, all right? It's not going out to the public.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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2 (Redacted)

3 A. Well, I shall tell you this -- I peg your pardon. Could you repeat your
4 question so that I can understand it properly and answer?

5 Q. Let me just split it into two questions. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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4 Now, I don't understand your question. Where are you trying to take me?

5 PRESIDING JUDGE EBOE-OSUJI: Witness, remember when you came in the first

6 time when I was giving you advice, I told you to listen to the question. If you

7 understand the question, answer it. I also remember telling you try not to worry

8 about where the answer is leading to or where the question is leading to. The way

9 you can assist us is listen to the question, one question at a time and one answer at a

10 time. Understand the question. If you understand it, you answer it. If you don't

11 understand the question because you don't know what is being asked on the face of

12 the question, then ask the lawyer to repeat and then the lawyer will ask it in a clearer

13 fashion that you will understand.

14 And once you understand the question, answer it. Never mind where the lawyer is

15 headed with his question. Okay? I see you are nodding. Let's do it that way.

16 MR HOOPER:

17 Q. A final question at the moment on this. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 12 (Redacted)
- 13 PRESIDING JUDGE EBOE-OSUJI: Can we leave it there for now for the morning
- 14 break, and then we want to have a word with you. You said you have some I
- 15 believe submissions to make as to your very first question, the relevance of it. Why
- 16 don't we have that discussion outside of the witness's hearing.
- 17 MR HOOPER: (Microphone not activated)
- 18 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we will let you out of the
- 19 courtroom for now and for the morning break and then you will rejoin us at 11.30.
- 20 Thank you.
- 21 The blinds will come down and the witness escorted.
- 22 (Closed session at 10.57 a.m.) Reclassified into open session
- 23 THE COURT OFFICER: We're in closed session, your Honours.
- 24 (The witness stands down)
- 25 PRESIDING JUDGE EBOE-OSUJI: So private session then.

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1 (Private session at 10.58 a.m.) Reclassified into open session

2 THE COURT OFFICER: We are in private session, your Honours.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Mr Hooper.

5 MR HOOPER: Well, let me put the cards on the table so that we know where we're

6 going, necessarily going, because of course I'm not making this stuff up as I go

7 along. I have to act on instructions.

8 PRESIDING JUDGE EBOE-OSUJI: No one -- no one is suggesting you're messing it

9 up, but it seemed to me an odd question to begin with, and that was why I wanted

10 to know where it was going.

11 MR HOOPER: Well, the reason for the question really was this: She spent 45

12 hours with the Prosecution. She goes in considerable detail into all the events over

13 45 hours plus 9 hours last week, but the very first time she mentions (Redacted)

14 (Redacted) and the rest of it is in the course of her evidence. That's quite

15 possible. People can be moved in their recollections sitting in that chair. We all

16 know that. We've all experienced it.

17 But the background to our difficulty really is, bear in mind she says very little about

18 Mr Ruto. Nothing malign. In fact, benign. So I'm placed in this rather difficult

19 situation.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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25 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, we have to leave it at that. We

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- 1 have to rise.
- 2 MR HOOPER: Yes, certainly.
- 3 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 4 THE COURT USHER: All rise.
- 5 (Recess taken at 11.07 a.m.)
- 6 (Upon resuming in open session at 11.35 a.m.)
- 7 THE COURT USHER: All rise. Please be seated.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Witness, welcome back.
- 9 We are in open session.
- 10 Mr Hooper, please proceed.
- 11 MR HOOPER: Yes. Thank you, your Honour. Unfortunately, your Honour, as
- 12 you know, I'm just starting my questioning of the witness. And as your Honour
- 13 would expect, my initial questions relate to personal matters. And as I've said to
- 14 the witness as well, it's not my intention to discuss private matters as it were in
- 15 public. But for that reason I'm going to need to go into private session for at least
- 16 half an hour I thought. I'll be as quick as I can.
- 17 PRESIDING JUDGE EBOE-OSUJI: All right. Private session then.
- 18 (Private session at 11.37 a.m.) Reclassified into open session
- 19 THE COURT OFFICER: We're in private session, your Honours.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 21 MR HOOPER:
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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16 (Redacted)
17 (Redacted)

18 MR HOOPER:

19 Q. Let me ask you about -- I don't want to dwell on this overmuch. I appreciate
20 it's a private matter as well. I want to, as it were, get to the bottom of it as much as I
21 can. So I'm going to ask you to look at a document. It will be put on your screen.

22 MR HOOPER: And I think there are bundles. May I, first of all, assure you, the
23 Judges, I'm not intending to use all these documents by any means. But as you
24 know, unless we put them in, we can't really refer to them at all. So as a
25 consequence you get these perhaps rather extended bundles. I doubt if I'll be

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1 visiting this more than a few times, this bundle. And I'm not going to burden the
2 witness either, I hope, with many documents as I suspect you're not at ease with
3 them. So let me just show you this though. And I'll give you the reference. It's
4 KEN-D09-0031-0056.

5 PRESIDING JUDGE EBOE-OSUJI: What tab?

6 MR HOOPER: That's tab 10.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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21 (Redacted)

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25 (Redacted)

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1 (Redacted)

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3 (Redacted)

4 (Redacted)

5 Q. All right. Thank you, thank you for that clarification.

6 Now, let me jump on to events in 2008. And at that time you were at the

7 showground now in Eldoret, which may I say I will understand was a very

8 unpleasant experience for you and the many thousands who were camped there

9 (Redacted). In mid-2008, there was Operation Rudi Nyumbani,

10 N-Y-U-M-B-A-N-I, Rudi, R-U-D-I, Rudi Nyumbani, is that right? Perhaps you can

11 tell the Court what that, what Rudi Nyumbani was very briefly?

12 A. The Rudi Nyumbani Operation was, in fact, an operation designed to bring

13 the victims back to their places of origin and back to their homes.

14 PRESIDING JUDGE EBOE-OSUJI: Is this somebody, Rudi Nyumbani? Is that the

15 name of somebody?

16 MR HOOPER: I'll consult an expert.

17 THE WITNESS: (Speaking English) Yeah.

18 PRESIDING JUDGE EBOE-OSUJI: She can tell us perhaps. The witness seems to

19 be on top of the question. Let's see what she says.

20 THE WITNESS: (Interpretation) The operation --

21 PRESIDING JUDGE EBOE-OSUJI: What I want to know now is whether --

22 THE INTERPRETER: Was --

23 PRESIDING JUDGE EBOE-OSUJI: -- the name Rudi Nyumbani, is it somebody's

24 name?

25 THE WITNESS: (Speaks English) No.

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1 PRESIDING JUDGE EBOE-OSUJI: Is there somebody called Rudi Nyumbani?

2 THE WITNESS: (Interpretation) No. There is no one called Rudi Nyumbani. It
3 is an operation that was given that name, that title, Rudi Nyumbani.

4 MR HOOPER: Well, what I'll do, Interpreter, is I'll say that word, and perhaps we
5 can have it interpreted into English, Rudi Nyumbani.

6 A. (No interpretation).

7 Q. Not by you. We're asking our interpreters to -- I understand it means come
8 back home or go back home. Can the interpreters tell us what the Swahili --

9 THE INTERPRETER: From the --

10 MR HOOPER: Yes, thank you.

11 THE INTERPRETER: -- Swahili booth, return home, return to the house or return
12 home.

13 MR HOOPER: All right.

14 Q. And I think that was in June of 2008, about then. And it was a
15 government-sponsored operation to get people to go home after the terrible upsets
16 that had occurred during the post-election violence. And, Madam Witness, is it
17 right to say that many did go home? That's right, isn't it?

18 A. (Interpretation) When the Rudi Nyumbani Operation started or was
19 launched, people were all asked whether they wanted to go back home (Redacted)
20 (Redacted).

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted). Can I ask you how long, how long
23 did you remain at the Eldoret showground camp as an IDP? When did you leave
24 there? If you need a moment.
25 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Hooper, let's do this, let's take our

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- 1 morning -- let's take our lunch break now, and when we come you can continue.
- 2 MR HOOPER: All right.
- 3 PRESIDING JUDGE EBOE-OSUJI: Witness, we will, because you indicated you
- 4 needed time to rest, we will be taking an earlier lunch break, and we will come back
- 5 at 2.30, and we will hope that by that time you would have had enough time to
- 6 recompose yourself.
- 7 As I said earlier to you, the Judges here have a job, and part of our job is that no
- 8 witness who comes to court is asked unfair questions. Lawyers will ask questions
- 9 that witnesses sometimes find difficult or surprising, but that does not make the
- 10 question unfair. A witness will be asked questions they don't like sometimes. That
- 11 is part of the process. It doesn't make the question unfair because a witness doesn't
- 12 like the question.
- 13 When a question is unfair, we will -- if you remember in the morning there was a
- 14 question that you were asked, and I said, no, you will not be asked that question.
- 15 That is part of our job.
- 16 So we will take a break now for you to recompose yourself, and we will come back
- 17 at 2.30, and Mr Hooper will continue his questions. (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 Thank you. So we will rise now and come back at 2.30. Blinds down.
- 21 (Closed session at 12.49 p.m.) Reclassified into open session
- 22 THE COURT OFFICER: We're in closed session, your Honours.
- 23 (The witness stands down)
- 24 PRESIDING JUDGE EBOE-OSUJI: All rise. And we'll meet again at 2.30.
- 25 THE COURT OFFICER: All rise.

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1 (Recess taken at 12.50 p.m.)

2 (Upon resuming in open session at 2.41 p.m.)

3 THE COURT USHER: All rise. Please be seated.

4 THE COURT OFFICER: We're in open session, your Honours.

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

6 Witness, welcome back. I hope you had a good lunch. Mr Hooper will continue
7 asking you questions.

8 Mr Hooper, we are in public session now.

9 MR HOOPER: Yes.

10 Q. Good afternoon, Witness. I've got a little over an hour of questions this
11 afternoon, and I hope -- well, let's see how we go.

12 PRESIDING JUDGE EBOE-OSUJI: Do we remain in public?

13 MR HOOPER: Yes. Well, I can start off in public. We'll almost straight away go
14 into private. That's the position.

15 Q. Most Kikuyu IDPs got back, that is those from Kapsabet, most of them got
16 back to Kapsabet, did they not?

17 A. Not all of them went home.

18 Q. No, I agree with that, but most of them did.

19 A. Only one or two went home.

20 Q. Well, we may differ on that, but that's your answer. Now, you remained at
21 Eldoret --

22 MR HOOPER: Perhaps we can go into private. I'm going to talk about you. It
23 may be better. It will be in fact necessary.

24 PRESIDING JUDGE EBOE-OSUJI: For how long do you anticipate we be in there?

25 MR HOOPER: For about ten minutes.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session then.

2 (Private session at 2.44 p.m.) Reclassified into open session

3 THE COURT OFFICER: We're in private session, your Honours.

4 MR HOOPER:

5 Q. Now, you personally remained at Eldoret as an IDP until when?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 A. I don't think it's true. Nobody needed -- needed land.

14 Q. I'll just pause there and just reflect on that answer you gave me. Nobody
15 needed land, is that right?

16 A. Yes.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 Q. All right. Now, can I just ask you about your present circumstances. And
4 in doing that, even though we are in private session, you must remember not to say
5 anything about where you're presently living or your family are living or your
6 children are living, all right? That's a secret between you and the Prosecution and
7 the Victim and Witness Unit. So you don't tell us about that.

8 So with that in mind, (Redacted) since you first came into contact with the
9 Prosecution of the ICC, is it right to say that you've been receiving support
10 (Redacted), financial support, directly and indirectly? Is that right? And
11 there is nothing wrong, of course, with that. That's understandable. But that's the
12 position that you're in, is it not? You're being supported by the -- by the ICC?

13 A. Yes. I would say that the ICC does provide (Redacted) support, (Redacted)
14 (Redacted)
15 indeed receive financial support from the ICC.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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1 (Redacted)

2 MR HOOPER: We can be in public at this point. We're talking in generalities, not
3 specifics. So we can go into public session. I'll conclude my questions on this in
4 public.

5 PRESIDING JUDGE EBOE-OSUJI: Public session.

6 (Open session at 3.01 p.m.)

7 THE COURT OFFICER: We are in open session, your Honours.

8 MR HOOPER:

9 Q. My question was: Did you make a statement to any commission of inquiry?
10 And we've been in private session. Would I be right in understanding you to be
11 telling us that you did make a statement to a commission or more than one
12 commission? What's the position?

13 A. Yes.

14 Q. Did you -- have you ever heard of an organisation called the Centre Against
15 Torture?

16 A. No.

17 Q. Have you ever heard of an organisation called the Centre for Human Rights?

18 A. I have heard about the Centre for Human Rights, but I've only heard about
19 that indirectly. When we were asked to go to some seminars in Nairobi in 2008 and
20 2009 --

21 PRESIDING JUDGE EBOE-OSUJI: Witness, I've signalled you to stop there. Again
22 I have to recall my advice to you to listen carefully and just answer the question in as
23 few words as possible. Part of the difficulty that comes in when you answer more
24 than the question asked is you may end up giving information about yourself that's
25 identifying when that may not be what the lawyer wants from you.

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1 Just answer the question he asked and then let him ask further questions. He
2 knows that there are some questions he will not ask you in public session out of a
3 need to avoid identifying you, but it will not be his fault, of course, if you added
4 something else that he did not anticipate that identified you. So keep it to just to his
5 questions, okay?

6 MR HOOPER:

7 Q. All right. So you've heard of that organisation. Can I ask you, I'm going to
8 ask you about two names, deal with it more quickly. Have you ever heard of
9 someone called Ken Wafula or David Koros? Ken Wafula or David Koros?

10 A. No.

11 Q. Now, relatively recently I understand the government provided any person
12 who can demonstrate that they were an internally displaced person with 400,000
13 shillings. Did you receive such a benefit? I hope you did. Did you receive such a
14 benefit?

15 A. Could you repeat that question?

16 Q. Certainly. I understand that the government recently has provided the sum
17 of 400,000 shillings to any person who can demonstrate that they are, were an
18 internally displaced person, an IDP. First of all, have you heard of that? And
19 secondly, have you received such a benefit?

20 A. Yes, I have heard about that, but I did not receive that amount of money.

21 Q. Was there any reason why not? Remember we're in open session.

22 A. There are several reasons.

23 Q. All right. Well, let's leave it there then.

24 Now, your first contact with the Office of the Prosecution, according to the records
25 that I have seen, was on (Redacted). Do you remember that?

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1 A. I remember.

2 Q. And you spoke to the Prosecution for several hours over those two days.

3 You didn't make, that is sign a statement. What I've got is what we call a screening
4 note, a note that's made not by you and probably isn't even checked by you, but it's
5 made by the people you're talking to. And that's at our tab 23. And I'm just going
6 to ask you -- excuse me.

7 MR KIGEN-KATWA: With your permission, your Honours, page 68, line 19, I
8 thought the witness said that "I have not received the amount, but I'm waiting." If
9 that issue could be clarified. The element of waiting is not captured in the
10 translation.

11 MR HOOPER:

12 Q. Well, Witness, you probably heard Mr Katwa's observation. You said more
13 than we heard or is on the record. When I was asking you whether you had
14 received the 400,000 shillings, is it right that you said "I haven't yet. I'm still
15 waiting"? So you're waiting to receive that money? Is that the position?

16 A. Yes.

17 Q. All right. Now, coming back to when you first contacted the
18 Prosecution - from the note, and I'm looking at paragraph 3 for those following in
19 the note - can you remember saying or claiming to the Prosecution then that you had
20 attended ten ODM rallies? That's my question. Can you remember telling the
21 Prosecution you attended ten ODM rallies?

22 A. I think that the way I expressed it, I said that of the various rallies that I saw
23 and the ones that I heard, I think that you just said that none of the rallies that I was
24 at, except for one rally that was organised and that I listened to it as I was going by
25 along the road. That is what I said yesterday.

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1 Q. Yes, I understand that, but can you remember telling the Prosecution that you
2 had attended ten ODM rallies?

3 A. That's what you say. I never said that.

4 Q. All right. And again -- and I appreciate this isn't your note, it's somebody
5 else's note made following a conversation with you, but this note goes on to say that
6 you specified three -- in particular three rallies, and you gave specific dates. Let me
7 just go through those three dates with you.

8 Kapsabet town stadium on 29 October is the first one, Kapsabet town on 26
9 November and Nandi Hills on 24 November. So that's 29 October, 24 November, 26
10 November. So three specific dates.

11 And I want to ask you this, because it doesn't bear relation to your evidence: Where
12 did you get -- did you give those specific dates when you spoke to the Prosecution?

13 A. I do remember that I said that I had seen the Nandi Hills rally as I was
14 heading towards Gufla (phon) and I said that there had been many rallies. I said
15 that there had been more than ten that had been held. Some rallies were held at the
16 stadium. Others were held in the homes of various people. That is what I said.

17 Q. The question is quite specific. Did you give specific dates of 24 November,
18 26 November, 29 October? Where did those dates come from, if you did give them?

19 A. Yes, I did mention those specific dates.

20 Q. And why did you do that?

21 A. Because I saw those rallies.

22 Q. When you spoke to the Prosecution with this first contact in (Redacted),
23 did you have a piece of paper with you with those dates on the piece of paper?

24 A. I couldn't have had a piece of paper. First of all, because I didn't know what
25 they were going to ask me. It was the first time that I met them and that is why I'm

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1 saying that I did not write and that I did not have any paper with me.

2 Q. All right. Well, that was (Redacted)

3 (Redacted)

4 (Redacted) Do you remember that? You make a statement

5 in respect of that very long process. Do you remember that?

6 A. Are you talking about the date on which we met for the first time? Could
7 you tell me about the second time and then that way I will be able to give you a
8 better answer.

9 Q. Well, the first time I don't know if you met face to face or whether it was over
10 telephone, but that was in September for a few hours. But then there came a time
11 when you were interviewed day after day by (Redacted) at the end of which you read
12 and signed a statement. Do you remember that?

13 MS RENTON: Your Honours, for a moment could we just move into private
14 session for one second?

15 PRESIDING JUDGE EBOE-OSUJI: Private session then.

16 (Private session at 3.19 p.m.) Reclassified into open session

17 THE COURT OFFICER: We're in private session, your Honours.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 MR HOOPER: Yes, I will. We go back into public.

24 PRESIDING JUDGE EBOE-OSUJI: Public session then.

25 (Open session at 3.20 p.m.)

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1 THE COURT OFFICER: We're in open session, your Honour.

2 THE WITNESS: (Interpretation) I think --

3 MR HOOPER:

4 Q. I'm sorry, was that -- I just heard "I think".

5 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, maybe you can put your question
6 again.

7 MR HOOPER: Yes.

8 Q. Madam Witness, I was merely asking you do you recall that you went
9 through a very lengthy process when you gave your -- gave an account and it was
10 recorded and you read the finished statement and you signed it? Do you remember
11 going through all that in (Redacted)?

12 A. Yes, but before we keep on going, let us go back to the statement that you
13 made saying that I had given an another statement. I'm asking you to tell me where
14 that statement was made as well as the other statement. Tell me about the different
15 locations so that I can remember because, you see, that was a long time ago.

16 Q. Well, I'd like to be able to help you, but I can't because I'm not allowed to
17 know where the interview took place. But --

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

19 Witness, all right, let's keep going. If the lawyer wants to ask you questions about
20 specific locations, then we can deal with those as the questions are asked, okay?
21 Just try not to worry about where all this is going. Just listen to his question and
22 answer the question as he asks it. Thank you.

23 MR HOOPER:

24 Q. Let me -- excuse me. Let me jump over all this - I'm aware of the time - and
25 just mention a relatively small matter.

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1 And that was you may recall a couple of days ago - and this is in transcript 98 at
2 page 57 - you were talking about Raila at a meeting you attended and you said you
3 heard his speech. And I'm just going to read out one line from it and then ask you a
4 question about it.

5 "He went on to say the following: 'Even if they try to steal or to rig the votes or the
6 elections, there will be a tsunami.'" I'll repeat that. "Even if they try to steal or to
7 rig the votes or the elections, there will be a tsunami." First of all, do you remember
8 saying that?

9 A. Yes, I remember.

10 Q. Now, I suggest that if the word "tsunami" was used, it was used in this
11 meaning and context, that there was going to be a landslide of vote for ODM. Do
12 you agree with that?

13 A. No, that's not the case at all.

14 Q. Very well. Well, let me just read out to you very quickly and briefly just two
15 references that we've found contemporaneous, that is said at about the same time.
16 And that's at tab 11 and tab 12. And at tab 11 I have a report from the Standard
17 newspaper, and I'll just read out one section of it to demonstrate our -- what
18 we're -- what I'm saying.

19 And this is dated 20 December 2007, and it's headed "Kenya: Get Out to Vote for
20 Me, Raila Tells Supporters." And it reads -- and I'll read the whole -- the paragraph,
21 which is -- if one casts one's eye down, it's the first main paragraph one comes to,
22 about a few inches down from the top of the page. I'm going to read it to you,
23 Madam Witness, rather than burden you with the print.

24 "From Homa Bay, Raila flew to Narok North at Suswa where he declared a fresh
25 tsunami was on the way from South Africa towards Kenya in reference to the ANC

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1 party defeat of President Thabo Mbeki by rival Jacob Zuma. Accompanied by
2 Pentagon member Mr William Ruto, former MPs, Mr William ole Ntimama,
3 Mr Joseph Nkaissey, Mr Simeon Lesima, Mr Fred Gumo and Mr Franklin Bett and
4 ODM Kajiado North candidate, Mr Moses Sakuda, Raila asked President Kibaki to
5 read the sign on the wall saying he should be prepared for defeat."
6 So that's that reference where "tsunami" is used.
7 Let me just refer to one more and that's at the next page on our 12, tab 12. And this
8 is headed -- from the Daily Nation on the web dated 6 October, if my eyes are right,
9 2007 headed "Kenya: Swimming Against Tide - Candidates Face Uphill Task as Poll
10 Clock Ticks." And if we look two thirds of way down, we see the name Raphael
11 Tuju and then just a few lines below that starting "Mr Odinga." It reads as follows,
12 and let me read this to you:
13 "Mr Odinga has sounded a warning to those opposing his bid for the presidency just
14 as he did at the referendum with his 'tsunami is coming' remark."
15 Now, tsunami I suggest one can see is used in a political sense of a -- of an ODM
16 wave. Do you understand? What do you say it means?
17 A. That's very different from what I think.
18 Q. All right. What you think. Now, did you ever attend any meeting where
19 Mr Mudavadi was also present?
20 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you can ask that question, hold on
21 to it. But as regards the items appearing at tabs 11 and 12, do I take it these reports
22 were a product of a Google search? Would that be the case?
23 MR HOOPER: I think so, yes.
24 PRESIDING JUDGE EBOE-OSUJI: It might actually assist if that sort of record of a
25 search is indicated so that one would know the circumstances in which the material

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1 is generated.

2 MR HOOPER: Yes, I think someone has done a search and thrown up tsunami in
3 that way.

4 PRESIDING JUDGE EBOE-OSUJI: What I mean is for purposes of authenticity of
5 material, if it is shown that the record was pre-existing before somebody did a
6 Google search to dig it up, it might add a different value to what is dug up than if it
7 just shows up and we don't know when the record was created and that sort of
8 thing. That's what I'm saying. Yes.

9 MR HOOPER: I see the point and to our benefit. Yes. All right. Thank you very
10 much.

11 Q. Mr Mudavadi. Witness, I was asking about Mr Mudavadi. Did you ever
12 attend a meeting where he was present?

13 A. What I can say, and I will continue to say this, is that the rally that I saw and
14 that I didn't attend, this was the rally by the ODM delegation that was moving
15 towards the stadium.

16 Q. I'm sorry, I don't understand. When was this?

17 A. I can't quite recall the month. I know that it was in 2007, however.

18 Q. And what, did you see Mr Mudavadi or what?

19 A. I've just said the following: All the ODM delegates were present.

20 Q. Did you see him?

21 A. Yes, I saw him.

22 Q. And where did you see him?

23 A. I saw him in the town, yeah.

24 Q. Was he in a helicopter?

25 A. No. I didn't see any helicopter. Where the helicopters land is at Egash

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1 (phon) stadium or on the ground. I didn't go to the stadium. I saw him get on a
2 vehicle when he was being acclaimed by the crowd "Mudavadi, Mudavadi" and it
3 was at that particular point that I saw him, so I don't know whether he got on a
4 vehicle or a helicopter. That, I don't know.

5 Q. All right. Thank you. I want to take you to your statement to a particular
6 paragraph. I'm going to read it out to you, and it's paragraph -- of the statement at
7 tab 25 and the paragraph I want to read is at 96. And again, I'm not going to
8 burden you with paperwork. I'm just going to read one sentence, maybe two, from
9 this paragraph.

10 And let me just put it into context for you. This is after you voted you say and
11 while you're awaiting the results. And you're in this situation where you're
12 watching television, you're watching Citizen TV.

13 And you say that you saw Ruto -- this is second sentence, Ruto, Martha Karua and
14 Kiviutu arguing on television. I'll read out the paragraph, actually, the relevant
15 part.

16 "We saw Ruto, Martha Karua and Kiviutu arguing on TV. The entire ODM
17 Pentagon, that is Ruto, Orengo, Anyang Nyong, Najib Balala, Charity Ngilu,
18 Mudavada, Henry Kosgey and Margaret Wanjiro were at the KICC. It was the
19 ODM Pentagon against the PNU leadership. Ruto was forcing Kiviutu to announce
20 the results but Kiviutu refused. At one point Kiviutu wanted to leave, Ruto
21 grabbed him and slapped him and told him you must announce the results and you
22 will have to announce Odinga the winner. Kiviutu walked out of the KICC
23 building and left in a vehicle. The PNU and ODM leaders continued to argue."
24 And the one part of all that -- that's the quote. The one part of it that I want to ask
25 you about is this: You're watching on television you say, "...and at one point

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1 Kiviutu wanted to leave, Ruto grabbed him and slapped him and told him you must
2 announce the results." That's in your statement. You're watching television. Did
3 you really see that?

4 A. You've just read from the statement. There's a section of this statement
5 which is right, because I said, and I'll reiterate this, that when Kiviutu refused to
6 announce the results, Mr Ruto took hold of him and struck him, slapped him, and
7 after that, he was taken out. And another thing that I stated is that all the ODM
8 delegates were there. I saw Mr Orengo, Mr Anyang Nyong. That's -- those are the
9 names that feature in my statement. I also said that Kiviutu was taken out and the
10 PNU delegates and the ODM delegates stayed at that particular place.

11 Q. You say in your statement. So you confirm that this is something you saw; is
12 that right? You saw it yourself? You saw it on the television? You saw Ruto slap
13 Kiviutu, correct?

14 A. I saw it. I saw Ruto arguing very strenuously and vociferously with Kiviutu.
15 They were -- they were being very vehement.
16 Now, with regard to the blow, I learned after the fact that Mr William Ruto had
17 struck Kiviutu. When I was following things on the news, I only saw when they
18 were arguing, but then I didn't carry on watching the news. That's what I said in
19 my statement.

20 Q. You see, my position -- my position is that at no time did Mr Ruto slap
21 Kiviutu, nor is there any record of such a thing happening. I'm sure it would be all
22 over television and YouTube and everything else if it had happened. (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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(Private Session)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: Private session then.

5 (Private session at 3.41 p.m.) Reclassified into open session

6 THE COURT OFFICER: We're in private session, your Honour.

7 MR HOOPER: Thank you. Of course normally I wouldn't but because of the
8 unusual circumstances.

9 Q. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

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15 (Redacted)

16 (Redacted)

17 (Redacted)

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23 (Redacted)

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

25 (Trial Chamber confers)

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Page 69 redacted

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1 Q. I'm going to with the Court's leave ask you a few questions I'd like you to
2 help me with about your evidence that you gave. I'm not going to ask you many
3 questions concerning your evidence. And the first area I'd like to ask you about is
4 your evidence relating to 31 December. That's New Year's Eve. Don't bother about
5 the document.

6 MR HOOPER: Can that be taken off the screens, please, because it's obviously a
7 distraction. There we go.

8 Q. Now, listen to the question. New Year's Eve, 31 December 2007. On that
9 day, it was a Monday, you told us that there was a, in your words, a huge rally.
10 This is at T-69, page 9.

11 PRESIDING JUDGE EBOE-OSUJI: We're in private session.

12 MR HOOPER: We needn't be. I'm sorry.

13 PRESIDING JUDGE EBOE-OSUJI: Public session.

14 MR KIGEN-KATWA: Mr President, I was just wondering before we move whether
15 the witness should not be given a chance to answer the last question that Mr Hooper
16 asked.

17 PRESIDING JUDGE EBOE-OSUJI: It's Mr Hooper that's cross-examining. It's up
18 to Mr Hooper to manage his cross-examination until we say no, do it differently.

19 MR HOOPER: Yeah, I'm happy to move on. I see T-69. I seem to have my own
20 transcript numbers. It must be T-68.

21 PRESIDING JUDGE EBOE-OSUJI: Open session.

22 (Open session at 3.55 p.m.)

23 MR HOOPER: Sorry, T-98, maybe even 99.

24 PRESIDING JUDGE EBOE-OSUJI: Perhaps, Mr Hooper, I do understand the
25 delicate approach, but Mr Kigen-Katwa's point comes in if later on something is to

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1 be made of any matter of contradiction at least settling the witness did make a

2 statement while the witness is on the stand needs to happen.

3 MR HOOPER: Yes. Indeed.

4 Q. Well, let's -- don't mention any names in public.

5 PRESIDING JUDGE EBOE-OSUJI: So we then go back in private. Yes.

6 MR HOOPER: She needn't -- we needn't mention the name.

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

8 MR HOOPER: All right. Go back into private. Yes, there's certain obstacles I see.

9 (Private session at 3.56 p.m.) Reclassified into open session

10 THE COURT OFFICER: We're in private session, your Honours.

11 MR HOOPER:

12 Q. All right. My question was plainly from your July statement, the answer you

13 just gave to the Judges about (Redacted) is incorrect. That's

14 right, isn't it? (Redacted) You knew in July of last year (Redacted).

15 (Redacted) That's right, isn't it?

16 A. I say no, I wasn't aware of that. I was not aware of the fact that (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 THE WITNESS: (Interpretation) You've just read out from a statement. When I

23 said that, this wasn't construed according to my intention because I remember what I

24 said at that particular time.

25 MR HOOPER: All right.

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1 PRESIDING JUDGE EBOE-OSUJI: Let's -- we need to do it. It's not about making
2 somebody uncomfortable, but it's about giving them a chance to explain why it
3 might be an apparent contradiction and also establish signatures and that sort of
4 thing. So let the -- we need to bring paragraph 29 back on the screen so that she
5 sees it.

6 MR HOOPER: All right. Can we do that? All right. So let's deal with this a little
7 more fully. Now, I am only going to have sight of a redacted version. I don't
8 know how my friend might want to -- Ms Renton might want to deal with this. If
9 we're going to look at signatures, if you're happy for -- it's redacted. The signatures
10 are redacted. Oh, no. It's the interpreter that's redacted. All right. So we do
11 have copies of the signatures on the document even though much of it is redacted.
12 So I'm quite happy to work with the working document that we have.

13 And if we can go to the front page of it, which is -- the number's been redacted on
14 my -- on my copy, unusually. Oh, at the top. Thank you. Which is
15 KEN-OTP-0109-0328. And if we can get that first page up, it's going to come up on
16 your screen. Do we have a copy for the witness? I think you won't -- there we are.

17 Q. Can you see that, Madam Witness? It's on the screen now. Thank you for
18 looking at that. And you'll see it's just a normal statement for this Court headed
19 "International Criminal Court, Office of the Prosecutor, Witness Statement" and then
20 you'll see "Witness Information" and it's got your name clearly. And at the bottom
21 it will give the date and the times of these interviews. (Redacted)

22 Four and a half hours on each day as we can see.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you need to deal with what you
24 must deal with because we've now gone past 4. So see if we can quickly --

25 MR HOOPER: Sure.

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1 PRESIDING JUDGE EBOE-OSUJI: -- do this and continue --

2 MR HOOPER: Certainly.

3 Q. And if we can go to the next page, which is 0109-0329, we see signatures.

4 And I want you to look at that and tell me if you recognise your signature there and

5 the date on it. Do you see your signature, madam, at the -- it's the top signature of

6 the signatures that are there. Do you see that? Is your signature -- do you

7 recognise that as your signature, madam?

8 A. Yes.

9 Q. Now, I'm not going to go through all the statement with you. What I'd like

10 you to do is go to paragraph 29 on 0109-0336 which is page 9 of the statement itself

11 and paragraph 29. And if you look at that and can you read what it says there?

12 What's happened with this statement is that bits have been taken out because they

13 have been kept secret, you see? So that someone's cut out bits, but it doesn't matter,

14 you can see what it says I think sufficiently.

15 And if the Prosecution are concerned that it gives a wrong impression, they will let

16 us know and perhaps get the original to you.

17 But it reads, and I'll read it into the transcript: (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Keep going, Mr Hooper.

23 MR HOOPER:

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 A. I understand everything that's said in the statement, and I thank you for

6 giving me an opportunity to look at that part of my statement, but I do know what I

7 said was different to what is written here. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: What the lawyer is giving you an opportunity

13 now to say is if there's been a mistake or not is this, that in this statement, in this

14 passage that's on the screen, you see the first line says, (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-442

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 PRESIDING JUDGE EBOE-OSUJI: Yes.

3 MR HOOPER: And we'll have a look and see if there's any other material and

4 Prosecution as well for ambiguity or whatever.

5 THE WITNESS: (Interpretation) Could you give me an opportunity to answer the

6 question? Because we're not going to leave things at that. That's going to bother

7 me.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, we will leave it there - we're well

22 past 4 o'clock - and we will come back tomorrow at 12.

23 Witness, we will -- it's time for us to adjourn for the day and then we will continue

24 sitting tomorrow, but tomorrow we will start a little later because there's another

25 case that's happening in this courtroom, a judgment that's being delivered in another

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- 1 case. So we will meet again at 12 o'clock tomorrow. All right?
- 2 Please, blinds down.
- 3 (Closed session at 4.11 p.m.) Reclassified into open session
- 4 THE COURT OFFICER: We're in closed session, your Honours.
- 5 THE WITNESS: (Interpretation) Very well.
- 6 (The witness stands down)
- 7 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 8 THE COURT OFFICER: All rise.
- 9 (The hearing ends in closed session at 4.12 p.m.) Reclassified into open session
- 10 RECLASSIFICATION REPORT
- 11 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24
- 12 September 2013, and the instructions in the email dated 14 May 2014, the version of
- 13 the transcript with its redactions becomes Public.