

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Monday, 17 November 2014
10 (The hearing starts in open session at 2.41 p.m.)
11 THE COURT USHER: All rise.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We are in open session.
14 Court officer, you said you have another announcement to make?
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Republic of Kenya, in the case of The Prosecutor versus William
17 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
18 PRESIDING JUDGE EBOE-OSUJI: Thank you. The announcement is necessitated
19 by the changes in the transcripts.
20 The -- let's go into private session for a minute.
21 *(Private session at 2.42 p.m.) Reclassified as Open session
22 THE COURT OFFICER: We are in private session, Mr President.
23 PRESIDING JUDGE EBOE-OSUJI: Thank you.
24 An announcement and the ruling regarding Witness 658. I realise that Mr (Redacted)
25 is in the courtroom, but he is a professional though we will also still try to be careful

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1 in order not to compromise his own position.

2 First the announcement. The Chamber is confirming that Witness 658, the testimony
3 of that witness will start on 24 November 2014 and not on any earlier date as may
4 have been indicated. We will leave it at that.

5 And the ruling on Mr Khan's request. Mr Khan, the Chamber appreciates the
6 situation that you have -- that causes you concern. Nevertheless the preferred option
7 will be option number 3, as indicated when Mr Kigen-Katwa addressed the Court;
8 option number 3 being the proceeding will continue in the ordinary course. The
9 Prosecutor will do his examination-in-chief and, upon resting, the Defence should
10 prepare -- should be prepared to start their cross-examination immediately without
11 interruption necessitated by the issue raised by Mr Khan.

12 The Defence nevertheless may - may - if they see fit reserve additional
13 cross-examination subject to the further or anticipated disclosure. That would be
14 how the matter will proceed.

15 MR KHAN: I'm grateful, Mr President.

16 Could I ask for an order consequent to that? In light of the matters that were raised
17 this morning, I would ask that the Court order the Prosecution (1) not to proof the
18 witness in relation to the matters that were discussed, the material that we're waiting
19 for or the --

20 PRESIDING JUDGE EBOE-OSUJI: Okay, let's do this, Mr Khan. Let's not deal with
21 this now because we may now begin to get into deeper discussions about what this is
22 involved. As we indicated earlier, we have a stranger as it were --

23 MR KHAN: Indeed. Indeed.

24 PRESIDING JUDGE EBOE-OSUJI: -- in the courtroom.

25 MR KHAN: Your Honours, I can raise it perhaps on another occasion in that case.

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1 PRESIDING JUDGE EBOE-OSUJI: And if it is possible for you to briefly put it in
2 writing, if it is possible? This is not a direction to you at this stage.

3 MR KHAN: Well, Mr President, if you allow, perhaps I can put something by way
4 of email, copying in the Prosecution and the Bench, and then we can just continue
5 with this current witness?

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MR KHAN: I'm grateful. Thank you so much.

8 MR STEYNBERG: As I mentioned earlier, the proofing of the witness is underway.
9 I think it would only have started today because the witness was as of this morning
10 still finalizing the reading of his transcript, so my learned friend should do it without
11 delay please.

12 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it at that now on that
13 note and we will go back to public session now for the testimony of Witness 800.

14 No, let's go back to closed session, bring the witness in and then go back to public.

15 *(Closed session at 2.47 p.m.) Reclassified as Open session

16 THE COURT OFFICER: We're in closed session, Mr President.

17 (The witness enters the courtroom)

18 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, while the witness is being settled into
19 the seat, again for the record I think you said this before, but this may be a good time
20 also to reflect whether the Rule 66(3) and the Rule 74(1) advisories have been given to
21 this witness?

22 MR STEYNBERG: Yes, your Honours. I can confirm that I personally gave those to
23 the witness.

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

25 We will now go to public session.

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1 (Open session at 2.48 p.m.)

2 THE COURT OFFICER: We are in open session, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. And please administer the solemn
4 declaration.

5 WITNESS: KEN-OTP-P-0800

6 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and
7 nothing but the truth.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness 800. That is the
9 designation under which you will testify. And I welcome you to the courtroom. As
10 I say to every other witness who has appeared before you, and I also say to you,
11 you're welcome to a courtroom that belongs to you as it does to all the lawyers and
12 judges who are now in the courtroom. Feel comfortable while you are with us and
13 giving your testimony.

14 What we require of you is to tell the truth and nothing but the truth as you have
15 solemnly declared to do, and you will be doing that to questions that the lawyers will
16 be asking of you, and it is through questions that the lawyers do their work in our
17 quest for the truth.

18 Questions will begin with the Prosecutor, who will ask you questions in
19 examination-in-chief. When the Prosecutor completes his questions in
20 examination-in-chief, there will be cross-examinations done by the counsel for the
21 Defence. Mr Kigen-Katwa, who represents Mr Sang, and Ms Alagendra, who
22 represents Mr Ruto, will all take turns cross-examining you and again questions,
23 questions all the way. And your job is to listen carefully to each question asked of
24 you, concentrate on one question at a time, make sure you understand it, and then
25 answer that question to the point and briefly to the best of your ability and stop and

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1 wait for the next question.

2 Listen carefully, understand the question and answer it briefly to the best of your

3 ability and stop and wait for the next question.

4 Do not trouble yourself too much with whether or not the question has been fair or is

5 fair or whether the question has a point to it. Just listen, understand it and answer

6 the question as the -- give the answer as the question requires. It is for the Judges to

7 trouble themselves with the fairness of the question as well as the point of it. It is a

8 job we take very seriously. It is our duty to ensure that witnesses who come here to

9 testify are not treated unfairly because they are sitting down in court and taking

10 questions from the lawyers. We ensure that that does not happen and it does not

11 happen in this courtroom.

12 In answering your question, you must do your best to eliminate guesswork. Try not

13 to do the mathematics of the matter. So you put two and two together and then you

14 give what you think is a resulting answer. No. Just give us the raw material and let

15 the lawyers worry about whether or not all that adds up at the end of the day.

16 I also need to tell you that we're more interested in what you perceived yourself

17 directly, what you saw with your own eyes, what you heard with your own ears as

18 concerns the facts, not necessarily what somebody else told you about the facts and

19 you've come to tell us what you heard through somebody else. It may be from time

20 to time that such information about what you heard may be important, but not

21 always the case. So try your best to give us information about what you yourself

22 perceived on a firsthand basis.

23 The request has been made and request granted to give you protective measures and

24 that's why we are using for instance the pseudonym 800 instead of your real name.

25 That is part of the protective measures that the Chamber has granted. So your

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1 pseudonym is being used and not your real name because we do not want your
2 identity disclosed to the public when you are testifying in public.
3 Also, your image will not be broadcast to the public. Your voice also is not being
4 directly broadcast. Distortions will be applied to both your image and your voice.
5 From time to time we will need to go into closed session to receive certain
6 information that might identify who you are, and again all those are measures the
7 Chamber has ordered in order to protect your identity as well as the identity of
8 people who are closely related to you and again close friends who are closely
9 connected to you.
10 Also, material that we would not want you testifying to in the public session might be
11 some unique information that may -- that only a few people would have been
12 connected to, including yourself, but there may be other people in the public who
13 know, who have learned that you are one of those very few people connected to that
14 information. Information like that we will also want you to give only in private
15 session because we want to avoid a situation where any of those people outside in the
16 public could make -- relate that sort of information to you. We don't want them
17 knowing or being in the position to try and figure out whether it was you who is
18 testifying. So it's best to give that sort of information in the private session outside
19 the hearing of the public.
20 And all this returns, it takes us back to what I told you about to listen to the question
21 carefully, make sure you understand it and just answer that question that has been
22 asked of you as opposed to something else you are thinking about that might be
23 relevant. The reason is when lawyers ask you questions, they know of this need to
24 protect your identity, so they will not be deliberately asking you questions that will
25 reveal -- that will call for you to give answers that will reveal your identity, so they

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1 are careful to avoid that.

2 Now, it becomes important that you listen carefully to the question that's being asked
3 and answer just that, because if you do more than answer -- give an answer that the
4 question does not directly call for, you may run the risk of injecting identifying
5 information in the answer because the lawyer didn't think you would give that kind
6 of answer, you were just bringing out for them. So it's important, listen to the
7 question carefully, answer it, and if you feel there's a need for you to add more, also
8 think whether that more that you'll be asked -- adding may reveal your information,
9 then you can signal that and we will go into private session to receive that sort of
10 information.

11 Do you understand all that I'm saying?

12 THE WITNESS: Yes, your Honour.

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

14 There are some logistical matters you also need to keep in mind. There is a way we
15 try to do our work in order to make it easy for members of the Court who are helping
16 put this whole thing, make it work to make it easier for them. I'm talking here about
17 the interpreters and the court reporters who can only hear you through the
18 microphone. They're in sealed compartments. They cannot hear you directly. So
19 it is only through the microphone that they can hear what you're saying and create
20 the record for the Court.

21 So it is important at all times to respect the microphone, respect the microphone in the
22 sense of making sure that we don't have two people overlapping on the microphone,
23 speaking at the same time. That results in crowding the microphone, and when that
24 happens, the court reporters and interpreters will find it extremely difficult,
25 sometimes impossible, to understand what is being said. So only one person should

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1 speak at any given time.

2 And that brings us to matter of how you answer questions. I noticed you are

3 speaking in English, and it's more difficult -- it's a good thing that you speak in the

4 language that the lawyers are speaking, but the danger is that because you

5 understand the question even before it is completed, you may start answering at that

6 time, then you create that overlapping situation we want to avoid.

7 It's important for you to wait for the questioner to finish the question completely,

8 even though you may know the answer, do not take it away from them. Wait 'til

9 they finish. Then you will pause for five seconds. When you're pausing for five

10 seconds, you're freeing up the microphone and allowing interpretation of the

11 question to finish. Within five seconds that should be done and then you start your

12 answer after five seconds. The rule of thumb for five seconds is if you count in your

13 mind silently up to five that will help us do that trick.

14 It is also important for you to speak at a moderate pace, not too fast, but also not too

15 slowly, but just at a moderate pace keeping in mind that there are people who are

16 interpreting what you're saying and also recording it by stenography.

17 Counsel has been put on standby to advise you in case matters of self-incrimination

18 come up in the course of your testimony. Mr (Redacted), who is sitting back there,

19 that's the reason why he's in the courtroom. We understand that he has had

20 meetings with you and giving you advice about what the Chamber ruled on this

21 morning as well as perhaps later on he will meet further with you about any other

22 matters that may arise after he had finished reviewing some material that the

23 Prosecutor and the VWU have made available to him.

24 We will leave it at that for now. Again, thank you for coming. Mr Steynberg will

25 start his examination-in-chief.

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1 MR STEYNBERG: May it please the Court, your Honours. As a first matter may I
2 inform the Court that the PIS as usual contains a CV - curriculum vitae - with the
3 personal details of the witness.

4 PRESIDING JUDGE EBOE-OSUJI: We are in public session.

5 MR STEYNBERG: I realise that, your Honours.

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MR STEYNBERG: I will be careful. I've consulted with my learned friends and, to
8 the extent of the information that appears on the CV, they have informed me this is
9 not in dispute. There were some additional items relating to the work performed or
10 the work that this witness says he performed prior to and after the elections that are
11 in dispute, and I will lead him on those in the normal way, but since we do have the
12 PIS I can at least start in public. I will shortly have to go into private to elicit some
13 more details.

14 QUESTIONED BY MR STEYNBERG:

15 Q. Good afternoon, Mr Witness.

16 A. Good afternoon.

17 MR STEYNBERG: May I enquire whether the court officer could provide the
18 witness with a copy of the PIS form? Thank you, madam.

19 Q. Mr Witness, I advised you during the witness preparation session that we
20 would be using a form which I described as the protected information sheet. This is
21 that form. And contained on this form are certain details which the Prosecution
22 has -- considers unsafe to mention in public session. It contains details of locations,
23 certain names as well as your personal details contained on the last page. And
24 please ensure that whenever we are in public session and you need to refer to any of
25 these persons, or places, or organisations, that you should refer to them by the

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1 number that appears on this sheet; in other words, location number 1, organisation
2 number 1, person number 1, 2, 3, 4, et cetera. Do you understand?

3 A. Yes, I understand, your Honour.

4 Q. All right. I'd like to ask you to turn to the last page which is headed
5 "CV/Personal Information". It's page number 4. Do you have that?

6 A. Yes, your Honour.

7 Q. Now, I'd like you to read through this again. I know that we showed you this,
8 a similar page, during the course of your preparation, but can you please read
9 through this information and just confirm for the record that it is correct.

10 A. It is correct, your Honour.

11 MR STEYNBERG: Thank you, Mr Witness.

12 Your Honours, I do need to, as I said earlier, elicit some additional information and
13 may I ask that we go into private session for approximately ten to 15 minutes.

14 PRESIDING JUDGE EBOE-OSUJI: We will go into private session.

15 And Mr Steynberg, it might be safer if you introduced the PIS formally when we
16 move into the private session to avoid this business of us forgetting it, as we've often
17 done, in the course of the proceedings. Basically, to tender it in at this stage is what
18 I'm saying.

19 Private session.

20 *(Private session at 3.08 p.m.) Reclassified as Open session

21 THE COURT OFFICER: We are in private session, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR STEYNBERG: Thank you, your Honours. And thank you for that timely
24 reminder. May I then formally request that this be added to the record as the next in
25 the list of Prosecution PIS forms.

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1 PRESIDING JUDGE EBOE-OSUJI: I take it there is no issue from the Defence side.

2 MR KIGEN-KATWA: None on our part, Mr President.

3 MS ALAGENDRA: None, your Honour. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: The document would be admitted as the next
5 Prosecution PIS.

6 THE COURT OFFICER: The Prosecution PIS related to witness KEN-OTP-P-0800
7 will bear the number KEN-PIS-0001-0100.

8 MR STEYNBERG: Thank you, Madam Court Officer.

9 Q. Mr Witness, I'd like to pick up please -- we're in private session now, pick up
10 from the last bullet point of your CV which refers to work you did (Redacted)
11 (Redacted)

12 Can you kindly inform the Chamber what was the nature of the work you did for that
13 organisation.

14 A. Your Honour --

15 MS ALAGENDRA: Just -- I'm sorry. It says (Redacted) in the CV, but
16 there's -- I think my learned friend said (Redacted).

17 PRESIDING JUDGE EBOE-OSUJI: Indeed, that was the case.

18 MR STEYNBERG: Thank you, your Honours, for the correction. I misspoke. It is
19 indeed (Redacted).

20 Q. Mr Witness, can you tell the Court what was the nature of your work.

21 A. Yes, your Honour. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. All right. Now, during that period from (Redacted) did you work for any

5 (Redacted)

6 A. Yes, your Honour. Between this time I also worked with (Redacted)

7 (Redacted) I also worked with (Redacted)

8 With (Redacted) I worked as a -- as a (Redacted), and

9 with (Redacted) I worked as a (Redacted)

10 (Redacted)

11 Q. Thank you. I'd like to get some more details of your work with (Redacted)

12 (Redacted)

13 A. Yes, your Honour.

14 (Redacted)

15 A. I beg your pardon, your Honour?

16 Q. What work did the (Redacted) do?

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. Thank you. Can I just remind you, please, Mr Witness to observe a slight

21 pause before answering my questions. You're answering very quickly upon and

22 we're going to start getting some objections from the interpreters.

23 And what did your position as (Redacted), what did that

24 entail?

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. All right. Now, just to get into good habits before we launch into public

7 session, if you can look at page 3 of your PIS form you'll notice that the name of

8 (Redacted) appears at point 6. So if we were in public session you should please

9 refer to this individual, or any other individual, by that number. So person number

10 6. The -- it is roughly alphabetical, though I do see that one or two of them are not in

11 exact alphabetical order but that should guide you.

12 Now, perhaps while we -- while we have that page in front of you, you've mentioned

13 certain (Redacted), can you tell the Court, please, whether any of the (Redacted)

14 (Redacted)

15 A. Yes, your Honour.

16 Q. Who are they?

17 A. (Redacted)

18 Q. (Redacted)

19 A. (Redacted). Those are the persons I remember, your

20 Honour.

21 Q. Thank you. Mr Witness, (Redacted)

22 (Redacted)

23 A. (Redacted)

24 Q. And at the time -- well, over what time period did you work for (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. And --

19 A. The --

20 Q. Sorry, finish your answer please.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 PRESIDING JUDGE EBOE-OSUJI: Before that, you can hold that question
- 5 Mr Steynberg, but on this matter of (Redacted), Witness, (Redacted)
- 6 (Redacted)
- 7 THE WITNESS: Yes, your Honour.
- 8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted). So that was permitted?
- 12 THE WITNESS: Yes, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 14 Mr Steynberg, proceed.
- 15 MR STEYNBERG: Thank you, your Honours.
- 16 Q. What is the position in Kenya about (Redacted)
- 17 (Redacted)
- 18 A. I beg your pardon, your Honour?
- 19 Q. Let me rephrase it this way. Is it permissible (Redacted)
- 20 (Redacted)?
- 21 A. Your Honour, (Redacted)
- 22 (Redacted)
- 23 Q. So in the case of (Redacted), where did (Redacted)
- 24 A. Your Honour, when I worked -- when I was working with (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. All right. And I draw your attention to the PIS. That's organisation number 5.

5 All right, I think I can move along then. Now, from what you've told us, there was a

6 period where you were working for (Redacted). Firstly, can I

7 ask you where was (Redacted)? Where was your office at (Redacted)?

8 A. (Redacted)

9 Q. And did you work at the offices -- at the offices, or did you work from another
10 location?

11 A. My main work was in the office.

12 Q. And how were you able to (Redacted), which you've
13 indicated was (Redacted)?

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. All right. And during the period 2005 to 2007, which is the period we're most
20 interested in, where were you living?

21 A. Your Honour, within this period I (Redacted)

22 (Redacted)

23 (Redacted). That is

24 my home area.

25 Q. I'm going to have to ask you to spell (Redacted) for the record, please.

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1 (Redacted)

2 Q. All right, just a couple of clarifications. I don't think it will be in dispute. Is it
3 correct that (Redacted) is in the (Redacted) area?

4 A. (Redacted) and (Redacted) means the same place, because (Redacted) is a location,
5 it's a whole location, it's a sub-location, and (Redacted) is one of (Redacted)

6 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, while on (Redacted), if you look at
7 the -- I will take you to the last page of the PIS, the last sub-bullet under "Work
8 Experience" there is a location mentioned there in the last -- the very last line on the
9 page. Is that the same? (Redacted) location, is that the same as (Redacted), or is there
10 any relationship or not?

11 MR STEYNBERG: Your Honour, I think it's probably best if we ask the witness to
12 clarify that.

13 PRESIDING JUDGE EBOE-OSUJI: I'm asking you so you can --

14 MR STEYNBERG: Yes.

15 Q. Mr Witness, (Redacted), is that the same place as the
16 (Redacted) you've been referring to, or is it -- is that a different place?

17 A. Your Honour, (Redacted) is a location name, (Redacted) is a sub-location where it
18 is headed by a sub-chief and then (Redacted) is (Redacted)
19 sub-location.

20 Q. So is the position that (Redacted) sub-location falls within (Redacted) location,
21 both of which are in the (Redacted) area?

22 A. Yes, your Honour.

23 MR STEYNBERG: Thank you, your Honours.

24 Q. Lastly, which area of (Redacted) was your home based in?

25 A. In (Redacted), your Honour.

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1 Q. And I refer you to the list of locations. Please refer to (Redacted) as

2 "Location 8" and (Redacted) as "Location 9." Thank you.

3 Just one or two matters before we can proceed into public session. Your ethnicity is

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) the local population?

10 A. Your Honour, in (Redacted)

11 (Redacted)

12 Q. Now, I'd like to move on to certain events that took place in 2005. I'll have to

13 start dealing with this in private session, since it relates to your work with (Redacted),

14 and then we'll proceed into public session.

15 Mr Witness, it's not in dispute that in 2005 there was an constitutional referendum

16 held in Kenya. Do you recall that?

17 A. Yes, your Honour.

18 Q. And it's also not in dispute that on the issue of the proposed constitutional

19 reform there were two distinct camps: The "Yes" camp who were in favour of the

20 change and the "No" camp who were opposed to the change; is that correct?

21 A. Yes, your Honour.

22 Q. And perhaps I shouldn't lead you on the next aspect, so can you explain to the

23 Court generally speaking the persons in the Rift Valley, in particular in your areas of

24 (Redacted), how did they -- which side were they supporting?

25 A. Your Honour, during this time those people who were for the Yes were

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1 supporting were mostly the Kikuyus, people from the Kikuyu community and those
2 who were for No, pro No, were mostly the Kalenjin.

3 Q. All right. Now, at the time of -- or before the referendum was held, did you
4 (Redacted)
5 We're talking now in 2005.

6 A. Yes, your Honour.

7 Q. What event or events are you referring to?

8 A. On 1 October (Redacted) World Elderly Day.

9 Q. Are we still referring to 2005?

10 A. Yes, your Honour.

11 Q. How do you know that it was on 1 October?

12 A. Your Honour, (Redacted)

13 celebrate the World Elderly Day every first day of October of every year.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Was this event attended by any prominent persons?

18 A. Yes, your Honour, it was attended by members of parliament, councillors and
19 elders from different parts where (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MR STEYNBERG: And if we can just finish up with this while we're in private

6 session, can I ask the court officer please to call up firstly the first page of this

7 document, KEN-OTP-0082-0219, the latest redacted version of that. In fact, I don't

8 think it is redacted. It's at tab number 2 of the Court bundles, your Honours.

9 Q. Mr Witness, if you could look at your screen, you should see the cover of that
10 document.

11 A. No.

12 MR STEYNBERG: I don't see it either.

13 Thank you.

14 Q. Do you see that now, Mr Witness?

15 A. Yes, your Honour.

16 Q. Can you identify what you see there?

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 that clear?

5 A. Yes, your Honour.

6 MR STEYNBERG: Your Honours, I'm grateful for that indulgence. May we please
7 proceed into public session?

8 MS ALAGENDRA: Perhaps before we do that, just to indicate to my learned friend
9 that we have no objections if he'd want to admit (Redacted) at this stage before we go
10 into the public session.

11 MR STEYNBERG: Thank you. Your Honours, that is an eminently sensible
12 suggestion and I'll take my learned friend up on that. If I may ask that this exhibit be
13 handed in as the first Prosecution exhibit for this witness?

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

15 MR KIGEN-KATWA: I have no objection, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next in the
17 Prosecution exhibits.

18 THE COURT OFFICER: Document KEN-OTP-0082-0219 will bear number
19 EVD-T-OTP-00243.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 PRESIDING JUDGE EBOE-OSUJI: If you want to take this up later in
9 cross-examination, Ms Alagendra, Mr Kigen-Katwa, it's up to you, but we can move
10 on.

11 MR STEYNBERG: Thank you, your Honours. May we please move on then into
12 public session?

13 PRESIDING JUDGE EBOE-OSUJI: Public session.

14 (Open session at 3.47 p.m.)

15 THE COURT OFFICER: We are in open session, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 MR STEYNBERG: Thank you, your Honour.

18 Q. Now, if I can just recap, Mr Witness, we were dealing with a certain meeting
19 which took place in the area of location number 9 on the PIS, a meeting which was
20 attended by, amongst others, Mr William Ruto, Mr Lagat MP, Mr David Koros MP,
21 and Councillor Josiah Magut on 1 October 2005.

22 Now, did any of these persons speak at that event?

23 A. Yes, your Honour.

24 Q. And who were they?

25 A. I remember the words of Honourable William Ruto.

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/11

1 Q. And what were those words that you can recall?

2 Sorry, before you answer that, let me start off by saying in what language did

3 Mr Ruto address the persons gathered at that location?

4 A. Your Honour, Mr Ruto spoke in Kiswahili and then at some instant he switched
5 to Kalenjin.

6 Q. And while he was speaking in Kiswahili, is there anything that you can recall
7 him saying?

8 A. Yes, your Honour. He wanted people to vote against the constitution, come in
9 large numbers and ensure they have their voting cards so that they could vote against
10 the proposed constitution.

11 Q. Yes. Anything else?

12 A. He wanted to make sure that he urged people to turn out in numbers and also
13 wanted them to continue even going to -- down to the grass roots to those people who
14 did not attend the meeting, to be told that they should actually turn in numbers to
15 vote.

16 Q. All right. Now, when Mr Ruto switched into Kalenjin, what did he have to say
17 then?

18 A. When Mr Ruto turned to -- to Kalenjin, in the midst of his speech, he was saying
19 in Kalenjin that he was seeing the white mushrooms still in that -- in that -- in
20 that -- in -- in that area.

21 Q. Yes, and what did he say about these white mushrooms?

22 A. That they should be uprooted or eaten.

23 Q. Now, you've indicated on your CV that you speak -- or, you've indicated

24 Kalenjin is one of the languages that you speak. What is the level of your Kalenjin
25 competence?

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

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1 A. Good, your Honour.

2 Q. And you've also told us that you've -- no, I can't say that in public.

3 PRESIDING JUDGE EBOE-OSUJI: Let's get the answer to line 20. Did the witness
4 say "good"?

5 MR STEYNBERG: That is what I heard, your Honour.

6 Q. Did you say your Kalenjin understanding was good?

7 A. Yes, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Thanks.

9 MR STEYNBERG:

10 Q. All right. What did you understand Mr Ruto to be referring to when he
11 said - if I can just get the exact words - that he was seeing white mushrooms? What
12 were these white mushrooms?

13 A. Your Honour, I understood it to mean the Kikuyu people because some of them,
14 even who had attended, do -- they -- they -- they had the white scarves which they
15 put mostly around -- they -- they tie in their heads. These -- these white scarves
16 which are tied in their heads are mostly encouraged in Kikuyu community by
17 their -- their -- their -- their -- their -- their churches because when you become a
18 Christian and adore in their churches, you have to be -- you have to wear and you
19 have to -- to tie that white scarf on your head. So most Kikuyu people do tie that
20 white scarf in their -- in their -- in their heads.

21 Q. Thank you. And what did you understand him to mean when he said that
22 these white mushrooms should be uprooted or eaten?

23 A. I understood when he said that to mean that the Kalenjin people should send
24 away the Kikuyu.

25 Q. Now, we know that this event took place in the lead-up to the 2005 referendum.

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

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1 In that context why -- why would it be necessary to send away the Kikuyu people
2 from that area?

3 A. Your Honour, the Kikuyu people were not sent away, or there was no mayhem
4 after the referendum because the "No" campaign did achieve.

5 Q. All right. We understand the no -- the proponents of the "No" campaign were
6 successful in that referendum, but that's not my question. My question is why do
7 you think Mr Ruto was advocating for the removal of the Kikuyu people at that time?

8 A. By that time the Kikuyu people were not voting in line with the Kalenjin people
9 and by that time most Kalenjin people believed that the Kikuyu had taken up their
10 lands and the economy and now they wanted to use the constitution to take up the
11 leadership.

12 Q. Can you tell us, Mr Witness, about the role of Mr Ruto in the Rift Valley at that
13 time? We're now talking in 2005. How did you see him as a personality in the Rift
14 Valley?

15 A. Honourable Ruto, by that time, he was very vocal and speaking on behalf of the
16 Kalenjins.

17 Q. And how is it that Mr Ruto was able to speak on behalf of the Kalenjin?

18 A. Your Honour, at some occasion Mr Ruto was given honour to become a
19 spokesperson of the Kalenjin community.

20 Q. And do you know exactly when that was?

21 A. I don't remember the exact date, your Honour.

22 Q. How many people attended this meeting that you've been describing?

23 A. Over one thousand, your Honour.

24 Q. And what was the reaction of the persons present to Mr Ruto's comments
25 regarding the mushrooms?

Trial Hearing
Witness: KEN-OTP-P-0800

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1 A. Your Honour, those who understood Mr Ruto, especially the Kikuyu people
2 who were able to grasp the meaning of what Mr Ruto was speaking about, were not
3 happy.

4 Q. And what about the Kalenjin people present?

5 A. Most Kalenjin people were very happy with the words of Mr Ruto and
6 applauded him.

7 Q. And why from your knowledge of living in the Rift Valley would the Kalenjin
8 have been happy about -- or, were the Kalenjin people present happy about this
9 expression?

10 A. Like I said, your Honour, most Kalenjin people believes that the Kikuyu in Rift
11 Valley have taken up their land, they have taken up the economy and they
12 want -- and they -- and they're struggling to take up the leadership, so they were very
13 happy to hear what Mr Ruto was talking about because to them it was liberation.

14 Q. Now, I note the time but before we wrap up, Mr Witness, there's a correction I'd
15 like to ask you to make or, rather, a spelling I'd like you to ask us -- to help us with.
16 On page 14, line 3 you referred to --

17 MR STEYNBERG: Sorry, your Honour, there's a correction to two locations there,
18 but I can't do that in public. Perhaps I can come back to that tomorrow, or we can
19 briefly go into private and I can deal with it now.

20 PRESIDING JUDGE EBOE-OSUJI: Let's go into private and get it over with.

21 *(Private session at 4.01 p.m.) Reclassified as Open session

22 THE COURT OFFICER: We're in private session, Mr President.

23 MR STEYNBERG: Thank you, madam.

24 Q. You referred to two locations of (Redacted) and I think the second one was
25 (Redacted). Firstly, have I got the pronunciations right? I'll put it in context.

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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- 1 The -- your answer was, (Redacted)
- 2 (Redacted)..." and then I think it was (Redacted)
- 3 What were those two locations and then can you spell them for us, please?
- 4 (Redacted)
- 5 MR STEYNBERG: Thank you very much.
- 6 Your Honours, I'm going to move on to a new topic so perhaps it would be an
- 7 appropriate time to break.
- 8 PRESIDING JUDGE EBOE-OSUJI: Witness, we will be rising for the day and you
- 9 will join us again tomorrow morning.
- 10 In the meantime, Mr(Redacted) you should feel free to advise the witness following
- 11 your further review of the materials on -- solely limited to the matter (Redacted) all
- 12 right? The Court will rise.
- 13 THE COURT USHER: All rise.
- 14 (The hearing ends in private session at 4.03 p.m.) Reclassified as Open session
- 15 RECLASSIFICATION REPORT
- 16 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 17 2013, the version of the transcript with its redactions becomes Public.